

BOARD OF REGENTS BRIEFING PAPER

1. AGENDA ITEM TITLE: New Title IX Revisions to Handbook and Code: Updates to NSHE Discrimination and Sexual Harassment Policies and Procedures

MEETING DATE: August 7, 2020

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 financial assistance.”

On May 6, 2020, the U.S. Department of Education issued new Title IX regulations pertaining to sexual harassment that go into effect on August 14, 2020. The regulations, which were issued after the Department engaged in the formal rule-making process, consist of over 2,033 pages of legal analysis, discussion, and formal regulations that carry the force and effect of law.

Following the issuance of these new regulations, NSHE created a working group to draft revisions to the Board of Regents’ policy against sexual harassment, including the complaint procedure, to bring it in line with the new regulations by their effective date. This working group consisted of legal and Title IX representatives from NSHE, UNLV, UNR, and WNC.

The proposed revisions also include: revisions to the policy governing discrimination outside of Title IX, conforming revisions to Section 5.6.2 of the NSHE Code pertaining to confidentiality of records associated with a Title IX complaint or investigation, and conforming revisions to Chapter 10 of the Code pertaining to the student code of conduct.

Given that the new Title IX rules must be in place by August 14, 2020, the amendments to the NSHE Code are being requested on temporary and emergency 120-day basis pursuant to Title 2, Chapter 1, Section 1.3.3.(b). They will be re-submitted to be permanently codified through normal procedures on a later Board agenda.

Key provisions of the Department of Education’s new regulations, which are also now included in the proposed revisions to the NSHE policy, include:

- A narrower definition of “sexual harassment” that requires conduct to be “severe, persistent, *and* pervasive” (emphasis added);
- An expansion of jurisdictions within which sexual harassment can take place, including off-campus locations owned or under substantial control of school-sanctioned fraternities or sororities;
- Exclusion of conduct that occurs outside of the United States;
- A requirement that “live hearings” be conducted for all Title IX complaints, to include cross-examination of witnesses;
- A requirement that an advisor conduct cross examination; if the individual does not have an advisor, the institution must provide one; the advisor need not be an attorney;
- Flexibility to use technology to conduct Title IX investigations and hearings remotely; and
- An equal right of appeal for both parties to a Title IX proceeding;
- Requirements that institutions offer supportive measures to complainants and respondents, such as class or dorm reassignments, or no-contact orders; and

- Increased training requirements for Title IX personnel (coordinator, investigator, hearing officers, etc.) and a requirement that all training materials be posted online.

The proposed revisions are now provided for review and approval by the Board of Regents. Exhibits 1, 2, and 3.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

1. Revisions to Title 4, Chapter 8, Section 13 of the Board of Regents' *Handbook* that bring that section into compliance with the U.S. Department of Education's new regulations governing Title IX, which become effective August 14, 2020, and that also update the other provisions within that section pertaining to discrimination;
2. Conforming revisions to Section 5.6.2 of the NSHE Code pertaining to confidentiality of records associated with a Title IX complaint or investigation; and
3. Conforming revisions to Chapter 10 of the Code, which pertains to the student code of conduct.

4. IMPETUS (WHY NOW?):

The new federal regulations were issued in May 2020. Since these regulations were issued, a NSHE Title IX working group has been working diligently to craft revisions to the NSHE policy that bring it into compliance with the new regulations.

The effective date of the new regulations is August 14, 2020. NSHE must be in compliance by that date or else risk violating federal law.

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

- ☒ **Access (Increase participation in post-secondary education)**
- ☒ **Success (Increase student success)**
- ☒ **Close the Achievement Gap (Close the achievement gap among underserved student populations)**
- ☐ **Workforce (Collaboratively address the challenges of the workforce and industry education needs of Nevada)**
- ☐ **Research (Co-develop solutions to the critical issues facing 21st century Nevada and raise the overall research profile)**
- ☐ **Not Applicable to NSHE Strategic Plan Goals**

INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL

The revisions to the NSHE policy against sexual harassment and complaint procedure 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 in, increase student success in, and close the achievement gap in post-secondary education by reducing discrimination and providing prompt and fair remedies to those who have been the subject of discrimination.

6. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The proposed revisions bring the NSHE policy against sexual harassment and the complaint procedure in line with the Department's Title IX regulations, which carry the force and effect of federal law
- NSHE must comply with these regulations by August 14, 2020

7. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

None.

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

Not update the *Handbook*, and thereby place NSHE in violation of federal law beginning on August 14 and continuing every day thereafter.

9. RECOMMENDATION FROM THE CHANCELLOR'S OFFICE:

The Chancellor's office supports passage of these revisions.

10. 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 13
Title 2, Chapter 5, Section 5.6.2
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 a live hearing being required for each complaint, the need for an advisor for each party if they don't have their own, and increased training, to name a few. But these costs are difficult, if not impossible, to quantify accurately because implementation of rules like these has never been done before.

POLICY PROPOSAL - *HANDBOOK*

TITLE 4, CHAPTER 8, SECTION 13

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

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

Section 13. Policy Against *Unlawful* Discrimination and [~~Sexual~~] Harassment; Complaint Procedure

Introduction

This policy is largely based on federal and state anti-discrimination laws and is [~~This policy is~~] divided into four ***subsections***[~~parts~~]. ***Except as otherwise provided, subsections A through C do not apply to “sexual harassment” under 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.*** [~~Section B~~] ***specifies*** training requirements, and sexual harassment definition and examples, ***and defines “consent.”*** [~~Section C~~] ***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.*** [~~Section D~~] ***Subsection C*** contains the complaint and investigation procedures for ***complaints of unlawful*** discrimination and [~~sexual~~] harassment ***that does not constitute Title IX “sexual harassment” under subsection D*** [~~complaints~~] ***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*** [~~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***[~~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. However, information gathered as part of the complaint ***and/or investigation*** processes under this section may be used in connection with disciplinary proceedings.

[~~Title IX Notice of Non-Discrimination~~

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

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

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

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

~~Although it is the application of Title IX to athletics that has gained the greatest public visibility, the law 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.~~

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

A. NSHE [Non-Discrimination] Policy Against Unlawful Discrimination and Harassment that Does Not Constitute Title IX Sexual Harassment

1. Policy Applicability and Sanctions.

~~[The Nevada System of Higher Education]~~NSHE is committed to providing a place of work and learning free of discrimination on the basis of a person's age **(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, 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, [the] NSHE will act to stop the **unlawful** discrimination, to prevent its recurrence, to remedy its effects, and to discipline those responsible.

This policy also prohibits any discrimination based on a person's clothing or traits historically associated with national origin, race, color or religion, including, but not limited to, hair texture, hair style or headwear.

No employee, [or] 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]~~ **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* 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. ~~[Non-discrimination Policy and Prevention of Sexual Harassment Training.]~~ *Distribution of Policy; Training on the Prevention of Unlawful Discrimination and Harassment; and Annual Policy Review.*

a. ~~[Non-discrimination]~~ ***Distribution of*** Policy.

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

~~[Each institution shall have an ongoing non-discrimination training program and~~

~~shall designate a person or office to be responsible for such training.]~~

b. **Training on the** Prevention of **Unlawful Discrimination and**~~[Sexual]~~ Harassment ~~[Training]~~.

Each institution shall provide ongoing training on the prevention of unlawful discrimination and harassment and shall designate a person 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 months after an employee is initially appointed to NSHE, the employee shall receive training regarding the prevention of **unlawful discrimination and** ~~[sexual]~~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** ~~[sexual]~~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 b of subsection 3 of subsection C 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), gender (including pregnancy related conditions), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race, 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 ~~[under the definition]~~ **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 ~~[non]~~ **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, **color**, or religion;
- retaliation against an individual for **reporting an incident or** filing a charge of **unlawful** discrimination, **including unlawful harassment**^[7]; 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

- ~~[severe, persistent or pervasive conduct that has the purpose or effect of substantially interfering with an individual's academic or work performance, or of creating an intimidating, hostile or offensive environment in which to work or learn.]~~ ***“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, 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 ~~[work place]~~ **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 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.

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

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.

- ***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 unwelcome 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.***

[B. Policy Against Sexual Harassment

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

~~The Nevada System of Higher Education (NSHE) is committed to providing a place of work and learning free of sexual harassment, including sexual violence. Where sexual harassment is found to have occurred, the NSHE will act to stop the harassment, to prevent its recurrence, to remedy its effects, and to discipline those responsible in accordance with the NSHE Code, in the case of students, any applicable student code of conduct, in the case of classified employees, the Nevada Administrative Code, or in the case of DRI~~

~~technologists, the Technologists Manual. Sexual harassment, including sexual violence, is a form of discrimination; it is illegal.~~

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

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

~~2. Policy Applicability and Sanctions~~

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

~~3. Training, Employees and Students.~~

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

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

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

~~Each institution shall have an on-going sexual harassment prevention and awareness campaign and training program for employees and students.~~

~~See also Special Training with Regard to Sexual Violence, Section D(4)(c) below.~~

~~4. Sexual Harassment Defined.~~

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

~~a. Educational Environment:~~

- ~~1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic status ("quid pro quo");~~
- ~~2. Conduct that 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. Workplace Environment:~~

- ~~1. 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~~
- ~~2. Conduct that is sufficiently severe, persistent or pervasive so as to create a work environment that a reasonable person would consider intimidating, hostile or abusive, and which may or may not interfere with the employee's job performance ("hostile environment").~~

~~Sexual violence 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.~~

~~5. Sexual Harassment Examples, Sexual Assault, Dating Violence, Domestic Violence, Stalking, Consent and Coercion Defined.~~

- ~~a. Sexual Harassment Examples. Sexual harassment may take many forms—subtle and indirect, or blatant and overt. For example,~~
 - ~~1. It may occur between individuals of the opposite sex or of the same sex.~~
 - ~~2. 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).~~
 - ~~3. 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.~~

~~4. It may also rise to the level of a criminal offense, such as battery or sexual violence.~~

~~5. Sexual violence is a physical act perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol or other factors which demonstrate a lack of consent or inability to give consent. An individual also may be unable to give consent due to an intellectual or other disability. Sexual violence includes, but is not limited to, rape, sexual assault, sexual battery, and sexual coercion.~~

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

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

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

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

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

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

~~Use of mail, text messages, social media, electronic or computer dissemination of sexually oriented, sex-based communications;~~

~~Sexual advances, whether or not they involve physical touching;~~

~~Requests for sexual favors in exchange for actual or promised job or~~

~~educational benefits, such as favorable reviews, salary increases, promotions, increased benefits, continued employment, grades, favorable assignments, letters of recommendation;~~

~~Displaying sexually suggestive objects, pictures, magazines, cartoons, 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.~~

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

~~b. Sexual Assault.~~

~~Sexual Assault means a person subjects another person to sexual penetration, or forces another person to make a sexual penetration on himself or herself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct.~~

~~c. Dating Violence.~~

~~Dating Violence is an act committed by a person who is or has been in a "dating relationship" with the reporting party:~~

- ~~1. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context; and~~
- ~~2. For the purpose of this definition: Dating violence is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the reporting party. Dating violence includes, but is not limited to, mental, sexual or physical abuse or the threat of such abuse. Dating violence~~

~~does not include acts covered under the definition of domestic violence.~~

~~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.~~

~~d. Domestic Violence.~~

~~Domestic Violence is an act that includes but is not limited to violence that occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person is or was actually residing, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child:~~

- ~~1. A battery.~~
- ~~2. An assault.~~
- ~~3. Compelling the other person by force or threat of force to perform an act from which the other person has the right to refrain or to refrain from an act which the other person has the right to perform.~~
- ~~4. A sexual assault.~~
- ~~5. A knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to:~~
 - ~~a. Stalking.~~
 - ~~b. Arson.~~
 - ~~c. Trespassing.~~
 - ~~d. Larceny.~~
 - ~~e. Destruction of private property.~~
 - ~~f. Carrying a concealed weapon without a permit.~~
 - ~~g. Injuring or killing an animal.~~
- ~~6. A false imprisonment.~~

- ~~7. Unlawful entry of the other person's residence, or forcible entry against the other person's will if there is a reasonably foreseeable risk of harm to the other person from the entry.~~

~~e. Stalking.~~

~~Stalking is defined to be when a person who, without lawful authority, willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member, and that actually causes the victim to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member. Stalking includes but is not limited to:~~

- ~~1. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:~~
 - ~~a. Fear for the person's safety or the safety of others; or~~
 - ~~b. Suffer substantial emotional distress.~~
- ~~2. For the purpose of this definition:~~
 - ~~a. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens or communicates to or about, a person, or interferes with a person's property.~~
 - ~~b. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.~~
 - ~~c. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.~~

~~f. Coercion.~~

~~Coercion is:~~

- ~~• 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, or~~

- ~~when committed with 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.~~

~~In the context of sexual misconduct, coercion is the use of pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include 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.~~

~~g. Consent.~~

~~Consent is defined as:~~

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

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

B. [C.] 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 ~~[the respondent]~~ **either party** will either continue to harass or retaliate against the ~~[complainant]~~ **other party** and to provide ~~[additional]~~ support to the ~~[complainant]~~. ~~Such actions (as determined by the institution) may also be necessary or advisable on behalf of a respondent]~~ **parties, as appropriate.** The measures themselves must not amount to retaliation [against the complainant or the respondent] **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:

- Issuing ~~[a]~~ no contact ~~[directive]~~ **directives**;
- Providing an effective escort to ensure safe movement between classes and activities;
- Not sharing classes or extracurricular activities;
- Moving to a different residence hall ~~[(complainants should only be moved upon their request)]~~;
- 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 sexual ~~[violence]~~ **misconduct** and the misconduct that may have resulted in the complainant **or the respondent**

being disciplined¹; and

- j.* Requiring the parties to report any violations of these restrictions.

For Employees:

- k.* Provide an effective escort to ensure safe movement between work area and/or parking lots/other campus locations;
- l.* Issuing ~~[a] no contact [directive]~~ **directives**;
- m.* Placement on paid leave (not sick or annual leave);
- n.* Placement on administrative 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.

¹ For example, if ~~[the complainant]~~ **one party** was disciplined for skipping a class in which the ~~[respondent]~~ **other party** was enrolled, the institution should review the incident to determine if ~~[the complainant skipped class]~~ **class was skipped** to avoid contact with the ~~[respondent]~~ **other party**.

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** [or discrimination], 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. [D-] 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 procedure for complaints of **unlawful discrimination or unlawful harassment that does not constitute "sexual harassment" under Title IX** [or sexual harassment, including sexual violence] (except that complaints against students may be referred to student disciplinary processes)[²], **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 affirmative action officer; (3)] the human resources officer; or [(4)] **(3)** any other officer designated by the president. The president [shall] **may** also designate a primary investigating officer (primary officer) to [process] **investigate** all complaints. The primary officer may be any of the individuals identified in this paragraph. All complaints, whether received by the [affirmative action officer,] human resources officer or other designated officer, must immediately be forwarded to the [primary officer. All Title IX complaints must be immediately forwarded to the] Title IX Coordinator.

An individual filing a complaint of [alleged] **unlawful** discrimination or [sexual] harassment shall have the opportunity to select an independent advisor for assistance, support, and advice and shall be notified of this opportunity by the **Title IX Coordinator or designee**[primary officer, or the primary officer's designee]. It shall be the choice of the individual filing the complaint to utilize or not utilize [the] **an** independent advisor **and their responsibility to pay any associated fees.**

[² ~~Note: Sexual misconduct that also constitutes a criminal offense may be prosecuted independently and simultaneously by law enforcement agencies.~~]

~~[The]~~ **An** independent advisor may be brought into the process at any time at the request of the complainant. ~~[The means and manner by which an]~~ **An** independent advisor ~~[shall]~~ **may** be ~~[made available shall be determined by each institution or unit]~~ **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 ~~[alleged]~~ **unlawful** discrimination or ~~[sexual]~~ harassment is filed shall have the opportunity to select an independent advisor for assistance, support, and advice and shall be notified of this opportunity by the **Title IX Coordinator or designee**~~[primary officer, or the primary officer's designee]~~. It shall be the choice of the individual against whom the complaint is filed to utilize or not utilize ~~[the]~~ **an** independent advisor **and their responsibility to pay any associated fees.** ~~[The]~~ **An** independent advisor may be brought into the process at any time at the request of the respondent. ~~[The means and manner by which an]~~ **An** independent advisor ~~[shall]~~ **may** be ~~[made available shall be determined by each institution or unit]~~ **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** ~~[sexual]~~ harassment and the individual against whom a complaint is filed must be provided with a written explanation of their rights and options, including the **range of** available interim measures, and written notification of services available ~~[to victims]~~ 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 ~~[alleged]~~ **unlawful** discrimination **or harassment** ~~[or sexual harassment]~~, or observes or becomes aware of conduct that may constitute **unlawful** discrimination **or harassment** ~~[or sexual 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. ~~[Title IX complaints must be immediately provided to the Title IX Coordinator.]~~

Complaints of **unlawful** discrimination **or harassment** ~~[or sexual 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 ~~[sexual harassment or]~~ **unlawful** discrimination **or harassment.**

1. ~~[Employees]~~ 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. [4.] Employees.

1. ~~[a.]~~ An employee who believes that ~~[he or she has]~~ **they have** been subjected to **unlawful** discrimination or ~~[sexual]~~ harassment by anyone is encouraged—but it is neither necessary nor required, particularly if it may be confrontational—to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. An employee is not required to do this before filing a complaint. A person who receives such a request must immediately comply with it and must not retaliate against the employee.
2. ~~[b.]~~ The employee may file an **unlawful** discrimination **or harassment** ~~[or sexual harassment]~~ complaint with **their** ~~[his or her]~~ immediate supervisor, who will in turn immediately contact one of the officials listed in **the Introduction to this section** ~~[Section D]~~ above.
3. ~~[c.]~~ If the employee feels uncomfortable about discussing the incident with the immediate supervisor, the employee should feel free to bypass the supervisor and file a complaint with one of the other listed officials or with any other supervisor.
4. ~~[d.]~~ After receiving any employee's complaint of an incident of alleged **unlawful** discrimination **or harassment** ~~[or sexual harassment]~~, the supervisor will immediately contact any of the individuals listed in **the Introduction to this section** ~~[Section D]~~ 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. ~~[2.]~~ Students.

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

~~[3. Non-Employees and Non-Students.~~

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

3. ~~[4.]~~ Training, Investigation and Resolution.

- a. General Requirements. The Title IX Coordinator, executives, administrators designated to receive complaints, ~~[primary officer or designee,]~~ and appropriate management **level(s)** with decision-making authority shall have training or experience in handling **unlawful** discrimination and sexual misconduct complaints, and in the operation of the NSHE and *Nevada Administrative Code* disciplinary procedures.
- ~~b. [Primary Prevention and Awareness Training. Institutions must offer~~

~~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 or intervene in risky situations and the recognition of abusive behavior and how to avoid potential attacks.]~~

- b. [e.]Special Training With Regard to Sexual Violence. 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 [complainants] **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.
- c. [d.]Investigation. After receiving a complaint [of] **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** the 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 ~~[45 calendar days of]~~ **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.**

- d. ~~[e.]~~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). ~~[At the completion of the investigation, findings and a recommendation will be made to the appropriate management regarding the resolution of the matter. The recommendation is advisory only.]~~
- e. ~~[f.]~~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 ~~[will]~~ **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**, 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**, or Technologists Manual, the investigation conducted pursuant to this policy may be used as part of such investigations. The administrative officer, in ~~[his or her]~~ **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**, 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[, and if an appeal is provided, to appeal the decision].

- f.* [~~g.~~]Parties to be Informed. 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).
- g.* [~~f.~~]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**, or the Technologists Manual, such matters generally remain confidential under those sections, except that final decisions following hearings or appeals of professional employees and State of Nevada personnel hearings involving classified employees are public records. Student matters generally remain confidential under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, 34 CFR Part 99 (FERPA).
- h.* [~~i.~~]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.
- i.* [~~j.~~]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.
- j.* [~~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 ~~[gender]~~ **unlawful** discrimination or ~~[sexual]~~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.

k. ~~[1.]~~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**~~[Title IX]~~. The Title IX Coordinator is responsible for monitoring all aspects of the investigation and any ~~[disciplinary process]~~ **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. ~~[5.]~~**Prompt Attention.**

Complaints of **unlawful** discrimination or ~~[sexual]~~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 ~~[sexual]~~harassment, to prevent its recurrence, to remedy its effects, if any, and to discipline those responsible.

5. ~~[6.]~~**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 ~~[sexual]~~harassment to the extent reasonably possible and will maintain confidentiality to the extent possible. Examples of situations where confidentiality cannot be maintained include, but are not limited to, necessary disclosures during an investigation, circumstances where the NSHE is required by law to disclose information (such as in response to legal process), or when an individual is in harm's way.

- a. Confidentiality in Complaints Involving **Unlawful Discrimination or Harassment**~~[Sexual Violence]~~. In complaints involving **unlawful discrimination or harassment**,~~[sexual violence]~~ the following applies:

1. Varying Confidentiality Obligations. ~~[Complainants who are victims of]~~ ***In situations involving unlawful discrimination or harassment***~~[sexual violence]~~, ***individuals*** are encouraged to talk to somebody about what happened in order for them to receive the support they need~~[, and so the institution can respond appropriately]~~. Different individuals at the institution have different abilities to maintain ~~[a complainant]~~ ***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 ~~[a complainant]~~ ***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 ~~[complainant]~~ ***individual's*** wishes, except in certain circumstances discussed below.
- ~~[Complainants are encouraged to talk to one of the individuals identified in this Section 6.]~~
- Some employees are required to report all the details of an incident (including the identities of ~~[both the complainant and]~~ all ~~[others]~~ involved) to the Title IX Coordinator. A report to these employees (called ~~“[responsible employees]~~ ***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 ~~[such complainants]~~ ***individuals*** to talk to someone identified in one or more of these groups.

2. 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 ~~[employed by non-profit entities]~~ **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.***

3. Complainant Options. A complainant who reports an act of ***unlawful discrimination or harassment*** ~~[sexual violence]~~ **only** to a professional listed above in ***subsection 2 of subsection a of subsection 5*** ~~[Section 6-a-2]~~ 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 “[~~Responsible Employees~~]**Officials with Authority**³.”

1. “[~~Responsible Employees~~]**Officials with Authority**” Defined and Duties. An “[~~responsible employee~~]**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.*** [~~an employee who has the duty to report incidents of sexual violence or other sexual misconduct or who a complainant could reasonably believe has this authority or duty.~~] When a complainant ***or other person*** reports an incident of ***unlawful discrimination or harassment***[~~sexual violence~~] to an [~~responsible employee~~]**official with authority**, [~~the complainant has~~] ***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 [~~responsible employee~~]**official with authority** must report to the Title IX Coordinator all relevant details about the alleged ***unlawful discrimination or harassment***[~~sexual violence~~] shared by the [~~complainant~~] ***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 [~~responsible employee~~]**official with authority** will be shared only with people responsible for handling the institution’s response to the report. An [~~responsible employee~~]**official with authority** should not share information with law enforcement without the complainant’s

³ 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.

consent or unless the complainant has also reported the incident to law enforcement.

~~[Institutions must identify in their policies those employees who are designated as “responsible employees” and may also designate those employees who are not considered “responsible employees.” Responsible employees may include but are not limited to the following employees (or categories of employees):~~

- ~~• Title IX Coordinator~~
- Anyone in a supervisory, managerial, administrative or executive role or positions, such as a provost, vice provost, vice president, dean, department chair, director of a unit, resident director, resident assistant, supervisor, student advocate or faculty advisors to student clubs.]

~~[Before a complainant reveals any information to a responsible employee, the employee will inform the complainant of the employee’s reporting obligations. If the complainant wants to maintain confidentiality, the employee will direct the complainant to confidential resources.]~~

~~[If the complainant wants to tell the responsible employee what happened but also wants to maintain confidentiality, the employee will inform the complainant that the institution will consider the request, but cannot guarantee that the institution will honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the Coordinator of the complainant’s request for confidentiality.]~~

~~[Responsible employees will not pressure a complainant regarding the extent of the report the complainant wants to make. Responsible employees will not pressure a complainant to request confidentiality, but will honor and support the complainant’s wishes, including for the institution to fully investigate an incident. By the same token, responsible employees will not pressure a complainant to make a full report if the complainant is not ready to make such a report.]~~

2. 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 [responsible employee]~~**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 [~~sexual or other~~] violence, **discrimination or harassment**, such as:
 - o whether there have been other **misconduct**, [~~sexual~~] violence, **discrimination or harassment** complaints about the same respondent;
 - o whether the respondent has a history of arrests or other records indicating a history of violence, **discrimination or harassment**;
 - o whether the respondent threatened further [~~sexual violence or other~~] violence, **discrimination or harassment** against the complainant or others;
 - o whether the [~~sexual~~] violence, **discrimination or harassment** was committed by multiple persons;
 - o whether the circumstances of the incident indicate that the behavior was planned by the respondent or others;
 - ii. Whether the reported [~~sexual~~] violence, **discrimination or harassment** was committed with a weapon;
 - iii. Whether the complainant is a minor;

- iv. Whether the institution possesses other means to obtain relevant evidence of the reported ~~[sexual]~~ violence, **discrimination or harassment** (e.g., security cameras or personnel, physical evidence);
- v. 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;
- vi. 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 will inform ~~[the respondent]~~ **any individual involved in the matter** that retaliation ~~[against the complainant]~~ is prohibited and will take ~~[ongoing]~~ steps to protect ~~[the complainant]~~ **such individual(s)** from retaliation or harm ~~[and work with the complainant to create a safety plan]~~. Retaliation ~~against the complainant, whether by the respondent, or employees, students or others,~~ will not be tolerated. The institution will also:

- 1. ~~[assist the complainant in accessing other available advocacy, academic support, counseling, disability, health or mental health services, and legal assistance both on and off institution property;]~~ **Determine whether interim measures should be implemented in accordance with subsection B;**
- ~~[2. provide other security and support, which could include issuing a no-contact order, helping arrange a change of living or working arrangements or course schedules (including for the respondent~~

~~pending the outcome of an investigation) or adjustments for assignments or tests;]~~

2. ~~[3.]~~ inform ~~[the complainant]~~ **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. ~~[4.]~~ provide ~~[the complainant]~~ **any individual involved in the matter** with assistance if ~~[the complainant]~~ **they** ~~[wishes]~~ **wish** to report a crime.

The institution will not require ~~[a complainant or a respondent]~~ **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 ~~[the respondent]~~ **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.

~~[If the institution determines that it can follow a complainant's request for confidentiality, the institution will also take immediate action as necessary to protect and assist the complainant.]~~

- d. Reports to Other NSHE Institutions. If ~~an~~ ~~[responsible employee]~~ **official with authority** receives a complaint about **unlawful discrimination or harassment** ~~[sexual misconduct]~~ that has occurred at another NSHE institution **or to a student or employee of another NSHE institution**, the ~~[responsible employee]~~ **official with authority** shall report the information to ~~[his or her]~~ **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 ~~[complainants]~~ **individuals** disclose incidents of ~~[sexual violence]~~ **unlawful discrimination or harassment**, are not considered notice to the institution of ~~[sexual violence]~~ **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 ~~[complainants]~~ **individuals’** [Title IX] rights at these events.
- f. ~~[Off Institution Counselors and Advocates. Off institution counselors, advocates, and health care providers will also generally maintain confidentiality and will not share information with the institution unless the complainant requests the disclosure and signs a consent or waiver form.]~~

6. ~~[7.]~~Retaliation.

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

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

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

- a dismissal;
- a transfer;
- frequent changes in working hours or workdays;
- an unfair grade;
- an unfavorable reference **or reference** letter;
- ***intentionally providing false information.***

a. Employees

1. An employee who believes that ~~[he or she has]~~**they have** been subjected to retaliation may file a retaliation complaint with ~~[his or her]~~**their** immediate supervisor, who will in turn immediately contact the Title IX Coordinator ~~[or any other responsible employee designated by the institution]~~.
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~~[, any responsible employee designated by the institution or with any other supervisor]~~.
3. After receiving any employee's complaint of an incident of alleged retaliation, the supervisor will immediately contact the Title IX Coordinator ~~[or a responsible employee designated by the institution to forward the complaint,]~~ to discuss it and/or to report the action taken. The supervisor has a responsibility to act even if the individuals involved do not report to that supervisor.

b. Students

1. A student who believes that ~~[he or she has]~~**they have** been subjected to retaliation may file a retaliation complaint with ~~[his or her]~~**their** major department chair or director of an administrative unit, who will in turn immediately contact the Title IX Coordinator ~~[or any responsible employee designated by the institution]~~.
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~~[, a responsible employee designated by the institution, or to any chair, dean, or director of an administrative unit who will in turn~~

~~immediately contact one of the those officials to forward the complaint, to discuss it and/or to report the action taken. The chair, dean or director of an administrative unit has a responsibility to act even if the individuals involved do not report to that person].~~

- c. ~~[Complaints of retaliation under Title IX must be immediately provided to the Title IX Coordinator.]~~

7. ~~[8.]~~**False Reports.**

Because **unlawful** discrimination and ~~[sexual]~~harassment frequently involve interactions between persons that are not witnessed by others, reports of **unlawful** discrimination and ~~[sexual]~~harassment cannot always be substantiated by additional evidence. Lack of corroborating evidence or "proof" should not discourage individuals from reporting **unlawful** discrimination and ~~[sexual]~~harassment under this policy. However, individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth, may be subject to disciplinary action under the applicable 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. ~~[9.]~~**Supervisor Responsibilities.**

Every supervisor of employees has responsibility to take reasonable steps intended to prevent acts of **unlawful** discrimination or ~~[sexual]~~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 ~~[his/her]~~**their** line of supervision; and
- d. Taking immediate action to minimize or eliminate the work and/or school contact between the ~~[two]~~**involved** individuals where there has been a complaint of ~~[sexual]~~**unlawful discrimination or** harassment, pending investigation.

If a supervisor receives a complaint of ~~[alleged]~~**unlawful** discrimination or

[sexual]harassment, or observes or becomes aware of conduct that may constitute **unlawful** discrimination or [sexual]harassment, the supervisor must immediately contact the Title IX Coordinator ~~[or a responsible employee designated by the institution to forward the complaint]~~ **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. [10.]*Relationship to Freedom of Expression.*

[The] NSHE is committed to the principles of free inquiry and free expression. Vigorous discussion and debate are fundamental rights and this policy is not intended to stifle teaching methods or freedom of expression.

Unlawful [D]iscrimination or [sexual]harassment, however, is neither legally protected expression nor the proper exercise of academic freedom; it compromises the integrity of institutions, the tradition of intellectual freedom, and the trust placed in the institutions by their members.

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.

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.

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 be 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 College; 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.

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 no-contact directive(s);***
- b. Providing an effective 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;⁴ and

j. Requiring the parties to report any violations of these restrictions.

For Employees:

k. Providing an effective escort to ensure safe movement between work area and/or parking lots/other campus locations;

l. Issuing a no-contact directive(s);

m. Placement on paid leave (not sick or annual leave);

n. Placement on administrative 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 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 ongoing harassment or

⁴ ***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.***

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, and Chapter 10 of the NSHE Code or applicable code of conduct for students. 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.

c. Dismissal of formal complaint.

(i) 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.

(ii) The institution may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

(a) A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

(b) The respondent is no longer enrolled or employed by the institution; or

(c) Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(iii) Upon a dismissal required or permitted pursuant to subsections i and ii of subsection c of subsection 6, the institution must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

7. 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.

8. 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, the hearing officer(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that 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.

9. 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.

10. Appeals.

a. Within five (5) 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 five (5) calendar days of the outcome;

(v) Issue a written decision within five (5) 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.

11. 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 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.

12. 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.*

13. 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.*

14. 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.***

15. This subsection D shall become effective on August 14, 2020.

POLICY PROPOSAL - CODE
TITLE 2, CHAPTER 10
RULES OF CONDUCT AND PROCEDURES FOR STUDENTS OF THE
NEVADA SYSTEM OF HIGHER EDUCATION

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

Note: Section 10.1 is not included herein because no revisions are being proposed to it.

Section 10.2 Cause

10.2.1 Prohibited Conduct.

The following conduct is prohibited:

- (a) Acts of dishonesty, including but not limited to the following:
 - (1) Cheating, plagiarism, fraudulently obtaining grades, falsifying research data or results, assisting others to do the same, or other forms of academic or research dishonesty;
 - (2) Furnishing false information to any institution or System official, faculty member, or office;
 - (3) Forgery, alteration, misuse, theft, or using without permission, any institutional document or record.
- (b) Disorderly, lewd or indecent conduct, including the disruption, obstruction, or unauthorized interruption of teaching, convocations, recruiting interviews, social events, research, meetings, business and administration, disciplinary proceedings, or other institutional or System activities, including public service functions and outreach activities on or off campus, or other activities when the conduct occurs on institutional premises.
- (c) ***Physical abuse and/or conduct that threatens or*** endangers the health or safety of any member or guest of the System community.
- (d) [~~Physical abuse, v~~] ***Verbal abuse, [threats,] intimidation, coercion, or bullying which is sufficiently severe, persistent or pervasive so as to interfere with or limit a student's ability to participate in or benefit from the educational services, activities or opportunities offered by the university***[and/or conduct that threatens or endangers the health or safety of any person].

- (e) Interference by force, threat or duress with the lawful freedom of movement of persons or vehicles on institutional premises.
- (f) Resisting or obstructing institutional or other public officials in the performance of their duties.
- (g) Failure to comply with the directions of institutional officials acting in accordance with their duties and/or failure to identify oneself to these persons when requested to do so.
- (h) Acts of physical force or disruptive acts which interfere with institutional activities, freedom of movement on the campuses, freedom for students to pursue their studies, freedom of speech, freedom to be heard, and freedom to pursue research of their own choosing.
- (i) Failure of the student to present proper credentials, student identification card, driver's license, or parking registration, to institutional officials upon their request.
- (j) Forgery, alteration, falsification or destruction of System documents or furnishing false information in documents submitted to the System.
- (k) Willful damage, destruction, defacement, theft or misappropriation of equipment or property belonging to, in the possession of, or on premises occupied by the System.
- (l) Knowing possession on any premises of the System of any firearms, explosives, dangerous chemicals or other instruments of destruction, or other dangerous weapons as defined by the laws of the State of Nevada, without the written authorization of the institutional president or the president's authorized agent.
- (m) Continued occupation of buildings, structures, grounds or premises belonging to, or occupied by, the System after having been ordered to leave by the institution's president, the president's designee, or the Chancellor.
- (n) False reporting of any emergency situation, including but not limited to, misuse of campus or System emergency notification equipment. Unauthorized tampering with, and/or

accessing of, safety, security, or fire protection equipment or devices. Setting off a fire alarm for reasons other than actual fire or emergency, involvement in setting or causing any unauthorized fire in or on institution property.

- (o) The unauthorized possession, loan, modification, or distribution of keys, pass cards or institutional identification cards. Unauthorized or unlawful entry or access to institutional or System facilities, including buildings and grounds. The reproduction, manufacture or duplication of any key, pass card, institutional or System identification card or unlocking device for use on institution or System facilities or locks without proper authorization.
- (p) Abuse, unauthorized use, or theft of institutional or System computer facilities and resources, including but not limited to:
 - (1) Unauthorized entry into, or transfer of, a file to use, read, or change the contents or for any other purpose; and/or a violation of copyright laws;
 - (2) Use of another individual's identification and/or password;
 - (3) Interfering with the work of another student, faculty member or institution or System official, or with the normal operation of the institution or System Computing System; or,
 - (4) Violating the institution's Standards of Conduct for the Use of Institution's Computers.
- (q) Willfully destroying, damaging, tampering, altering, stealing, misappropriating or using without permission any System, program or file of the System.
- (r) Violation of the institution's policies and regulations governing residence in institution owned or controlled property, and access to and use of all institutional facilities, including responsibility for the conduct of guests.
- (s) Use, possession, or distribution of alcoholic beverages without authorization (except as expressly permitted by System or Institutional regulations, such as the Alcoholic Beverage Policy), or public intoxication. Alcoholic beverages may not, in any circumstances, be used by, possessed by, or provided to, any person under 21 years of age.

- (t) Use, possession, manufacturing or distribution (hereinafter “use”) of marijuana, including for medical purposes; heroin; narcotics; or other controlled substances; use or possession of any illegal and/or unauthorized drugs, prescription drugs, and drug paraphernalia or being under the influence of illegal drugs except as expressly permitted by law. Use, possession or cultivation of marijuana, including for medical purposes, on any NSHE or NSHE foundation owned or leased property, or at any NSHE sponsored or authorized activity, is expressly prohibited.
- (u) Contempt of student disciplinary proceedings including impairing or interrupting any proceeding or providing false information to institution or System officials and student hearing board members during the course of the conduct resolution process. Failure to comply with the terms of any sanction imposed in accordance with the rules of conduct.
- (v) The repeated use of obscene or abusive language in a classroom or public meeting of the System and which, if occurring in a class, is not significantly related to the teaching of the subject matter.
- (w) The use of threats or violence against a faculty member or the faculty member’s family in order to secure preferential treatment for grades, loans, employment, or other service or privilege accorded by the System.
- (x) Any act of unlawful discrimination based on race, ~~[creed,]~~ color, gender (including **sexual harassment and** pregnancy related conditions), age (**40 or older**), sexual orientation, disability, whether actual or perceived by others, military status or military obligations, religion or national origin, gender identity or expression, or genetic information, or any act of employment or educational retaliation against any person who has made a complaint about such discrimination.

~~[(y)] [Sexual harassment, defined as unwelcome sexual advances,~~

~~requests for sexual favors, and other visual, verbal or physical conduct of a sexual or gender bias nature constitute sexual harassment when:~~

~~1. Educational Environment:~~

~~a. Submission to such conduct is made either~~

~~explicitly or implicitly a term or condition of an individual's academic status ("quid pro quo"); or~~

- ~~b. Conduct that 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").~~

2. ~~Workplace Environment:~~

- ~~a. 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~~
- ~~b. Conduct that is sufficiently severe, persistent or pervasive so as to create a work environment that a reasonable person would consider intimidating, hostile or abusive, and which may or may not interfere with the employee's job performance ("hostile environment").~~

~~Sexual harassment includes sexual violence, sexual assault, dating violence, domestic violence, stalking and coercion or similar acts in violation of state or federal law.]~~

(y) ***Sexual harassment, as defined in the regulations (34 C.F.R. Part 106) implementing Title IX of the Education Amendments Act of 1972, which is conduct on the basis of sex that satisfies one of the following:***

- 1. An employee of a NSHE institution (including but not limited to a student employee) conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct;***
- 2. 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***
- 3. Sexual assault, as defined in 34 C.F.R. § 668.46(a) (commonly known as the Clery Act), as amended by the Violence Against Women Act, including dating violence, domestic violence, and stalking.***

(z) Acts of hazing. Hazing is defined as any method of initiation into or affiliation with the university, college or community college community, a student organization, a sports team, an

academic association, or other group engaged in by an individual that intentionally or recklessly endangers another individual.

- (aa) Intentionally making an accusation that is false or is made with reckless disregard for the truth against any member of the System community by filing a complaint or charges under the rules of conduct or under any applicable established complaint or grievance procedures in the System.
- (bb) Willful incitement of individuals to commit any of the acts herein prohibited.
- (cc) Any other conduct that violates applicable stated prohibitions, policies, procedures, rules, or regulations of the institution or Board of Regents.
- (dd) Any act prohibited by local, state or federal law that occurs on System premises or at a System-sponsored function on or off such premises.
- (ee) Any act prohibited by local, state or federal law that occurs on System premises or at a System-sponsored function on or off such premises.
- (ff) Dating violence. ***“Dating [V]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. [is an act committed by a person who is or has been in a “dating relationship” with the victim:***
 - 1. ~~The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. “Dating relationship” means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or~~

social context; and

2. ~~For the purpose of this definition: Dating violence is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the reporting party. Dating violence includes, but is not limited to, mental, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.~~

~~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.]~~

- (gg) Domestic violence. ***“Domestic [V]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.*** ~~[is an act that includes but is not limited to violence which occurs when a person commits one of the following acts against or upon the person’s spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person is or was actually residing, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person’s minor child or any other person who has been appointed the custodian or legal guardian for the person’s minor child:~~

1. ~~A battery.~~
2. ~~An assault.~~
3. ~~Compelling the other person by force or threat of force to perform an act from which the other person has the right to refrain or to refrain from an act which the other person has the right to perform.~~
4. ~~A sexual assault.~~

5. ~~A knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to:~~
 - a. ~~Stalking.~~
 - b. ~~Arson.~~
 - c. ~~Trespassing.~~
 - d. ~~Larceny.~~
 - e. ~~Destruction of private property.~~
 - f. ~~Carrying a concealed weapon without a permit.~~
 - g. ~~Injuring or killing an animal.~~
6. ~~A false imprisonment.~~
7. ~~Unlawful entry of the other person's residence, or forcible entry against the other person's will if there is a reasonably foreseeable risk of harm to the other person from the entry.]~~

(hh) 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.***~~[is defined to be when a person who, without lawful authority, willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member, and that actually causes the victim to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member. Stalking includes but is not limited to:~~

1. ~~Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:~~
 - a. ~~Fear for the person's safety or the safety of others; or~~
 - b. ~~Suffer substantial emotional distress.~~
2. ~~For the purpose of this definition:~~
 - a. ~~Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows,~~

~~monitors, observes, surveils, threatens or communicates to or about, a person, or interferes with a person's property.~~

- ~~b. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.~~
- ~~c. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.]~~

(ii) Sexual Violence. Sexual violence ***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***~~[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].~~ Sexual coercion is:

1. the use of violence or threats of violence against a person or the person's family or property;
2. depriving or hindering a person in the use of any tool, implement or clothing; ~~[or]~~
3. attempting to intimidate a person by threats or force;
or~~[;]~~
4. ~~[when]~~ **conduct** committed with 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.

In the context of sexual misconduct, coercion is the use of pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they impair

another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include 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.

Note: Sections 10.2.2 through Section 10.3 are not included herein because no revisions are being proposed to them.

Section 10.4 Allegations of Violations of the Rules of Conduct.

Complaints alleging discrimination, including sexual harassment, that do not constitute sexual harassment under Title IX, are subject to the complaint and investigation procedures set forth in Title 4, Chapter 8, Section 13(C) of the NSHE Handbook. The hearing procedures and sanctions established in this Chapter 10 are applicable to the resolution and determination of such complaints.

Procedures ~~[unique to]~~ **required for** allegations of sexual harassment **under Title IX**, including allegations of ~~[sexual violence]~~ **sexual assault, dating violence, domestic violence, and stalking**, are **set forth** in Section 10.4.12. ***In the event allegations of misconduct include allegations of Title IX sexual harassment as well as allegations of other misconduct, all of the allegations will be handled in accordance with the provisions of Section 10.4.12.*** The procedures for all **other** allegations are as follows:

Note: Sections 10.4.1 through 10.4.9 are not included herein because no revisions are being proposed to them.

10.4.10 Emergency Removal.

The president, the student conduct officer, or coordinator may impose an immediate emergency removal (hereafter, "removal") prior to the resolution of a charge of violation of the rules of conduct on the charged student. This removal includes the immediate exclusion from the institution and all of the institution's campuses, sites, locations, and property of a student for an interim period whenever the president determines that this is required to:

- (a) ~~[Insure]~~ **Ensure** the safety and well-being of members of the []institution's community[.];
- (b) Protect institution property;~~[-or]~~
- (c) ~~[If]~~ **Prevent** the student **from posing**~~[poses]~~ an ongoing threat of disruption of, or interference with, the normal operations of the institution; or
- (d) Protect any student from **discrimination, including** sexual

harassment or retaliation for the report of ***discrimination, including*** sexual harassment.

10.4.11 Conditions of Emergency Removal and Hearing.

- (a) When an emergency removal is imposed, the charged student shall be denied access to the institution, including classes and all other institutional activities or privileges for which the student might otherwise be eligible, as the president, the student conduct officer, or coordinator may determine to be appropriate. During the time of the removal from the institution, the student may not come onto institutional property for any reason other than meeting with the appropriate official(s) regarding resolution of the emergency removal and the student conduct violation. The student conduct officer or coordinator may permit the student to participate in distance learning classes that do not include entering onto institutional property and provide adequate protections to prevent any of the conditions of (a), (b), (c) or (d), above, from occurring. Any student so removed shall be afforded an opportunity for a hearing on the emergency removal no later than fourteen (14) calendar days following the removal unless the student agrees to delay the hearing to a later time. A hearing officer shall hold the hearing under the hearing procedures of the rules of conduct where those may be applicable. The student conduct hearing officer or coordinator shall make a recommendation to the president. The president's decision upon the hearing officer's recommendation shall be final. The removal does not replace the regular disciplinary process, which shall proceed under this chapter.
- (b) Interim measures as described in NSHE *Handbook*, Title 4, Chapter 8, Section 13(**B**), except for emergency removal of the student, may be implemented without a hearing and are not subject to any grievance procedure.

10.4.12 Procedures [Available] Required when Title IX Sexual Harassment is Alleged.

(a) Definitions.

- 1. "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.***
- 2. "Respondent" means an individual who has been reported by the individual engaging in conduct that could constitute sexual***

harassment.

3. “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.

4. “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, 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.

5. “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.

6. “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.

7. “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.

8. 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.

9. “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 College; 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.

10. “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.***

(b) Response to Sexual Harassment.

An institution with actual knowledge of sexual harassment in an education program or activity of the institution, as all defined in subsection (a), 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 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 6 of subsection (a) to a complainant, and by following a complaint process that complies with subsection (e) before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in subsection 6 of subsection (a) against a respondent.

The institution's Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in subsection 6 of subsection (a), 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 no-contact directive(s);***
- b. Providing an effective escort to ensure safe movement between classes and activities;***
- c. Not sharing classes or extracurricular activities;***
- d. Moving to a different residence hall (complainants should only be moved upon their request);***
- 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;¹ and***
- j. Requiring the parties to report any violations of these restrictions.***

For Employees:

- k. Providing an effective escort to ensure safe movement between work area and/or parking lots/other campus locations;***
- l. Issuing a no-contact directive(s);***
- m. Placement on paid leave (not sick or annual leave);***
- n. Placement on administrative leave;***
- o. Transfer to a different area/department or shift in order to***

¹ 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.

- 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 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 ongoing harassment or discrimination, protecting the safety of the parties, 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.

(c) Response to a Formal Complaint.

1. In response to a formal complaint, an institution must investigate the allegations contained therein and follow a complaint process that complies with subsection (e). With or without a formal complaint, an institution must comply with subsection (b).

2. 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.

3. 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 (e). 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.

4. 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.

(d) General complaint process requirements. Institutions shall:

1. 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;

2. Promote impartial investigations and adjudications of formal

complaints of sexual harassment;

3. 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 6 of subsection (a) 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 6 of subsection (a) as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;

4. 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;

5. Ensure that the Title IX Coordinator, investigator, hearing officer, or 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;

6. Ensure that the Title IX Coordinator, investigator, hearing officer, or any person designated by an institution to facilitate an informal resolution process receive training on the definition of sexual harassment in subsection (a), 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;

7. Ensure, 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 4 of subsection (g);

8. Ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in subsection 4 of subsection (g);

9. 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;

10. 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;

11. 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, and Chapter 10 of the NSHE Code or applicable code of conduct for students. Institutions may establish different time frames for different types of cases (e.g., sexual assault, domestic violence, dating violence, etc.);

12. 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;

13. 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;

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

15. Describe the range of supportive measures available to complainants and respondents;

16. 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

17. 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.

(e) Complaint Procedures.

1. 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 (a), 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 (a), 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 4 of subsection (f) who may be, but is not required to be, an attorney, and may inspect and review

evidence under subsection (f); and

(C) Consistent with subsection (l), inform the parties of the prohibition against knowingly making false statements or knowingly submitting false information during the complaint process.

2. 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 1 of subsection (e), the institution must provide notice of the additional allegations to the parties whose identities are known.

3. Dismissal of formal complaint.

(i) If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in subsection (a) of this section 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.

(ii) The institution may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

(A) A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

(B) The respondent is no longer enrolled or employed by the institution; or

(C) Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(iii) Upon a dismissal required or permitted pursuant to subsections i and ii of subsection 1 of subsection (e), the institution must promptly send written notice of the

dismissal and reason(s) therefor simultaneously to the parties.

(f) Investigation of a Formal Complaint. The investigation of a formal complaint must:

- 1. 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);**
- 2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;**
- 3. Do not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;**
- 4. 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;**
- 5. 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;**
- 6. 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;

7. 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 ten (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

8. 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.

(g) Live Hearings.

1. 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).

2. At the live hearing, the hearing officer must permit each party's advisor 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 4 of subsection (f) of this section to otherwise restrict the extent to which advisors may participate in the proceedings.

3. 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.

4. 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.

5. 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.

6. If a party or witness does not submit to cross-examination at the live hearing, the hearing officer(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that 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.

7. 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.

8. 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.

(h) Determination Regarding Responsibility.

1. The hearing officer(s) must issue a written determination regarding responsibility under the preponderance of the evidence standard within 14 calendar days of the live hearing.

2. The written determination must include:

(i) Identification of the allegations potentially constituting sexual harassment as defined in subsection (a);

(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.

3. The institution must provide the hearing officer(s)'s 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.

(i) Appeals.

1. Within five (5) 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; or

(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.

2. 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) 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:

(A) Does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;

(B) Receives training on the definition of sexual harassment in subsection (a), 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;

(C) Receives 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 4 of subsection (g);

(D) Receives training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in subsection 4 of subsection (g); and

(E) Uses training materials that do not rely on sex stereotypes.

3. Give all parties an equal opportunity to submit within five (5) calendar days of the outcome a written statement in support of, or challenging, the outcome;

(i) 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;

(ii) Issue a written decision within five (5) 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

(iii) Provide the written decision simultaneously to all parties.

4. 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.

(j) Informal Resolution.

1. 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 its 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.

2. 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 any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

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

4. 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.

(k) Recordkeeping.

1. 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 7 of subsection (g), 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, 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 (b) and (c), 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 complainant 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.

(f) 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.

(m) Retaliation.

1. 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 required to be adopted under 34 CFR § 106.8(c).

2. Specific circumstances.

(i) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under subsection 1 of subsection (m).

(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 1 of this subsection (m), provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

10.4.13 Board of Regents Policy ~~on~~ Against Unlawful Discrimination and Sexual Unlawful Harassment.

The Board of Regents' policy against **unlawful discrimination and ~~sexual~~unlawful** harassment is set forth in [~~Handbook~~] Title 4, Chapter 8, Section 13 **of the Board of Regents' Handbook.**

POLICY PROPOSAL - CODE
TITLE 2, CHAPTER 5, SECTION 5.6
FACULTY BENEFITS

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

5.6.2

- (e) A report of, informal complaint of, or formal complaint of sexual harassment and the investigative materials and any report related to an investigation, complaint process, or disciplinary process concerning allegations of discrimination, sexual harassment, or sexual assault are confidential and may not be released except: (1) pursuant to a court order directing the release of the records signed by a judge with jurisdiction over the matter; (2) to the U.S. Equal Employment Opportunity Commission; (3) to the Nevada Equal Rights Commission; (4) to the U.S. Department of Education's Office for Civil Rights; (5) to any federal grant awarding agency to comply with any law, regulation, executive order, or term or condition of the grant award; (6) as may be permitted by FERPA or FERPA regulations, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing or judicial proceeding arising thereunder; (7) to an employee who is subject to a disciplinary process that could result in a written warning or reprimand, suspension or termination based on a finding of discrimination, sexual harassment, or sexual assault; or (8) as required by law.***

In the event an employee is placed on administrative leave, or in the event other administrative action is taken in connection with or as the result of an investigation or disciplinary process concerning allegations of discrimination, sexual harassment, or sexual assault, including but not limited to the issuance of a written warning or written reprimand to the employee, notice of such administrative leave and/or other administrative action may be made to the federal grant awarding agency as required by the terms and conditions of the grant award or federal law or regulation.