

# **BOARD OF REGENTS BRIEFING PAPER**

## **1. AGENDA ITEM TITLE: Re-approval of Title IX Code revisions**

**MEETING DATE:** December 3-4, 2020

## **2. BACKGROUND & POLICY CONTEXT OF ISSUE:**

On August 7, 2020, the Board approved revisions to the NSHE Code to comply with the U.S. Department of Education's new regulations governing sexual harassment under Title IX. These revisions included amendments to Title 2, Chapter 5, Section 5.6.2 (confidentiality of records) and Title 2, Chapter 10 (student code of conduct).

The Board approved these revisions under the Code's emergency amendment process, which allows revisions to become effective immediately but for no longer than 120 calendar days unless identical revisions are approved within that period. This agenda item presents identical revisions to ensure the previously approved revisions remain effective after the 120-day window and that NSHE continues to comply with federal law.

## **3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

1. Identical revisions to Section 5.6.2 of the NSHE Code that were approved by the Board on August 7, 2020; and
2. Identical revisions to Chapter 10 of the Code that were approved by the Board on August 7, 2020.

## **4. IMPETUS (WHY NOW?):**

To ensure the revisions previously passed under the Code's emergency amendment process do not become ineffective after the 120-calendar-day period.

## **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 21<sup>st</sup> 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 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:**

Reject the identical revisions and thereby risk placing NSHE in violation of federal law.

**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 # \_\_\_\_\_ Chapter # \_\_\_\_\_ Section # \_\_\_\_\_  
☒ Amends Current Board Policy: **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 - 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.***

**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 allegations 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 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 6 of subsection (a) to all parties, 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;***
- 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;<sup>1</sup> 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***

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<sup>1</sup> 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. 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 institution investigating 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. Avoid restricting 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 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 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 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.***

***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 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;**
- (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; or**
- (iv) Any additional basis offered by an institution.**

**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.*

*(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.*

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

*3. 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.*

*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, 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 (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 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.***

***(l) 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 subsection 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.***