

BOARD OF REGENTS
BRIEFING PAPER

1. Agenda Item Title: Handbook Revision, Title 4, Chapter 8, Section 13 and Title 2, Chapter 6, Section 6.2.5

Meeting Date: January 20, 2012

2. Background and Policy Context of Issue:

In 2011, Vice Chancellor of Administrative and Legal Affairs Bart Patterson constituted the Code Chapters 5 and 6 Task Force, naming representatives from each of the NSHE institutions to the Task Force. The Task Force's work is to review Code Chapters 5 and 6 and make recommendations for amendments and new sections.

On April 4, 2011, the U.S. Department of Education, Office of Civil Rights (OCR) issued a "Dear Colleague" letter (DCL), discussing Title IX and setting forth significant guidance on Title IX requirements. In connection with related revisions of Title 2, Ch. 6, the Task Force reviewed Title 4, Chapter 8, Section 13, the NSHE Policy Against Discrimination and Sexual Harassment, Complaint Procedure, for the purpose of bringing the policy into compliance with the OCR's guidance on Title IX.

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes sexual violence, is a form of sex discrimination prohibited by Title IX. The OCR has reviewed statistics on sexual violence in schools and found those statistics deeply troubling. The OCR characterized the statistics as a call to action. The OCR is committed to ensuring that students can benefit from their schools' programs and activities. The guidance the OCR has provided in the DCL is an effort to ensure that students can benefit from their schools' programs and activities.

In addition, the 2011 Nevada Legislature passed legislation prohibiting discrimination based on gender identity or expression; the amendment includes a prohibition against discrimination based on gender identity or gender expression.

GINA, the Genetic Information Non-Discrimination Act, a federal law, is now in effect. The amendment includes a prohibition against discrimination based on genetic information.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Interim Chief Counsel Brooke Nielsen requests approval of an amendment to Board of Regents Policy Against Discrimination and Sexual Harassment; Complaint Procedure (*Title 4, Chapter 8, Section 13*) and Title 2, Chapter 6, Section 6.2.5 of the *Code*, which will bring the policy into compliance with the Office of Civil Rights' April 4, 2011, "Dear Colleague" letter, recent Nevada legislation prohibiting discrimination based on gender identity or gender expression, and federal legislation prohibiting discrimination based on genetic information.

4. IMPETUS (WHY NOW?):

These proposals are related to and implement legal requirements that are already effective.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The amendment brings the policy into compliance with Federal and state law.
- The amendment includes the NSHE Title IX Notice of Non-discrimination.
- The amendment clarifies that sexual violence is a form of sex harassment and sex discrimination.
- The amendment defines "sexual violence".
- The amendment specifies that each institution shall provide the policy annually to students and may do so electronically.
- The amendment specifies that each institution shall include the policy on its website.

- The amendment specifies that Title IX complaints must be forwarded immediately to the institution's Title IX coordinator.
- The amendment specifies that an individual against whom a complaint of sexual harassment has been filed may have an independent advisor (the policy already provides that the person filing the complaint may have an independent advisor; the DCL seeks equal treatment for both individuals).
- The amendment removes the time limitation for filing sexual harassment complaints.
- The amendment clarifies that the standard for evaluating complaints and in any hearings shall be a preponderance of the evidence.
- The amendment gives the person making the complaint equal right to be interviewed, provide and obtain information regarding the matter
- The amendment gives the person making the complaint the right to appeal a decision in a disciplinary action
- The amendment clarifies the circumstances under which certain disclosures of information can be made.
- The amendment prohibits discrimination based on gender identity or expression.
- The amendment prohibits discrimination based on genetic information.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- None known.

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

Do not amend these sections of the Handbook.

8. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title # _____ Chapter # _____ Section # _____
- Amends Current Board Policy: Title # 4 Chapter # 8 Section # 13 and Title 2, Chapter 6, Section 6.2.5
- Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
- Other:
- Fiscal Impact: Yes _____ No X
Explain: _____

**POLICY PROPOSAL - HANDBOOK
TITLE 4, CHAPTER 8, SECTION 13**

[Policy Against Discrimination and Sexual Harassment; Complaint Procedure]

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

Title 4 - Codification of Board Policy Statements

Chapter 8

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

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

Introduction

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

Title IX Notice of Non-Discrimination

NSHE and its member institutions do not discriminate on the basis of sex in their education programs and activities; Title IX of the Education Amendments Act of 1972 is a federal law that states:

"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 of Civil Rights of the United States Department of Education. Each member institution shall include on its website and in its general catalog, its Title IX Coordinator's name, office address, telephone number, and email address.

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

A. NSHE Non-Discrimination Policy

1. Policy Applicability and Sanctions.

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

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

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

2. Policy Applicability and Sanctions.

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

3. Training.

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

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

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

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

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

4. Discriminatory Practices.

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

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

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

Discriminatory practices also include:

- discrimination on the basis of a person's age, disability (including service-connected disabilities), gender (including pregnancy related condition), military status or military obligations, sexual orientation, ***gender identity or expression, genetic information***, national origin, race, or religion.;

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

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

B. Policy Against Sexual Harassment

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

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

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

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

2. Policy Applicability and Sanctions

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

3. Training.

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

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

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

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

4. Sexual Harassment Practices.

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

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

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

- It may occur between individuals of the opposite sex or of the same sex.
- It may occur between students, between peers and/or co-workers, or between individuals in an unequal power relationship (such as by a supervisor with regard to a supervised employee or an instructor regarding a current student).
- It may be aimed at coercing an individual to participate in an unwanted sexual relationship or it may have the effect of causing an individual to change behavior or work performance.
- It may consist of repeated actions or may even arise from a single incident if sufficiently severe.
- It may also rise to the level of a criminal offense, such as battery or ***sexual violence*** [sexual assault].
- ***Sexual violence is a physical act perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or***

alcohol. An individual also may be unable to give consent due to an intellectual or other disability. Sexual violence includes, but is not limited to, rape, sexual assault, sexual battery, and sexual coercion.

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

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

Rape, sexual assault, sexual battery, sexual coercion or other sexual violence;~~[Sexual assault;]~~

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

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

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

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

Sexual advances, whether or not they involve physical touching;

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

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

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

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

C. Complaint and Investigation Procedure.

This section provides the complaint and investigation procedure for complaints of discrimination or sexual harassment, ***including sexual violence*** (except that complaints against students may be referred to student disciplinary processes). The Chancellor (for the System Office) and each president shall designate no fewer than two administrators to receive complaints. The

administrators designated to receive the complaints may include the following: (1) **the Title IX Coordinator**; (2) the Affirmative Action Program Officer; (3) ~~(2)~~ the Human Resources Officer; or (4) ~~(3)~~ any other officer designated by the president. The President shall also designate a primary investigating officer (Primary Officer) to process all complaints. The Primary Officer may be any of the individuals identified above. All complaints, whether received by the Affirmative Action Officer, Human Resources Officer or other designated officer, must immediately be forwarded to the Primary Officer. **All Title IX complaints must be immediately forwarded to the Title IX Coordinator.**

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

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

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

Complaints of discrimination or sexual harassment should be filed as soon as possible, ~~but no later than three hundred (300) calendar days after the discovery of the alleged act of discrimination or sexual harassment]~~ with the supervisor, department chair, dean, or one of the administrators listed above and/or designated by the president to receive complaints of alleged sexual harassment or discrimination. ~~[Complaints of prohibited conduct, including discrimination or sexual harassment, filed with an institution's administrative officer pursuant to NSHE Code Chapter 6, Section 6.8.1, are not subject to this 300-day filing requirement.]~~

1. Employees.

- a. An employee who believes that he or she has been subjected to discrimination or sexual harassment by anyone is encouraged—but it is neither necessary nor

required, particularly if it may be confrontational—to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. **An employee is not required to do this before filing a complaint.** A person who receives such a request must immediately comply with it and must not retaliate against the employee.

- b. The employee may [~~also choose to~~] file a discrimination or sexual harassment complaint with his or her immediate supervisor, who will in turn immediately contact one of the officials listed above.
- c. If the employee feels uncomfortable about discussing the incident with the immediate supervisor, the employee should feel free to bypass the supervisor and file a complaint with one of the other listed officials or with any other supervisor.
- d. After receiving any employee's complaint of an incident of alleged discrimination or sexual harassment, the supervisor will immediately contact any of the individuals listed above to forward the complaint, to discuss it and/or to report the action taken. The supervisor has a responsibility to act even if the individuals involved do not report to that supervisor.

2. Students.

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

3. Non-Employees and Non-Students

Individuals who are neither NSHE employees nor NSHE students and who believe they have been subjected to discrimination or sexual harassment by a NSHE

employee during the employee's work hours or by a NSHE student on campus or at a NSHE-sponsored event may utilize any of the complaint processes set forth above in this section.

4. Investigation and Resolution.

- a. After receiving a complaint of the incident or behavior, the Primary Officer, or designee, will initiate an investigation to gather information about the incident. If the Primary Officer is unable to initiate an investigation, due to a conflict or for any other reason, the President shall designate another individual to act as Primary Officer for the matter. Each institution may set guidelines for the manner in which an investigation shall be conducted. The guidelines shall provide for the prompt, **thorough, impartial, and equitable** investigation and resolution of complaints, and shall identify the appropriate management level with final decision-making authority. The guidelines shall, at a minimum, provide the person subject to the complaint with information as to the nature of the complaint, and shall further provide that the person filing the complaint and the person who is the subject of the complaint have [a] **equal** rights to be interviewed, identify witnesses and provide documentation pertaining to the complaint. In most cases, an investigation should be completed within 45 calendar days of receipt of the complaint.
- b. **The standard for evaluating complaints shall be a preponderance of the evidence.** At the completion of the investigation, a recommendation will be made to the appropriate management regarding the resolution of the matter. The recommendation is advisory only.
- c. After the recommendation has been made, a determination will be made by appropriate management regarding the resolution of the matter. If warranted, disciplinary action up to and including involuntary termination or expulsion will be taken. Any such disciplinary action shall be taken, as applicable, in accordance with NSHE Code Chapter 6 (or applicable Student Code of Conduct), or, in the case of classified employees, NAC Chapter 284. Other appropriate actions will be taken to correct problems **and remedy effects**, if any, caused by the conduct, **if appropriate**. If proceedings are initiated under Chapter 6, the applicable Student Code of Conduct, or the Nevada Administrative Code, the investigation conducted pursuant to this policy may be used as part of such investigations. The administrative officer, in his or her discretion, may also supplement the investigation with additional investigation. **In any disciplinary hearings conducted pursuant to a Student Code of Conduct or under Title 2, Ch. 6, the burden of proof shall be by a preponderance of the evidence. In connection with any such disciplinary hearings, the person filing the complaint and the person who is the subject of the complaint have equal rights to be interviewed, identify witnesses, and provide and receive documentation and witness lists pertaining to the complaint, and if an appeal is provided, to appeal the decision.**
- d. After the appropriate management has made a determination regarding the resolution of the matter, and depending on the circumstances, both parties may be informed **concurrently** of the resolution.

- e. In the event actions are taken against an individual under NSHE Code Chapter 6 (or applicable Student Code of Conduct) or NAC Chapter 284, such matters generally remain confidential under those sections, except that final decisions following hearings or appeals of professional employees and State of Nevada personnel hearings involving classified employees are public records. Student matters generally remain confidential under FERPA.
- f. ***When discriminatory conduct or sexual harassment involves a crime of violence or a non-forcible sex offense, FERPA permits the institution to disclose to the alleged victim the final results (limited to the name of the alleged perpetrator, any violation found to have been committed, and any sanction imposed) of a disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed. With respect to an institutional disciplinary proceeding alleging a sex offense, the Clery Act requires that the accuser and the accused must be informed of the outcome.***
- g. ***In the event a student is found to have engaged in sexual harassment of another student, the institution shall disclose to the student who was harassed, information about the sanction imposed on the student who was found to have engaged in harassment when the sanction directly relates to the harassed student.***

5. Prompt Attention.

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

6. Confidentiality.

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

7. Retaliation

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

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

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

a. **Employees**

- I. An employee who believes that he or she has been subjected to retaliation may file a retaliation complaint with his or her immediate supervisor, who will in turn immediately contact one of the officials listed above.***

- II. If the employee feels uncomfortable about discussing the alleged retaliation with the immediate supervisor, the employee should feel free to bypass the supervisor and file a complaint with one of the other listed officials or with any other supervisor.***

- III. After receiving any employee’s complaint of an incident of alleged retaliation, the supervisor will immediately contact any of the individuals listed above to forward the complaint, to discuss it and/or to report the action taken. The supervisor has a***

responsibility to act even if the individuals involved do not report to that supervisor.

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

8. False Reports

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

9. Supervisors' Responsibilities.

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

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

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

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

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

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

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

10. Relationship to Freedom of Expression.

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

(B/R 12/09)

POLICY PROPOSAL - HANDBOOK
TITLE 2, CHAPTER 6, SECTION 6.2.5
[Sexual Harassment]

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

Title 2 - Codification of Board Policy Statements

Chapter 6, Section 6.2.5:

...

(b) An alleged victim ***of sexual harassment and a person against whom a complaint of alleged sexual harassment is filed*** shall have the opportunity to select an independent advisor for assistance, support and advice. They [~~alleged victim~~ shall be advised at the beginning of the ***Title 2, Chapter 6*** complaint process that he or she may select an independent advisor and it shall become the ***ir*** choice [~~of the alleged victim~~] to utilize or not utilize the independent advisor. The independent advisor may be brought into the process at anytime. [~~at the request of the alleged victim~~]. The institutional affirmative action officer or the administrative officer shall advise the alleged victim ***and the individual against the complaint of alleged sexual harassment has been filed*** of this right. The means and manner by which an independent advisor shall be made available shall be determined by each institution or unit.

In any hearings on a complaint of sexual harassment, the burden of proof shall be by a preponderance of the evidence. In connection with any hearings, the person filing the complaint and the person against whom the complaint of alleged sexual harassment has been filed have equal rights to be interviewed, identify witnesses, provide documentation pertaining to the complaint, receive documents and witness lists prior to the hearing, and to appeal the decision in accordance with Section 6.13. With respect to an institutional disciplinary proceeding alleging a sex offense, the Clery Act requires that the accuser and the accused must be informed of the outcome.