

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**

*[**Note: Handbook Revision, Title 4, Chapter 8, Section 13 was approved at the December 1-2, 2011, Board of Regents meeting. This is the second hearing at which the Code revision is being presented.]*

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 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 and receive documentation and witness lists pertaining to the complaint, 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.