

**Nevada System of Higher Education
Board of Regents Handbook
Title 4 - Codification of Board Policy Statements
Chapter 8**

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

Introduction

This policy is divided into four parts. Section A states the NSHE policy against discrimination. Section B states the NSHE policy against sexual harassment, training requirements, and sexual harassment definition and examples. Section C describes the remedies and interim measures that are available. Section D 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, Chapter 8 or Chapter 10 of the NSHE Code (or if applicable, institution student codes of conduct), or against classified employees under the *Nevada Administrative Code* Chapter 284 or Desert Research Institute Technologists under the Technologists Manual. 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 at 20 U.S.C. §1681(a):

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

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

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

Although it is the application of Title IX to athletics that has gained the greatest public visibility, the law applies to every single aspect of education, including course offerings, counseling and counseling materials, financial assistance, student health and insurance benefits and/or other services, housing, marital and parental status of students, physical education and athletics, education programs and activities sponsored by the institution, and employment.

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

A. NSHE Non-Discrimination Policy

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 conditions), 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.

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* or, in the case of Desert Research Institute (DRI) technologists, the Technologists Manual. Other lesser sanctions may be imposed, depending on the circumstances. Complaints may also be filed against visitors, consultants, independent contractors, 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.

2. Non-discrimination Policy and Prevention of Sexual Harassment Training.

a. Non-discrimination Policy.

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

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

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

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

b. Prevention of Sexual Harassment Training.

Within six months after an employee is initially appointed to NSHE, the employee shall receive training regarding the prevention of sexual harassment. At least once every two years after the appointment, an employee shall receive training concerning the prevention of sexual harassment.

3. Discriminatory Acts.

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 accommodations or 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.

Discriminatory acts also include:

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

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, in the case of students, any applicable student code of conduct, in the case of classified employees, the *Nevada Administrative Code*, or in the case of DRI technologists, the Technologists Manual. Sexual harassment, including sexual violence, is a form of discrimination; it is illegal.

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

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

2. Policy Applicability and Sanctions

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

3. Training, Employees and Students.

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

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

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

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

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

4. Sexual Harassment Defined.

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

- a. Educational Environment:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic status ("quid pro quo");
2. Conduct that is sufficiently severe, persistent or pervasive so as to interfere with or limit a student's ability to participate in or benefit from the services, activities or opportunities offered by the institution ("hostile environment").

b. Workplace Environment:

1. Submission to or rejection of the conduct is used as a basis for academic or employment decisions or evaluations, or permission to participate in an activity ("quid pro quo"); or
2. Conduct that is sufficiently severe, persistent or pervasive so as to create a work environment that a reasonable person would consider intimidating, hostile or abusive, and which may or may not interfere with the employee's job performance ("hostile environment").

Sexual violence is a severe form of sexual harassment, and refers to physical sexual acts or attempted sexual acts perpetrated against a person's will or where a person is incapable of giving consent, including but not limited to rape, sexual assault, sexual battery, sexual coercion or similar acts in violation of state or federal law.

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

- a. Sexual Harassment Examples. Sexual harassment may take many forms—subtle and indirect, or blatant and overt. For example, • It may occur between individuals of the opposite sex or of the same sex.
- It may occur between students, between peers and/or co-workers, or between individuals in an unequal power relationship (such as by a supervisor with regard to a supervised employee or an instructor regarding a current student).
 - It may be aimed at coercing an individual to participate in an unwanted sexual relationship or it may have the effect of causing an individual to change behavior or work performance.
 - It may consist of repeated actions or may even arise from a single incident if sufficiently severe.
 - It may also rise to the level of a criminal offense, such as battery or sexual violence.
 - Sexual violence is a physical act perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol or other factors which demonstrate a lack of consent or inability to give consent. An individual also may be unable to give consent due to an intellectual or other disability. Sexual violence includes, but is not limited to, rape, sexual assault, sexual battery, and sexual coercion.

Determining what constitutes sexual harassment under this policy is dependent upon the specific facts and the context in which the conduct occurs. Some

conduct may be inappropriate, unprofessional, and/or subject to disciplinary action, but would not fall under the definition of sexual harassment. The specific action taken, if any, in a particular instance depends on the nature and gravity of the conduct reported, and may include disciplinary processes.

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

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

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

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

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

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

Sexual advances, whether or not they involve physical touching;

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

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

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

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

b. Sexual Assault.

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

c. Dating Violence.

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

1. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement. The term does not include

a casual relationship or an ordinary association between persons in a business or social context; and

2. For the purpose of this definition:

Dating violence is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the reporting party.

Dating violence includes, but is not limited to, mental, sexual or physical abuse or the threat of such abuse.

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

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

d. Domestic Violence.

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

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

e. Stalking.

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

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

f. Coercion.

Coercion is:

- the use of violence or threats of violence against a person or the person's family or property;
- depriving or hindering a person in the use of any tool, implement or clothing;
- attempting to intimidate a person by threats or force, or
- when committed with the intent to compel a person to do or abstain from doing an act that the person has the right to do or abstain from doing.

In the context of sexual misconduct, coercion is the use of pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

g. Consent.

Consent is defined as:

- An affirmative, clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity. Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent. Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- The existence of a dating relationship or past sexual relations between the participants does not constitute consent to any other sexual act.
- The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.
- Affirmative consent must be ongoing throughout the sexual activity and may be withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop.
- Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes impairment due to drugs or alcohol (whether such use is voluntary or involuntary); inability to communicate due to a mental or physical condition; the lack of consciousness or being asleep; being involuntarily restrained; if any of the parties are under the age of 16; or if an individual otherwise cannot consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

C. Remedies and Interim Measures.

It may be necessary or advisable to take actions (as determined by the institution) designed to minimize the chance that the respondent will either continue to harass or retaliate against the complainant and to provide additional support to the complainant. Such actions (as determined by the institution) may also be necessary or advisable on behalf of a respondent. The measures themselves must not amount to retaliation against the complainant or the respondent. Depending on the specific nature of the problem, interim measures and final remedies may include, but are not limited to:

For Students:

- Issuing a no contact directive;
- Providing an effective escort to ensure safe movement between classes and activities;
- Not sharing classes or extracurricular activities;
- Moving to a different residence hall (complainants should only be moved upon their request);
- Providing written information regarding institution and community services including but not limited to medical, counseling and academic support services, such as tutoring;
- Providing extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;

- Restricting to online classes;
- Providing information regarding campus transportation options;
- Reviewing any disciplinary actions taken against the complainant to see if there is a connection between the sexual violence and the misconduct that may have resulted in the complainant being disciplined¹; and
- Requiring the parties to report any violations of these restrictions.

For Employees:

- Provide an effective escort to ensure safe movement between work area and/or parking lots/other campus locations;
- Issuing a no contact directive;
- Placement on paid leave (not sick or annual leave);
- Placement on administrative leave;
- Transfer to a different area/department or shift in order to eliminate or reduce further business/social contact;
- Providing information regarding campus transportation options;
- Instructions to stop the conduct;
- Providing information regarding institution and community services including medical, counseling and Employee Assistance Program;
- Reassignment of duties;
- Changing the supervisory authority; and
- Directing the parties to report any violations of these restrictions.

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

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

Any interim measures or final remedies shall be monitored by the Title IX coordinator throughout the entire process to assess whether the interim measures or final remedies meet the goals of preventing ongoing harassment or discrimination, protecting the safety of the parties and preventing retaliatory conduct.

D. 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

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

against students may be referred to student disciplinary processes)². The Chancellor (for the System Office) and each president shall designate no fewer than two administrators to receive complaints. The administrators designated to receive the complaints may include the following: (1) the Title IX coordinator; (2) the affirmative action officer; (3) the human resources officer; or (4) 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 in this paragraph. All complaints, whether received by the affirmative action officer, human resources officer or other designated officer, must immediately be forwarded to the primary officer. All Title IX complaints must be immediately forwarded to the Title IX coordinator.

An individual filing a complaint of alleged 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 the primary officer's 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 complainant. 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 the primary officer's designee. It shall be the choice of the individual against whom the complaint is filed to utilize or not utilize the independent advisor. The independent advisor may be brought into the process at any time at the request of the respondent. The means and manner by which an independent advisor shall be made available shall be determined by each institution or unit.

The individual filing a complaint of sexual harassment and the individual against whom a complaint is filed must be provided with a written explanation of their rights and options, including the available interim measures, and written notification of services available to victims on campus and in the community.

If anyone in a supervisory, managerial, administrative or executive role or position, such as a supervisor, department chair, or director of a unit, receives a complaint of alleged 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 in this section 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 with the supervisor, department chair, dean, or one of the administrators listed in this section above and/or designated by the president to receive complaints of alleged sexual harassment or discrimination.

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

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

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 file a discrimination or sexual harassment complaint with his or her immediate supervisor, who will in turn immediately contact one of the officials listed in Section D 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 in Section D above to forward the complaint, to discuss it and/or to report the action taken. The supervisor has a responsibility to act even if the individuals involved do not report the complaint to that supervisor.

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 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 in Section D 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 in Section D or to any chair, dean, or director of an administrative unit who will in turn immediately contact one of the officials listed above in Section D to forward the complaint, to discuss it and/or to report the action taken. The chair, dean or director of an administrative unit has a responsibility to act even if the individuals involved do not report to that person.

3. Non-Employees and Non-Students.

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

4. Training, Investigation and Resolution.

- a. General Requirements. The Title IX coordinator, executives, administrators designated to receive complaints, primary officer or designee, and appropriate

management with decision-making authority shall have training or experience in handling discrimination and sexual misconduct complaints, and in the operation of the NSHE and *Nevada Administrative Code* disciplinary procedures.

- b. **Primary Prevention and Awareness Training.** Institutions must offer new students and new employees primary prevention and awareness training that promotes awareness of rape, domestic violence, dating violence, sexual assault and stalking as defined in this policy. The training must address safe and positive options for bystander intervention to prevent harm or intervene in risky situations and the recognition of abusive behavior and how to avoid potential attacks.
- c. **Special Training With Regard to Sexual Violence.** The training for each of the individuals identified in paragraph 4.a above, should include annual training on how to investigate and conduct hearings in a manner that protects the safety of complainants and promotes accountability; information on working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including stalking and same-sex sexual violence; the proper standard of review for sexual violence complaints (preponderance of the evidence); information on risk reduction; information on consent and the role drugs or alcohol can play in the ability to consent; the importance of accountability for individuals found to have committed sexual violence; the need for remedial actions for the respondent, complainant, and institution community; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; how to conduct investigations; confidentiality; the effects of trauma, including neurobiological change; and cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.
- d. **Investigation.** 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 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.
- e. **Standard of Review.** The standard for evaluating complaints shall be a preponderance of the evidence (i.e., the evidence establishes that it is more likely than not that the prohibited conduct occurred). At the completion of the investigation, findings and a recommendation will be made to the appropriate management regarding the resolution of the matter. The recommendation is advisory only.
- f. **Management Determination.** 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, Chapter 8 or Chapter 10 (or applicable Student Code of Conduct), or, in the case of classified employees, *Nevada Administrative Code* (NAC) Chapter 284, or in the case of DRI technologists, the Technologists Manual. Other appropriate actions will be taken to correct problems and remedy effects, if any, caused by the conduct, if appropriate. If proceedings are initiated under Title 2, Chapter 6, Chapter 8 or Chapter 10, the applicable Student Code of Conduct, the NAC Chapter 284, or Technologists Manual, 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, Chapter 6, Chapter 8, Chapter 10, the NAC Chapter 284, or Technologists Manual, the standard of evidence shall be by a preponderance of the evidence, (i.e., the evidence establishes that it is more likely than not that the prohibited conduct occurred).

In connection with any such disciplinary hearings, the person filing the complaint and the person who is the subject of the complaint have equal rights to be interviewed, identify witnesses, and provide and receive documentation and witness lists pertaining to the complaint, and if an appeal is provided, to appeal the decision.

- g. Parties to be Informed. 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 (see subparagraph i below).
- h. Confidentiality of Actions Taken. In the event actions are taken against an individual under NSHE Code Title 2, Chapter 6, Chapter 8 or Chapter 10 (or applicable Student Code of Conduct) or NAC Chapter 284, or the Technologists Manual, such matters generally remain confidential under those sections, except that final decisions following hearings or appeals of professional employees and State of Nevada personnel hearings involving classified employees are public records. Student matters generally remain confidential under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, 34 CFR Part 99 (FERPA).
- i. Crime of Violence Exception to the Family Educational Rights and Privacy Act (FERPA). When discriminatory conduct or sexual harassment involves a crime of violence or a non-forcible sexual offense, FERPA permits the institution to disclose to the complainant the final results (limited to the name of the respondent, any violation found to have been committed, and any sanction imposed) of a disciplinary proceeding against the respondent, regardless of whether the institution concluded that a violation was committed. With respect to an institutional disciplinary proceeding alleging sexual violence, domestic violence, dating violence or stalking offense, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092 (f). 34 CFR 668.46 (Clery Act) requires that the accuser and the accused must be simultaneously informed of the outcome.

- j. Disclosure of Sanction Imposed. In the event a student is found to have engaged in sexual harassment of another student, the institution shall disclose to the student who was harassed, information about the sanction imposed on the student who was found to have engaged in harassment when the sanction directly relates to the harassed student.
- k. Resignation of Employee or Withdrawal of Student. If a student respondent withdraws from the institution or an employee respondent ends employment (e.g., resigns, retires) while an investigation of a complaint involving gender discrimination or sexual harassment is pending under this policy, the Title IX coordinator shall take appropriate action, which may include completing the investigation to the extent reasonably practicable, in order to prevent the reoccurrence of and to remedy the effects of the alleged misconduct.
- l. Title IX Coordinator Monitoring. The institution Title IX coordinator has primary responsibility for coordinating the institution's efforts to comply with and carry out its responsibilities under Title IX. The Title IX coordinator is responsible for monitoring all aspects of the investigation and any disciplinary process to help ensure that:
 - 1. the process is fair and equitable to both the complainant and the respondent;
 - 2. the applicable policies and procedures of NSHE and of the institution are followed; and
 - 3. the interim measures and final remedies are followed.

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

- a. Confidentiality in Complaints Involving Sexual Violence. In complaints involving sexual violence the following applies:
 - 1. Varying Confidentiality Obligations. Complainants who are victims of sexual violence are encouraged to talk to somebody about what happened in order for them to receive the support they need, and so the institution can respond appropriately. Different individuals at the

institution have different abilities to maintain a complainant's confidentiality:

- Some are required to maintain near complete confidentiality; talking to them is sometimes called a "privileged communication."
- Other employees may talk to a complainant in confidence, and generally only report to the institution that an incident occurred without revealing any personally identifying information. Disclosures to these employees will not trigger investigation into an incident against the complainant's wishes, except in certain circumstances discussed below.
- Complainants are encouraged to talk to one of the individuals identified in this Section 6.
- Some employees are required to report all the details of an incident (including the identities of both the complainant and all others involved) to the Title IX coordinator. A report to these employees (called "responsible employees") constitutes a report to the institution – and generally obligates the institution to investigate the incident and take appropriate steps to address the situation.

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

2. **Privileged and Confidential Communications.** A complainant or respondent may wish to consult with professional counselors, pastoral counselors or others. Certain professionals are not required to report incidents unless they have been granted permission:
 - **Professional Counselors.** Professional, licensed counselors who provide mental-health counseling to members of the institution community (and including those who act in that role under the supervision of a licensed counselor) are not required to report any information about an incident to the Title IX coordinator without a complainant's permission.
 - **Pastoral Counselors.** A complainant and/or a respondent may choose to consult with a non-institution pastoral counselor and is encouraged to discuss confidentiality with that individual.
 - Under Nevada law other professionals who may maintain confidentiality include lawyers, psychologists, doctors, social workers, and victim advocates employed by non-profit entities.
3. **Complainant Options.** A complainant who reports an act of sexual violence to a professional listed above in Section 6.a.2 must understand that, if they want to maintain confidentiality, the institution

will be unable to conduct a full investigation into the incident and will likely be unable to pursue disciplinary action against the respondent.

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

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

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

b. Reporting to "Responsible Employees"³.

1. "Responsible Employees" Defined and Duties. A "responsible employee" is an employee who has the duty to report incidents of sexual violence or other sexual misconduct, or who a complainant could reasonably believe has this authority or duty. When a complainant reports an incident of sexual violence to a responsible employee, the complainant has the right to expect the institution to take prompt and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

A responsible employee must report to the Title IX coordinator all relevant details about the alleged sexual violence shared by the complainant and that the institution will need to determine what happened – including the name(s) of the complainant, respondent(s) and any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the institution's response to the report. A responsible employee should not share information with law enforcement without the complainant's consent or unless the complainant has also reported the incident to law enforcement.

Institutions must identify in their policies those employees who are designated as "responsible employees" and may also designate those employees who are not considered "responsible employees."

³ Note: Campus Security Authorities, who are designated by the institutions in accordance with Clery Act requirements, have an independent responsibility to report sexual and other crimes (which may be reported anonymously) to campus police.

Responsible employees may include but are not limited to the following employees (or categories of employees):

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

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

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

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

2. Requesting Confidentiality From the Institution: How the Institution Will Weigh the Request and Respond.
 - a. Request for Confidentiality. If a complainant discloses an incident to a responsible employee but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the institution will weigh that request against the institution's obligation to provide a safe, non-discriminatory environment for everyone, including the complainant. If the Institution honors the request for confidentiality, a complainant will be informed that the institution's ability to investigate the incident and pursue disciplinary action against the respondent may be limited.

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

- b. **Factors to Be Considered.** When weighing a complainant's request for confidentiality or a complainant's request that no investigation or discipline be pursued, the institution will consider a range of factors, including the following:
- i. The increased risk that the identified respondent will commit additional acts of sexual or other violence, such as:
 - whether there have been other sexual violence complaints about the same respondent;
 - whether the respondent has a history of arrests or other records indicating a history of violence;
 - whether the respondent threatened further sexual violence or other violence against the complainant or others;
 - whether the sexual violence was committed by multiple persons;
 - whether the circumstances of the incident indicate that the behavior was planned by the respondent or others;
 - ii. Whether the reported sexual violence was committed with a weapon;
 - iii. Whether the complainant is a minor;
 - iv. Whether the institution possesses other means to obtain relevant evidence of the reported sexual violence (e.g., security cameras or personnel, physical evidence);
 - v. Whether the complainant's information reveals a pattern of behavior (e.g., illicit use of drugs, alcohol, coercion, intimidation) at a given location or by a particular group;
 - vi. Other factors determined by the institution that indicate the respondent may repeat the behavior or that others may be at risk.

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

- c. **Actions After Decision to Disclose.** If the institution decides that a complainant's confidentiality cannot be maintained, the institution will inform the complainant in writing or via email prior to starting an investigation and the institution will, to the extent possible, only share information with people responsible for handling the institution's response.

The institution will inform the respondent that retaliation against the complainant is prohibited and will take ongoing steps to protect the

complainant from retaliation or harm and work with the complainant to create a safety plan. Retaliation against the complainant, whether by the respondent, or employees, students or others, will not be tolerated. The institution will also:

1. assist the complainant in accessing other available advocacy, academic support, counseling, disability, health or mental health services, and legal assistance both on and off institution property;
2. provide other security and support, which could include issuing a no-contact order, helping arrange a change of living or working arrangements or course schedules (including for the respondent pending the outcome of an investigation) or adjustments for assignments or tests;
3. inform the complainant of the right to report a crime to the institution and/or local law enforcement and to have a criminal investigation proceed simultaneously; and
4. provide the complainant with assistance if the complainant wishes to report a crime.

The institution will not require a complainant or a respondent to participate in any investigation or disciplinary proceeding.

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

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

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

- d. Reports to Other NSHE Institutions. If a responsible employee receives a complaint about sexual misconduct that has occurred at another NSHE institution, the responsible employee shall report the information to his or her Title IX coordinator, who shall provide the information to the Title IX coordinator at the other NSHE institution.
- e. Public Awareness Events—Not Notice to the Institution. Public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, “survivor speak outs” or other forums in which complainants disclose incidents of sexual violence, are not considered notice to the institution of sexual violence for purposes of triggering the institution's

obligation to investigate any particular incident(s). Such events may, however, inform the need for institution-wide education and prevention efforts, and the Institution will provide information about complainants' Title IX rights at these events.

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

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

1. 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 the Title IX coordinator or any other responsible employee designated by the institution.
2. If the employee feels uncomfortable about discussing the alleged retaliation with the immediate supervisor, the employee should feel free to

bypass the supervisor and file a complaint with the Title IX coordinator, any responsible employee designated by the institution or with any other supervisor.

3. After receiving any employee's complaint of an incident of alleged retaliation, the supervisor will immediately contact the Title IX coordinator or a responsible employee designated by the institution to forward the complaint, to discuss it and/or to report the action taken. The supervisor has a responsibility to act even if the individuals involved do not report to that supervisor.

b. Students

1. A student who believes that he or she has 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 the Title IX coordinator or any responsible employee designated by the institution.
2. If the student feels uncomfortable about discussing the alleged retaliation with the department chair or director of an administrative unit, the student should feel free to bypass the person and file a complaint with the Title IX coordinator, a responsible employee designated by the institution, or to any chair, dean, or director of an administrative unit who will in turn immediately contact one of the those officials to forward the complaint, to discuss it and/or to report the action taken. The chair, dean or director of an administrative unit has a responsibility to act even if the individuals involved do not report to that person.

- c. Complaints of retaliation under Title IX must be immediately provided to the Title IX coordinator.

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 institution and Board of Regents disciplinary procedures. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by subsequent investigation.

9. Supervisor Responsibilities.

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

- a. Monitoring the work and school environment for signs that discrimination or harassment may be occurring;
- b. Refraining from participation in, or encouragement of actions that could be perceived as discrimination or harassment (verbal or otherwise);

- c. 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
- d. 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 the Title IX coordinator or a responsible employee designated by the institution to forward the complaint, to discuss it and/or to report the action taken.

Failure to take 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 12/15)