

**TITLE 4, CHAPTER 8, SECTION 13**  
**STUDENT RECRUITMENT AND RETENTION POLICY, EQUAL  
EMPLOYMENT OPPORTUNITY POLICY AND AFFIRMATIVE ACTION  
PROGRAM FOR THE NEVADA SYSTEM OF HIGHER EDUCATION**

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

**Introduction**

This policy is largely based on federal and state anti-discrimination laws and is divided into four subsections. Except as otherwise provided, subsections A through C do not apply to “sexual harassment” under Title IX, the requirements and procedures of which are stated in subsection D. Subsection A states the Nevada System of Higher Education (NSHE) policy against unlawful discrimination and unlawful harassment that does not constitute Title IX “sexual harassment” under subsection D, specifies training requirements, and defines “consent.” Subsection B describes the remedies and interim measures that are available in cases of unlawful discrimination and unlawful harassment that does not constitute “sexual harassment” under Title IX. Subsection C contains the complaint and investigation procedures for complaints of unlawful discrimination and harassment that does not constitute Title IX “sexual harassment” under subsection D and, when appropriate, instances where the institution has notice of possible unlawful discrimination and/or harassment. Subsection D sets forth NSHE’s sexual harassment policy under Title IX; defines “sexual harassment”; describes the remedies and supportive measures available in a sexual harassment case; and describes the requirements and procedures for a sexual harassment complaint, investigation, informal resolution, live hearing, and appeal. All of these 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 and/or Chapter 289 or Desert Research Institute Technologists under the Technologists Manual. However, information gathered as part of the complaint and/or investigation processes under this section may be used in connection with disciplinary proceedings.

**A. NSHE Policy Against Unlawful Discrimination and Harassment that Does Not Constitute Title IX Sexual Harassment**

**1. Policy Applicability and Sanctions.**

NSHE is committed to providing a place of work and learning free of discrimination on the basis of a person’s age (40 or older), disability, whether

actual or perceived by others (including service-connected disabilities), gender (including pregnancy related conditions), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race, color or religion (protected classes). Discrimination on the basis of a protected class, including unlawful harassment, which is a form of discrimination, is illegal under federal and state law. Where unlawful discrimination is found to have occurred, NSHE will act to stop the unlawful discrimination, to prevent its recurrence, to remedy its effects, and to discipline those responsible.

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

No employee, student, or other member of the campus community, either in the workplace or in the academic environment, should be subject to unlawful discrimination.

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

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

Any employee, student, or other member of the campus community may utilize any of the complaint processes set forth in this policy.

## **2. Distribution of Policy; Training on the Prevention of Unlawful Discrimination and Harassment; and Annual Policy Review.**

### **a. Distribution of Policy.**

Annually, all employees shall be given a copy of this anti-discrimination policy, which may be provided electronically, and each institution shall maintain documentation that each employee received the anti-discrimination policy. New employees shall be given a copy of this policy at the time of hire and each

institution's Human Resources Office shall maintain documentation that each new employee received the policy.

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

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

**b. Training on the Prevention of Unlawful Discrimination and Harassment.**

Each institution shall provide ongoing training on the prevention of unlawful discrimination and harassment and shall designate a person or office to be responsible for such training.

Institutions must provide new students and new employees primary prevention and awareness training that promotes awareness of rape, domestic violence, dating violence, sexual assault and stalking as defined in this policy. The training must address safe and positive options for bystander intervention to prevent harm, including how to intervene in risky situations; the recognition of abusive behavior; and how to avoid potential attacks.

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

Incoming freshmen and transfer students within their first semester of enrollment shall receive training regarding the prevention of unlawful discrimination and harassment, including primary prevention and awareness training.

See also Special Training with Regard to Sexual Violence in subsection b of subsection 3 of subsection C below.

**c. Annual Policy Review.**

No later than the end of each calendar year, each institution's Title IX Coordinator shall review and provide to NSHE suggestions for changes to this policy. NSHE shall review and consider the suggested changes and propose policy revisions to the Board of Regents, as appropriate, at the last regular Board meeting of the fiscal year.

**3. Discriminatory Acts.**

It is illegal to discriminate on the basis of age (40 or older), disability (including service-connected disabilities), gender (including pregnancy related conditions), military status or military obligations, sexual orientation, gender identity or expression,

genetic information, national origin, race, color, or religion in any aspect of employment or education, such as:

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

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

Discriminatory acts also include:

- discrimination on the basis of a person's age (40 or older), disability (including service-connected disabilities), gender (including pregnancy related conditions), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race, color, or religion;
- retaliation against an individual for reporting an incident or filing a charge of unlawful discrimination, including unlawful harassment; participating in an investigation, hearing, or other related administrative process; or opposing discriminatory acts;
- employment or education decisions based on stereotypes or

assumptions about the abilities, traits or performance of individuals of a certain age (40 or older), disability (including service-connected disabilities), gender (including pregnancy related condition), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race, color or religion; and

- “harassment,” which refers to unwelcome conduct that is based on a person’s age (40 or older), disability (including service-connected disabilities), gender (including pregnancy related conditions), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race, color, or religion. Harassment becomes unlawful where: 1) enduring the offensive conduct becomes a condition of employment or educational pursuits, or 2) the conduct is severe, persistent, or pervasive enough to create a work or educational environment that a reasonable person would consider intimidating, hostile, offensive, or abusive. Examples of unwelcome conduct that, if severe, persistent, or pervasive could constitute harassment, include but are not limited to: slurs, jokes, graffiti, offensive or derogatory comments, or other verbal or physical conduct that is unwelcome.

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

#### **4. Non-Title IX Sexual Harassment Defined.**

Outside of the Title IX context, unwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual or gender bias nature constitute sexual harassment when:

- a. In the educational environment:
  - i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s academic status (“quid pro quo”); or
  - ii. Conduct, viewed under an objective standard, is sufficiently severe, persistent or pervasive so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities or opportunities offered by the institution (“hostile environment”).
- b. In the workplace environment:
  - i. Submission to or rejection of the conduct is used as a basis for academic

or employment decisions or evaluations, or permission to participate in an activity (“quid pro quo”); or

- ii. Conduct, viewed under an objective standard, is sufficiently severe, persistent or pervasive so as to create an intimidating, hostile or abusive work environment, which may or may not interfere with the employee’s job performance (“hostile environment”).

## **5. Non-Title IX Sexual Harassment Examples.**

### **a. Sexual Harassment Examples Outside of the Title IX Context.**

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

- It may occur between individuals of the opposite sex or of the same sex.
- It may occur between students, between peers and/or co-workers, or between individuals in an unequal power relationship (such as by a supervisor with regard to a supervised employee or an instructor regarding a current student).
- It may be aimed at coercing an individual to participate in an unwanted sexual relationship or it may have the effect of causing an individual to change behavior or work performance.
- It may consist of repeated actions or may even arise from a single incident if sufficiently severe.
- It may also rise to the level of a criminal offense, such as battery or sexual violence.
- Sexual violence, which is a severe form of sexual harassment and refers to physical, sexual acts or attempted sexual acts perpetrated against a person’s will or where a person is incapable of giving consent, including but not limited to rape, sexual assault, sexual battery, sexual coercion or similar acts in violation of state or federal law. A person may be incapable of giving consent due to the use of drugs or alcohol, age, an intellectual or other disability, or other factors, which demonstrate a lack of consent or inability to give consent.

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

the conduct reported, and may include disciplinary processes.

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

- Rape, sexual assault, sexual battery, sexual coercion, dating violence, domestic violence, stalking, other sexual violence;
- Stealthing, including the intent to remove or damage a contraceptive device without the knowledge or consent of the other participant while engaging in a sexual act;
- Sexually explicit or gender related statements, comments, questions, jokes, innuendoes, anecdotes, or gestures;
- Other than customary handshakes, uninvited touching, patting, hugging, or purposeful brushing against a person's body or other inappropriate touching of an individual's body;
- Remarks of a sexual nature about a person's clothing or body;
- Use of mail, text messages, social media, or other electronic or computer sources for nonconsensual dissemination of sexually oriented, sex-based communications;
- Sexual advances, whether or not they involve physical touching;
- Requests for sexual favors in exchange for actual or promised job or educational benefits, such as favorable reviews, salary increases, promotions, increased benefits, continued employment, grades, favorable assignments, letters of recommendation;
- Displaying sexually suggestive objects, pictures, magazines, cartoons, screen savers or electronic files;
- Inquiries, remarks, or discussions about an individual's sexual experiences or activities and other written or oral references to sexual conduct.
- Even one incident, if it is sufficiently serious, may constitute sexual harassment. One incident, however, does not necessarily constitute sexual harassment.

## **6. Sexual Assault, Dating Violence, Domestic Violence, Stalking, Coercion and**

## **Consent Defined.**

### **a. Sexual Assault.**

“Sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the Federal Bureau of Investigation’s Uniform Crime Reporting Program.

“Rape” means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

“Fondling” means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

“Incest” means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

“Statutory rape” means sexual intercourse with a person who is under the statutory age of consent (16 years old).

### **b. Dating Violence.**

“Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

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

### **c. Domestic Violence.**

“Domestic violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic

or family violence laws of the jurisdiction.

d. Stalking.

“Stalking” means engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others, or suffer substantial emotional distress.

e. Coercion.

“Coercion” means the intent to compel a person to do or abstain from doing an act that the person has the right to do or abstain from doing through words, conduct or pressure by:

- the use of violence or threats of violence against a person or the person’s family or property;
- depriving or hindering a person in the use of any tool, implement or clothing;
- attempting to intimidate a person by threats or force;
- compelling another individual to initiate or continue sexual activity against an individual’s will; or
- threatening to “out” someone based on sexual orientation, gender, identity, or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail.

f. Consent.

Conduct is unwelcome if it is done in the absence of consent.

“Consent” means an affirmative, clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity.

- Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent.
- Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- The existence of a dating relationship or past sexual relations between the participants does not constitute consent to any other sexual act.
- Affirmative consent must be ongoing throughout the sexual activity and may be withdrawn at any time. When consent is withdrawn or cannot

be given, sexual activity must stop.

- Consent cannot be given when it is the result of any coercion, intimidation, force, deception, or threat of harm.
- Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes impairment due to drugs or alcohol (whether such use is voluntary or involuntary); inability to communicate due to a mental or physical condition; the lack of consciousness or being asleep; being involuntarily restrained; if any of the parties are under the age of 16; or if an individual otherwise cannot consent.
- The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.

#### **B. Remedies and Interim Measures for Unlawful Discrimination and Unlawful Harassment that Does Not Constitute Sexual Harassment under Title IX.**

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

For Students:

- a. Issuing no contact directives;
- b. Providing an effective escort to ensure safe movement between classes and activities;
- c. Not sharing classes or extracurricular activities;
- d. Moving to a different residence hall;
- e. Providing written information regarding institution and community services including but not limited to medical, counseling and academic support services, such as tutoring;
- f. Providing extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;
- g. Restricting to online classes;
- h. Providing information regarding campus transportation options;
- i. Reviewing any disciplinary actions taken against the

complainant or the respondent to see if there is a connection between the sexual misconduct and the misconduct that may have resulted in the complainant or the respondent being disciplined,<sup>1</sup> and

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

For Employees:

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

All institution administrators, academic and administrative faculty, and staff are responsible for carrying out the interim measures and final remedies.

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

Final remedies may also include review and revision of institution sexual misconduct policies, increased monitoring, supervision or security at locations

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<sup>1</sup> For example, if one party was disciplined for skipping a class in which the other party was enrolled, the institution should review the incident to determine if class was skipped to avoid contact with the other party.

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 unlawful discrimination or harassment, protecting the safety of the parties, restoring access to the institution's education programs and activities, and preventing retaliatory conduct.

Notwithstanding a complainant's request for confidentiality under subsection 6 of subsection C, the institution may undertake interim measures.

### **C. Complaint and Investigation Procedure for Unlawful Discrimination and Unlawful Harassment that Does Not Constitute Sexual Harassment under Title IX.**

#### **Introduction**

This section provides the complaint and investigation procedure for complaints of unlawful discrimination or unlawful harassment that does not constitute "sexual harassment" under Title IX (except that complaints against students may be referred to student disciplinary processes), including instances where the institution has notice of unlawful discrimination or harassment. The Chancellor (for the System Office) and each president shall designate no fewer than two administrators to receive complaints. The administrators designated to receive the complaints may include the following: (1) the Title IX Coordinator; (2) the human resources officer; or (3) any other officer designated by the president. The president may also designate a primary investigating officer (primary officer) to investigate all complaints. The primary officer may be any of the individuals identified in this paragraph. All complaints, whether received by the human resources officer or other designated officer, must immediately be forwarded to the Title IX Coordinator.

An individual filing a complaint of unlawful discrimination or harassment shall have the opportunity to select an independent advisor for assistance, support, and advice and shall be notified of this opportunity by the Title IX Coordinator or designee. It shall be the choice of the individual filing the complaint to utilize or not utilize an independent advisor and their responsibility to pay any associated fees. An independent advisor may be brought into the process at any time at the request of the complainant. An independent advisor may be any person who does not have a conflict of interest and who is not a witness in the matter.

An individual against whom a complaint of unlawful discrimination or harassment is filed shall have the opportunity to select an independent advisor for assistance, support, and advice and shall be notified of this opportunity by the Title IX Coordinator or designee. It shall be the choice of the individual against whom the complaint is filed to utilize or not utilize an independent advisor and their

responsibility to pay any associated fees. An independent advisor may be brought into the process at any time at the request of the respondent. An independent advisor may be any person who does not have a conflict of interest and who is not a witness in the matter.

The individual filing a complaint of unlawful discrimination or harassment and the individual against whom a complaint is filed must be provided with a written explanation of their rights and options, including the range of available interim measures, and written notification of services available 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 unlawful discrimination or harassment, or observes or becomes aware of conduct that may constitute unlawful discrimination or harassment, the person must immediately contact one of the individuals identified in this section above to forward the complaint and/or provide information about the conduct, to discuss it and/or to report the action taken.

Complaints of unlawful discrimination or harassment should be filed as soon as possible with the supervisor, department chair, dean, or one of the administrators listed in this section above and/or designated by the president (or the Chancellor for NSHE System Administration matters) to receive complaints of alleged unlawful discrimination or harassment.

### **1. Time Frames.**

Complaints of unlawful discrimination or harassment that does not constitute sexual harassment under Title IX must be filed within the time frames stated below.

Holidays and weekends should be included in all calculations. If, however, the deadline falls on a weekend or holiday, the complaint may be filed on the next business day and still considered timely. (Business days are non-weekend and non-holiday days in which NSHE administrative offices are open for business.)

Resources, to include actions commonly classified as “interim measures,” are available to eligible students and employees notwithstanding the issue of timeliness.

#### **a. Employee Complaints**

All employment complaints alleging unlawful discrimination or harassment (to include retaliation) must be received in the appropriate institutional office within 300 calendar days from the day the alleged act took place. If more than one act is alleged, the deadline will apply to each act independently, except in complaints of ongoing unlawful discrimination or harassment. Complaints of ongoing unlawful discrimination or harassment must be filed within 300 calendar days of

the last alleged incident of unlawful harassment, although all alleged incidents of ongoing unlawful discrimination or harassment may be considered during the investigation, even if the earlier incidents are alleged to have occurred more than 300 calendar days earlier.

b. Student Complaints

All student complaints alleging unlawful discrimination or harassment (to include retaliation) must be received in the institution's appropriate office within 180 calendar days from the day the alleged act took place. If more than one act is alleged, the deadline will apply to each event independently, except in complaints of ongoing unlawful discrimination or harassment. Complaints of ongoing unlawful discrimination or harassment must be filed within 180 calendar days of the last alleged incident of ongoing unlawful discrimination or harassment, although all alleged incidents of ongoing unlawful discrimination or harassment may be considered during the investigation, even if the earlier incidents are alleged to have occurred more than 180 calendar days earlier.

c. Other/Campus Visitor/Non-employee

Complaints alleging unlawful discrimination or harassment (to include retaliation) asserted by individuals who are neither NSHE employees nor students alleging unlawful discrimination or harassment by a NSHE employee during the employee's work hours, or by a NSHE student on campus or at a NSHE-sponsored event, must be received in the institution's appropriate office within 180 calendar days from the day the alleged act took place. If more than one act is alleged, the deadline will apply to each act independently, except in complaints of ongoing unlawful discrimination or harassment. Complaints of ongoing unlawful discrimination or harassment must be filed within 180 calendar days of the last alleged incident of ongoing unlawful discrimination or harassment, although all alleged incidents of ongoing unlawful discrimination or harassment may be considered during the investigation, even if the earlier incidents are alleged to have occurred more than 180 calendar days earlier.

## **2. Complaint Procedures.**

a. Employees.

1. An employee who believes that they have been subjected to unlawful discrimination or harassment by anyone is encouraged—but it is neither necessary nor required, particularly if it may be confrontational—to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. An employee is not required to do this before filing a complaint. A person who receives such a request must immediately comply with it and must not retaliate

against the employee.

2. The employee may file an unlawful discrimination or harassment complaint with their immediate supervisor, who will in turn immediately contact one of the officials listed in the Introduction to this section above.
3. If the employee feels uncomfortable about discussing the incident with the immediate supervisor, the employee should feel free to bypass the supervisor and file a complaint with one of the other listed officials or with any other supervisor.
4. After receiving any employee's complaint of an incident of alleged unlawful discrimination or harassment[, the supervisor will immediately contact any of the individuals listed in the Introduction to this section above to forward the complaint, to discuss it and/or to report the action taken. The supervisor has a responsibility to act even if the individuals involved do not report the complaint to that supervisor.

b. Students.

1. A student who believes that they have been subjected to unlawful discrimination or harassment by anyone is encouraged—but it is neither necessary nor required particularly if it may be confrontational—to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. A student is not required to do this before filing a complaint. A person who receives such a request must immediately comply with it and must not retaliate against the student.
2. The student may file a complaint with their major department chair or director of an administrative unit, who will in turn immediately contact one of the officials listed in the Introduction to this section above.
3. If the student feels uncomfortable about discussing the incident with the department chair or director of an administrative unit, the student should feel free to bypass the person and file a complaint with one of the above officials in the Introduction to this section or to any chair, dean, or director of an administrative unit who will in turn immediately contact one of the officials listed above in the Introduction to this section 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. Training, Investigation and Resolution.**

- a. **General Requirements.** The Title IX Coordinator, executives, administrators designated to receive complaints, and appropriate management level(s) with decision-making authority shall have training or experience in handling unlawful discrimination and sexual misconduct complaints, and in the operation of the NSHE and Nevada Administrative Code disciplinary procedures.
- b. **Special Training With Regard to Sexual Violence.** The training for each of the individuals identified in paragraph 3.a above, should include annual training on how to investigate and conduct hearings in a manner that protects the safety of the parties and promotes accountability; information on working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including stalking and same-sex sexual violence; the proper standard of review for sexual violence complaints (preponderance of the evidence); information on risk reduction; information on consent and the role drugs or alcohol can play in the ability to consent; the importance of accountability for individuals found to have committed sexual violence; the need for remedial actions for the respondent, complainant, and institution community; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; how to conduct investigations; confidentiality; the effects of trauma, including neurobiological change; and cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.
- c. **Investigation.** After receiving a complaint or information about the incident or behavior, the Title IX Coordinator or the primary officer, or designee, will initiate an investigation to gather information about the incident. If the Title IX Coordinator or the primary officer, or designee, is unable to initiate an investigation, due to a conflict or for any other reason, the president shall designate another individual to act as primary officer for the matter. Each institution may set guidelines for the manner in which an investigation shall be conducted. The guidelines shall provide for the prompt, thorough, impartial, and equitable investigation and resolution of complaints, and shall identify the appropriate management level with final decision-making authority. The guidelines shall, at a minimum, provide the person subject to the complaint with information as to the nature of the complaint, and shall further provide that the person filing the complaint and the person who

is the subject of the complaint have equal rights to be interviewed, identify witnesses and provide documentation pertaining to the complaint. In most cases, an investigation should be completed within a reasonable time from receipt of the complaint or information about the conduct. At the completion of the investigation, findings and a recommendation will be made to the appropriate management level with final decision-making authority regarding the resolution of the matter. The recommendation is advisory only.

- d. **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).
- e. **Management Determination.** After the recommendation has been made, a determination will be made by appropriate management level with final decision-making authority regarding the resolution of the matter. If warranted, disciplinary action up to and including involuntary termination or expulsion may be taken. Any such disciplinary action shall be taken, as applicable, in accordance with NSHE Code Chapter 6, Chapter 8 or Chapter 10 (or applicable Student Code of Conduct), or, in the case of classified employees or law enforcement personnel, Nevada Administrative Code (NAC) Chapter 284 or Chapter 289, or in the case of DRI technologists, the Technologists Manual. Other appropriate actions will be taken to correct problems and remedy effects, if any, caused by the conduct, if appropriate. If proceedings are initiated under Title 2, Chapter 6, Chapter 8 or Chapter 10, the applicable Student Code of Conduct, the NAC Chapter 284 or Chapter 289, or Technologists Manual, the investigation conducted pursuant to this policy may be used as part of such investigations. The administrative officer, in their discretion, may also supplement the investigation with additional investigation. In any disciplinary hearings conducted pursuant to a Student Code of Conduct or under Title 2, Chapter 6, Chapter 8, Chapter 10, the NAC Chapter 284 or Chapter 289, or Technologists Manual, the standard of evidence shall be by a preponderance of the evidence, (i.e., the evidence establishes that it is more likely than not that the prohibited conduct occurred).

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

- f. **Parties to be Informed.** After the appropriate management level with

final decision-making authority has made a determination regarding the resolution of the matter, and depending on the circumstances, both parties may be informed concurrently of the resolution (see subparagraph i below).

- g. Confidentiality of Actions Taken. In the event actions are taken against an individual under NSHE Code Title 2, Chapter 6, Chapter 8 or Chapter 10 (or applicable Student Code of Conduct) or NAC Chapter 284 or Chapter 289, or the Technologists Manual, such matters generally remain confidential under those sections, except that final decisions following hearings or appeals of professional employees and State of Nevada personnel hearings involving classified employees are public records. Student matters generally remain confidential under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, 34 CFR Part 99 (FERPA).
- h. Crime of Violence Exception to the Family Educational Rights and Privacy Act (FERPA). When discriminatory conduct or sexual harassment involves a crime of violence or a non-forcible sexual offense, FERPA permits the institution to disclose to the complainant the final results (limited to the name of the respondent, any violation found to have been committed, and any sanction imposed) of a disciplinary proceeding against the respondent, regardless of whether the institution concluded that a violation was committed. With respect to an institutional disciplinary proceeding alleging sexual violence, domestic violence, dating violence or stalking offense, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092 (f). 34 CFR 668.46 (Clery Act) requires that the accuser and the accused must be simultaneously informed of the outcome.
- i. Disclosure of Sanction Imposed. In the event a student is found to have engaged in sexual harassment of another student, the institution shall disclose to the student who was harassed, information about the sanction imposed on the student who was found to have engaged in harassment when the sanction directly relates to the harassed student.
- j. 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 unlawful discrimination or harassment is pending under this policy, the Title IX Coordinator shall take appropriate action, which may include completing the investigation to the extent reasonably practicable, in order to prevent the reoccurrence of and to

remedy the effects of the alleged misconduct.

- k. Title IX Coordinator Monitoring. The institution Title IX Coordinator has primary responsibility for coordinating the institution's efforts to comply with and carry out its responsibilities under this subsection. The Title IX Coordinator is responsible for monitoring all aspects of the investigation and any interim measures or final remedies to help ensure that:
  1. the process is fair and equitable to both the complainant and the respondent;
  2. the applicable policies and procedures of NSHE and of the institution are followed; and
  3. the interim measures and final remedies are followed.

#### **4. Prompt Attention.**

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

#### **5. Confidentiality.**

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

- a. Confidentiality in Complaints Involving Unlawful Discrimination or Harassment. In complaints involving unlawful discrimination or harassment, the following applies:
  1. Varying Confidentiality Obligations. In situations involving unlawful discrimination or harassment, individuals are encouraged to talk to somebody about what happened in order for them to receive the support they need. Different individuals at the institution have different abilities to maintain an individual's confidentiality:

- Some are required to maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.”
- Other employees may talk to an individual in confidence, and generally only report to the institution that an incident occurred without revealing any personally identifying information. Disclosures to these employees will not trigger investigation into an incident against the individual’s wishes, except in certain circumstances discussed below.
- Some employees are required to report all the details of an incident (including the identities of all involved) to the Title IX Coordinator. A report to these employees (called “officials with authority”) constitutes a report to the institution – and generally obligates the institution to investigate the incident and take appropriate steps to address the situation.

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

2. Privileged and Confidential Communications. A complainant or respondent may wish to consult with professional counselors, pastoral counselors or others. Certain professionals are not required to report incidents unless they have been granted permission:

- Professional Counselors. Professional, licensed counselors who provide mental-health counseling to members of the institution community (and including those who act in that role under the supervision of a licensed counselor) are not required to report any information about an incident to the Title IX Coordinator without a complainant’s permission.
- Pastoral Counselors. A complainant and/or a respondent may choose to consult with a non-institution pastoral counselor and is encouraged to discuss confidentiality with that individual.

- Under Nevada law other professionals who may maintain confidentiality include lawyers, psychologists, doctors, social workers, and victim’s advocates as defined in NRS 49.2545.
- Off-Campus Counselors and Advocates. Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and will not share information with the institution unless the individual requests the disclosure and signs a consent or waiver form.

3. Complainant Options. A complainant who reports an act of unlawful discrimination or harassment only to a professional listed above in subsection 2 of subsection a of subsection 5 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 “Officials with Authority<sup>2</sup>.”

1. “Officials with Authority” Defined and Duties. An “official with authority”

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<sup>2</sup> 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.

is the institution's Title IX Coordinator or any official of the institution who has authority to institute corrective measures on behalf of the institution, including the President, Vice Presidents, Provost, Vice Provosts, Human Resources Director, and those designated by the President. When a complainant or other person reports an incident of unlawful discrimination or harassment to an official with authority, they have the right to expect the institution to take prompt and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

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

## 2. Requesting Confidentiality From the Institution: How the Institution Will Weigh the Request and Respond.

- a. Request for Confidentiality. If a complainant discloses an incident to an official with authority but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the institution will weigh that request against the institution's obligation to provide a safe, non-discriminatory environment for everyone, including the complainant, after the official with authority reports the incident to the Title IX Coordinator. If the institution honors the request for confidentiality, a complainant will be informed that the institution's ability to investigate the incident and pursue disciplinary action against the respondent may be limited.

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

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

Based on one or more of these factors, the institution may decide to investigate and, if appropriate, pursue disciplinary action even though the complainant requested confidentiality or requested that

no investigation or disciplinary action be undertaken. If none of these factors is present, or if any or all of these factors are present to an insufficient degree, the institution will work to respect the complainant's request for confidentiality.

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

The institution will inform any individual involved in the matter that retaliation is prohibited and will take steps to protect such individual(s) from retaliation or harm. Retaliation will not be tolerated. The institution will also:

1. Determine whether interim measures should be implemented in accordance with subsection B;
2. inform any individual involved in the matter of the right to report a crime to the institution and/or local law enforcement and to have a criminal investigation proceed simultaneously; and
3. provide any individual involved in the matter with assistance if they wish to report a crime.

The institution will not require any individual involved in the matter to participate in any investigation or disciplinary proceeding.

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

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

complainant.

- d. Reports to Other NSHE Institutions. If an official with authority receives a complaint about unlawful discrimination or harassment that has occurred at another NSHE institution or to a student or employee of another NSHE institution, the official with authority shall report the information to the institution's Title IX Coordinator, who shall provide the information to the Title IX Coordinator at the other NSHE institution.
- e. Public Awareness Events—Not Notice to the Institution. Public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, “survivor speak outs” or other forums in which individuals disclose incidents of unlawful discrimination or harassment, are not considered notice to the institution of unlawful discrimination or harassment for purposes of triggering the institution's obligation to investigate any particular incident(s). Such events may, however, inform the need for institution-wide education and prevention efforts, and the Institution will provide information about individuals' rights at these events.

## **6. Retaliation.**

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

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

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

- a reduction in pay;
- the denial of a promotion;
- a dismissal;
- a transfer;
- frequent changes in working hours or workdays;
- an unfair grade;
- an unfavorable reference or reference letter;
- intentionally providing false information.

a. Employees

1. An employee who believes that they have been subjected to retaliation may file a retaliation complaint with their immediate supervisor, who will in turn immediately contact the Title IX Coordinator.
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.
3. After receiving any employee's complaint of an incident of alleged retaliation, the supervisor will immediately contact the Title IX Coordinator 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 they have been subjected to retaliation may file a retaliation complaint with their major department chair or director of an administrative unit, who will in turn immediately contact the Title IX Coordinator.
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.

**7. False Reports.**

Because unlawful discrimination and harassment frequently involve interactions between persons that are not witnessed by others, reports of unlawful

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

## **8. Supervisor Responsibilities.**

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

- a. Monitoring the work and school environment for signs that unlawful discrimination or harassment may be occurring;
- b. Refraining from participation in, or encouragement of actions that could be perceived as unlawful discrimination or harassment (verbal or otherwise);
- c. Stopping any observed acts that may be considered unlawful discrimination or harassment, and taking appropriate steps to intervene, whether or not the involved individuals are within their line of supervision; and
- d. Taking immediate action to minimize or eliminate the work and/or school contact between the involved individuals where there has been a complaint of unlawful discrimination or harassment, pending investigation.

If a supervisor receives a complaint of unlawful discrimination or harassment, or observes or becomes aware of conduct that may constitute unlawful discrimination or harassment, the supervisor must immediately contact the Title IX Coordinator to provide the information about the conduct, to discuss it and/or to report the action taken.

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

## **9. Relationship to Freedom of Expression.**

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

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

#### **D. Sexual Harassment under Title IX.**

NSHE and its member institutions do not discriminate on the basis of sex in their education programs and activities. Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1861(a), provides:

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

Title IX applies to every single aspect of education, including course offerings, counseling and counseling materials, financial assistance, student health and insurance benefits and/or other services, housing, marital and parental status of students, physical education and athletics, education programs and activities sponsored by the institution, and employment.

##### **1. Designation of Coordinator, dissemination of policy, and adoption of complaint procedures.**

- a. Each President of NSHE’s eight (8) institutions and the Chancellor for NSHE’s System Administration offices shall designate and authorize an individual to serve as the Title IX Coordinator for the institution who shall be tasked with coordinating the institution’s efforts to comply with its responsibilities under this Section. The institution must notify applicants for admission or employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the institution, of the name or title, office address, electronic mail address, and telephone number of the individual designated as the Title IX Coordinator.
- b. Each institution must prominently display the contact information for the Title IX Coordinator on its website, if any, and in each handbook, or catalog that it makes available to persons entitled to a notification under paragraph (a) of this section. Each institution must notify persons entitled to a notification under paragraph (a) of this section that the institution does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate in such a manner. Such notification must state that

the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX to the institution may be referred to the institution's Title IX Coordinator, to the Assistant Secretary of the Department of Education, or both.

c. Each institution must adopt and publish complaint procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited under this section and a complaint process that complies with subsection 5 for formal complaints as defined in subsection 2. An institution must provide to persons entitled to a notification under paragraph (a) of this section notice of the institution's complaint procedures and complaint process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the institution will respond.

## **2. Definitions.**

a. "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

b. "Respondent" means an individual who has been reported by the individual engaging in the conduct that could constitute sexual harassment.

c. "Reporting Party" means any person who reports sexual harassment or conduct that could constitute sexual harassment, whether or not the person reporting is the person alleged to be the victim.

d. "Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

(i) An employee of a NSHE institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct;

(ii) Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; or

(iii) Sexual assault, as defined by the Clery Act, 34 C.F.R. § 668.46(a), as amended by the Violence Against Women Act of 1994, including but not limited to dating violence, domestic violence, and stalking.

For the purposes of this definition, "education program or activity" includes locations, events, or circumstances over which an institution exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by an institution, which may

include but is not limited to recognized fraternity, sorority, or student organizations. This definition does not apply to persons outside the United States.

For the purposes of this definition, “sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the Federal Bureau of Investigation’s Uniform Crime Reporting Program.

“Rape” means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

“Fondling” means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

“Incest” means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

“Statutory rape” means sexual intercourse with a person who is under the statutory age of consent (16 years old).

“Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

“Domestic violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

“Stalking” means engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others, or suffer substantial emotional distress.

e. “Formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and

requesting that the institution investigate the allegation of sexual harassment.

f. "Supportive measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

g. "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to an institution's Title IX Coordinator or any official of the institution who has authority to institute corrective measures on behalf of the institution, including the President, Vice Presidents, Provost, Vice Provosts, Human Resources Director, and those designated by the President.

Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the institution with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform an individual about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the institution.

h. "Institution" means any and all of NSHE's eight (8) institutions, including the College of Southern Nevada; the Desert Research Institute; Great Basin College; Nevada State College; Truckee Meadows Community College; the University of Nevada, Las Vegas; the University of Nevada, Reno; and Western Nevada College, and NSHE's System Administration offices.

i. "Consent" means an affirmative, clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity.

- Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent.
- Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- The existence of a dating relationship or past sexual relations between the participants does not constitute consent to any other sexual act.
- Affirmative consent must be ongoing throughout the sexual activity and may be withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop.
- Consent cannot be given when it is the result of any coercion, intimidation,

force, deception, or threat of harm.

- Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes: impairment due to drugs or alcohol (whether such use is voluntary or involuntary); inability to communicate due to a mental or physical condition; the lack of consciousness or being asleep; being involuntarily restrained; if any of the parties are under the age of 16; or if an individual otherwise cannot consent.
- The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.

### **3. Response to Sexual Harassment.**

An institution with actual knowledge of sexual harassment allegations in an education program or activity of the institution, as all defined in subsection 2, against a person in the United States must respond promptly in a manner that is not deliberately indifferent. An institution is "deliberately indifferent" only if its response to sexual harassment allegations is clearly unreasonable in light of the known circumstances.

An institution's response must treat complainants and respondents equitably by offering supportive measures as defined in subsection f of subsection 2 to all parties, and by following a complaint process that complies with subsection 5 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in subsection f of subsection 2 against a respondent.

The institution's Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in subsection f of subsection 2, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. An institution's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

Depending on the specific nature of the problem, supportive measures and remedies may include, but are not limited to:

For Students:

- a. Issuing a no-contact directive(s);
- b. Providing an effective escort to ensure safe movement between classes

and activities;

- c. Not sharing classes or extracurricular activities;
- d. Moving to a different residence hall;
- e. Providing written information regarding institution and community services including but not limited to medical, counseling and academic support services, such as tutoring;
- f. Providing extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;
- g. Restricting to online classes;
- h. Providing information regarding campus transportation options;
- i. Reviewing any disciplinary actions taken against the complainant or the respondent to see if there is a connection between the sexual misconduct and the misconduct that may have resulted in the complainant or the respondent being disciplined;<sup>3</sup> and
- j. Requiring the parties to report any violations of these restrictions.

For Employees:

- k. Providing an effective escort to ensure safe movement between work area and/or parking lots/other campus locations;
- l. Issuing a no-contact directive(s);
- m. Placement on paid leave (not sick or annual leave);
- n. Placement on administrative leave;
- o. Transfer to a different area/department or shift in order to eliminate or reduce further business/social contact;
- p. Providing information regarding campus transportation options;
- q. Instructions to stop the conduct;
- r. Providing information regarding institution and community services

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<sup>3</sup> For example, if one party was disciplined for skipping a class in which the other party was enrolled, the institution should review the incident to determine if class was skipped to avoid contact with the other party.

- including medical, counseling and Employee Assistance Program;
- s. Reassignment of duties;
- t. Changing the supervisory authority; and
- u. Directing the parties to report any violations of these restrictions.

All institution administrators, academic and administrative faculty, and staff are responsible for carrying out the supportive measures and remedies.

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

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

Any supportive measures or remedies shall be monitored by the Title IX Coordinator throughout the entire process to assess whether the supportive measures or remedies meet the goals of preventing ongoing harassment or discrimination, protecting the safety of the parties, restoring access to the institution's education programs and activities, and preventing retaliatory conduct.

In responding to allegations of sexual harassment, an institution shall not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

#### **4. Response to a Formal Complaint.**

- a. In response to a formal complaint, an institution must investigate the allegations contained therein and follow a complaint process that complies with subsection 5. With or without a formal complaint, an institution must comply with subsection 3.
- b. Nothing in this subsection precludes an institution from removing a respondent from the institution's education program or activity on an emergency basis, provided that the institution undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans

with Disabilities Act.

c. Nothing in this subsection precludes an institution from placing a non-student employee respondent on administrative leave during the pendency of a complaint process that complies with subsection 5. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

d. An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a complaint process involves more than one complainant or more than one respondent, references in this section to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.

**5. General complaint process requirements. Institutions shall:**

a. Permit any person to report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator;

b. Promote impartial investigations and adjudications of formal complaints of sexual harassment;

c. Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a complaint process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in subsection f of subsection 2 against a respondent. Remedies must be designed to restore or preserve equal access to the institution’s education program or activity. Such remedies may include the same individualized services described in subsection f of subsection 2 as “supportive measures”; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;

d. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations

- may not be based on a person's status as a complainant, respondent, or witness;
- e. Ensure that the Title IX Coordinator, investigator, hearing officer, and any person designated by an institution to facilitate an informal resolution process, does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
  - f. Ensure that the Title IX Coordinator, investigator, hearing officer, and any person designated by an institution to facilitate an informal resolution process receive training on the definition of sexual harassment in subsection 2, the scope of the institution's education program or activity, how to conduct an investigation and complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
  - g. Ensure, in coordination with the NSHE Chief General Counsel, that hearing officers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in subsection d of subsection 8;
  - h. Ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in subsection d of subsection 8;
  - i. Ensure that any materials used to train Title IX Coordinators, investigators, hearing officers, and any person who facilitates an informal resolution process, do not rely on sex stereotypes;
  - j. Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the complaint process;
  - k. Establish a reasonably prompt time frame for conclusion of the complaint process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the institution offers informal resolution processes, and a process that allows for the temporary delay of the complaint process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The institution must establish a reasonably prompt time frame that complies with the procedures outlined in Chapter 284 of the Nevada Administrative Code for classified employees, Chapter 289 of the Nevada Administrative Code for law enforcement,

Chapter 6 of the NSHE Code for professional employees, and Chapter 10 of the NSHE Code or applicable code of conduct for students. Institutions may establish different time frames for different types of cases (e.g., sexual assault, domestic violence, dating violence, etc.);

l. Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the institution may implement following any determination of responsibility;

m. State that the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard, and must apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and must apply the same standard of evidence to all formal complaints of sexual harassment. "Preponderance of the evidence" means the evidence establishes that it is more likely than not that the prohibited conduct occurred;

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

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

p. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege; and

q. Require any party to assert that the Title IX Coordinator, investigator(s), or hearing officer(s) has a conflict of interest or bias against complainants or respondents generally or the individual complainant or respondent at the time the party knew or should have known of such conflict of interest or bias.

## **6. Complaint Procedures.**

a. Upon receipt of a formal complaint, an institution must provide the following written notice to the parties who are known:

(i) Notice of the institution's complaint process that complies with this section, including any informal resolution process; and

(ii) Notice of the allegations potentially constituting sexual harassment as defined in subsection 2, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. "Sufficient details" include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under subsection 2, and the date and location of the alleged incident, if

known. This written notice also must:

- (a) Include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process;
- (b) Inform the parties that they may have an advisor of their choice under subsection d of subsection 7 who may be, but is not required to be, an attorney, and may inspect and review evidence under subsection 7; and
- (c) Consistent with section 13, inform the parties of the prohibition against knowingly making false statements or knowingly submitting false information during the complaint process.

b. If, in the course of an investigation, the institution decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to subsection a of subsection 6, the institution must provide notice of the additional allegations to the parties whose identities are known.

c. Dismissal of formal complaint.

- (i) If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in subsection 2 even if proved, did not occur in the institution's education program or activity, or did not occur against a person in the United States, then the institution must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. Such a dismissal does not preclude action under another provision of the Board of Regents' Handbook, NSHE Code, or institution's code of conduct.
- (ii) The institution may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:
  - (a) A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
  - (b) The respondent is no longer enrolled or employed by the institution; or
  - (c) Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- (iii) Upon a dismissal required or permitted pursuant to subsections i and ii of subsection c of subsection 6, the institution must promptly send written

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

**7. Investigation of a Formal Complaint. The institution investigating a formal complaint must:**

- a. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the institution and not on the parties, provided that the institution cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the institution obtains that party's voluntary, written consent to do so for a complaint process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the institution must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);
- b. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- c. Avoid restricting the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- d. Provide the parties with the same opportunities to have others present during any complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or complaint proceeding. However, an institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to all parties;
- e. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- f. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to

conclusion of the investigation;

g. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The institution must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

h. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. Each party's written response, if any, shall be submitted to the investigator at least three (3) days prior to the live hearing.

## **8. Live Hearings.**

a. An institution must hold a live hearing over which a hearing officer presides. The hearing officer cannot be the same person as the Title IX Coordinator or the investigator(s) and must be selected in consultation with the NSHE Chief General Counsel.

b. At the live hearing, the hearing officer must permit each party's advisor during cross-examination to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the institution under subsection d of subsection 7 to otherwise restrict the extent to which advisors may participate in the proceedings.

c. The live hearing may be conducted with all parties physically present in the same geographic location or, at the institution's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the institution must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the hearing officer(s) and parties to simultaneously see and hear the party or the witness answering questions.

d. Only relevant cross-examination and other questions may be asked of a party

or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. For the purposes of this section, “relevant” means a question or evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the question or evidence. Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.

e. If a party does not have an advisor present at the live hearing, the institution must provide, without fee or charge to that party, an advisor of the institution’s choice, who shall not be an attorney, to conduct cross-examination on behalf of that party. Such advisors need not be provided with specialized training because the essential function of such an advisor provided by the institution is not to “represent” a party but rather to relay the party’s cross-examination questions that the party wishes to have asked of other parties or witnesses so that parties never personally question or confront each other during a live hearing.

f. If a party or witness does not submit to cross-examination at the live hearing, the hearing officer(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the hearing officer(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.

g. Institutions must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

h. Nothing in this subsection shall be construed to impair rights under the U.S. Constitution, including but not limited to the Fifth Amendment, or privileges recognized by statute or common law.

## **9. Determination Regarding Responsibility.**

a. The decision-maker, or hearing officer(s) as appropriate, must issue a written determination regarding responsibility under the preponderance of the evidence

standard within 14 calendar days of the live hearing.

b. The written determination must include:

- (i) Identification of the allegations potentially constituting sexual harassment as defined in subsection 2;
- (ii) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- (iii) Findings of fact supporting the determination;
- (iv) Conclusions regarding the application of the institution's code of conduct to the facts;
- (v) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the institution imposes on the respondent, and whether remedies designed to restore or preserve equal access to the institution's education program or activity will be provided by the institution to the complainant; and
- (vi) The institution's procedures and permissible bases for the complainant and respondent to appeal.

c. The institution must provide the written determination regarding responsibility to the parties simultaneously. The written determination becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

## **10. Appeals.**

a. Within five (5) calendar days, any party may appeal from a determination regarding responsibility, and from an institution's dismissal of a formal complaint or any allegations therein, on the following bases:

- (i) Procedural irregularity that affected the outcome of the matter;
- (ii) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- (iii) The Title IX Coordinator, investigator(s), or hearing officer(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the

matter; and

(iv) Any additional basis offered by an institution.

b. As to all appeals, the institution must:

(i) Immediately notify the other party in writing when an appeal is filed;

(ii) Ensure that the decision-maker for the appeal is not the same person as the hearing officer(s) or decision-maker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

(iii) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in subsections e-i of subsection 5;

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

(v) Issue a written decision within five (5) calendar days of receiving a written statement in support of, or challenging, the outcome describing the result of the appeal and the rationale for the result; and

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

c. The review on appeal is limited to the record, except in appeals based on newly discovered evidence that could affect the outcome of the matter and that was not reasonably available at the time the determination regarding responsibility or dismissal was made. In such appeals, newly discovered evidence may be considered on appeal notwithstanding its absence from the record.

## **11. Informal Resolution.**

a. If a formal complaint of sexual harassment is filed, and at any time prior to reaching a determination regarding responsibility, an institution may offer the parties the option of informal resolution and may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the institution:

(i) Provides to the parties a written notice disclosing the allegations; setting forth the requirements of the informal resolution process, including the circumstances under which the process's agreed upon resolution precludes the parties from resuming a formal complaint arising from the same allegations; and explaining that any statements made or documentation or information provided by a party during the informal resolution process shall not be used or relied upon in a subsequent

complaint process or live hearing without the permission of the party who made the statement or provided the documentation or information;

(ii) Obtains the parties' voluntary, informed written consent to the informal resolution process; and

(iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

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

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

d. An individual serving as a facilitator of an informal resolution process shall not be the Title IX Coordinator, Title IX investigator, Title IX hearing officer, witness, or other institutional employee that has a duty to disclose allegations of sexual harassment to the institution.

## **12. Recordkeeping.**

a. An institution must maintain for a period of at least seven (7) years records of:

(i) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under subsection g of subsection 8, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the institution's education program or activity;

(ii) Any appeal and the result therefrom;

(iii) Any informal resolution and the result therefrom; and

(iv) All materials used to train Title IX Coordinators, investigators, hearing officers, decision-makers, and any person who facilitates an informal resolution process. An institution must make these training materials publicly available on its website, or if the institution does not maintain a website the institution must make these materials available upon request

for inspection by members of the public;

- (v) For each response required under subsections 3 and 4, an institution must create, and maintain for a period of seven (7) years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the institution must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the institution's education program or activity. If an institution does not provide a party with supportive measures, then the institution must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the institution in the future from providing additional explanations or detailing additional measures taken.

**13. False Reports.** Because discrimination and sexual harassment frequently involve interactions between persons that are not witnessed by others, reports of discrimination or sexual harassment cannot always be substantiated by additional evidence. Lack of corroborating evidence or "proof" should not discourage individuals from reporting discrimination or sexual harassment under this policy. However, individuals who knowingly make false reports or submit false information during the complaint process may be subject to disciplinary action under the applicable institution and Board of Regents disciplinary procedures. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by subsequent investigation.

**14. Retaliation.**

a. Retaliation Prohibited. No institution or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation. The institution must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been

reported to have engaged in sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the complaint procedures for sex discrimination under subsection C.

b. Specific circumstances.

- (i) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under subsection a of this subsection.
- (ii) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a complaint proceeding under this part does not constitute retaliation prohibited under subsection a of this subsection, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

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