



# Equal Opportunity & Nondiscrimination

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## Investigation Foundations

**Equal Opportunity and Compliance, General Counsel & Labor Relations**  
*November 4-5, 2025*

# Outline of Today's Presentation

- » Purpose or “why”
- » Board Policies and System Procedures
- » Key elements of 1B.1 and 1B.3
- » Other system policies and procedures
- » Roles in the process
- » Investigation reports and decision-making
- » Questions/Discussion

# Purpose or “why”

- » Safe and inclusive campus communities
- » Nondiscrimination and Bias Incidents
- » Confidence in the process
- » Inquiry vs. investigation

# Safe and Inclusive Campus Communities

- » Preventing and combating workplace and education environment discrimination and harassment
- » Preventing and remedying retaliation
- » Fostering diversity, equity, inclusion, and accessibility in the workplace to promote equal opportunity
- » Fostering diversity, equity, inclusion, and accessibility in the education environment to promote equal access
- » SO: Supporting campuses with training and resources needed to effectively address reports and complaints

# Nondiscrimination and Bias Incidents

## » Discrimination or harassment

- Unwelcomed conduct or communication of discrimination or harassment based on a person's actual or perceived protected class
- Considered within the scope of a policy
- Identified Complainant(s) and Respondent(s)
- May be addressed through Informal Resolution or Investigation per System Procedure
- Designated Officer

## » Bias Incident

- An act or pattern or bigotry, harassment, or intimidation motivated in whole or part by a person's or group's actual or perceived protected class
- May or may not be a hate crime or policy violation
- May or may not be anonymous
- May be addressed through support, referral to resources, referral to reporting options, coordinated community circles, etc.
- Bias Response Team

# Confidence in the Process

- » Up to 70% never make a report
  - Why not? Fear: inaction, blame, disbelief, retaliation
  - What then? Endure, avoid, seek support, leave
- » Provide training and awareness about policy and procedure
- » Be transparent in process (i.e. flowchart, outline)
- » Be consistent, timely, and fair in enforcement
- » Make a decision and have a rationale that you can explain

# Inquiry vs. Investigation

## » Inquiry or Intake

- Limited information disclosed
- An anonymous report
- May ask questions, seek information, gather some insight specific to the allegation(s)
- Evaluate allegations within the scope of the Policies & Procedures

## » Investigation

- Complaint within scope of policy or policies
- Notices of investigation
- Methodical process for gathering information, facts, and evidence; conducting interviews
- Allowing the Respondent to respond to allegations
- Composing an Investigation Report for a Decision-maker

# Minnesota State Policy and Procedure

## Board Policies and System Procedures

- » Board Policy **1B.1** Equal Opportunity and Nondiscrimination in Employment and Education
- » Board Policy **1B.3** Sexual Misconduct
- » System Procedure **1B.1.1** Investigation and Resolution
- » System Procedure **1B.3.1** Response to Sexual Misconduct

# Understanding Board Policies

# Board Policy 1B.1

## Equal opportunity and nondiscrimination in employment and education

- » Equal opportunity for students and staff
- » Nondiscrimination
- » Protected Classes
- » Discrimination
- » Harassment
  - Discriminatory harassment
  - Sexual harassment
- » Consensual relationships
- » Retaliation

# Protected Classes

Harassment and discrimination are prohibited based on:

- » Race
- » Creed
- » Age
- » Disability
- » Sexual Orientation
- » Gender Expression
- » Familial Status
- » Sex (including pregnancy, child birth, and related medical conditions)
- » Status with regard to Public Assistance
- » Membership or activity in a local human rights commission
- » Color
- » Religion
- » National Origin
- » Marital Status
- » Gender Identity
- » Veteran Status
- » Genetic Information (employees)

# Protected Classes: Full Scope

- » Actual or perceived protected class
- » May include traits or characteristics linked to the protected class
- » May include stereotyping of a protected class

# Stereotyping

- » Social or cultural expectations
- » Includes positive, negative, and neutral expectations
  - Positive include intended compliments and model social expectations
  - Negative include offensive labels and usually imply inferiority
- » Often adjectives or nouns ascribed to people
- » Investigation considerations
  - Consider real or perceived protected classes
  - Identify relevant protected class statutes of involved parties

# Protected Classes & Intersectionality

- » Different forms of inequality operate together and exacerbate each other (Dr. Kimberle' Crenshaw)
- » Personal identities and characteristics do not exist in isolation
- » Some characteristics often fuse inextricably, made flesh in a person; they indivisibly intermingle
- » The combination of identities of any given person is endless and should be considered in context of the scope of the investigation.

# Policy Application

- » This policy applies to all individuals affiliated with Minnesota State, including but not limited to, its students, employees, applicants, volunteers, agents, the Board of Trustees, and others as appropriate and protects the rights and privacy of all involved individuals, as well as prevents retaliation.
- » On property; off property, including online
- » 1B.1 Policy implemented through 1B.1.1 Procedure

# Discrimination

**The elements of discrimination include:**

- » Someone was treated **differently**;
- » The different treatment was **based on** the individual's protected status or perceived protected class status; **and**
  - **Interfered** with or **limited** the ability of that person to participate in, or benefit from, the services, activities or privileges provided by Minnesota State **or**
  - Otherwise **adversely affected** that person's employment or educational experience of the college/university

# Discriminatory Harassment

**The elements of discriminatory harassment include:**

- » **Unwelcome** conduct or communication;
- » **Based on** actual or perceived membership in a protected class;
- » That has a **negative effect** or **is likely to** have a negative effect on the complainant or the workplace or education environment.

# Discriminatory Harassment, cont.

The examples of discriminatory harassment include:

- » Oral or written conduct such as jokes, innuendo, slurs, name calling, negative comments about cultural norms, circulating rumors;
- » Physical conduct, battery, blocking movement;
- » Non-verbal derogatory gestures, stalking, interference with work performance;
- » Visual displays.

# Sexual Harassment

**The elements of sexual harassment include:**

- » Unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, and other verbal or physical conduct of a sexual nature and;
- » The conduct has a negative or is likely to have a negative effect on the complainant or the workplace or the educational environment.

# Sexual Harassment Investigation Considerations

- » The subject of the harassment and harasser may be woman, man, or nonbinary; they do not have to be different sexes.
- » The harasser may be a supervisor of the person, a supervisor in a different area, a co-worker, a student, etc.
- » The reporting party does not have to be the subject of the harassment to be affected by the offensive conduct.

# Sexual Harassment, cont.

**The examples of sexual harassment include:**

- » Unwelcome conduct
  - Verbal, ex. sexual innuendos, suggestive comments, sounds, or propositions
  - Physical, ex. suggestive objects or pictures, obscene gestures
  - Physical contact, defined by Board Policy 1B.3 Sexual Violence
- » Preferential treatment or promises
- » Negative treatment or threats
- » Sexual exploitation, ex. transmitting or threatening to share images or video of graphic nudity or messages without consent

# Retaliation

## Retaliation is prohibited at Minnesota State.

Retaliations includes, but is not limited to, engaging in any form of intimidation, reprisal or harassment against an individual because the person:

- Made a complaint or other communication under 1B.1 or 1B.3; **or**
- Assisted or participated in an investigation or process under these policies, regardless of whether a claim of discrimination or harassment was substantiated (or other applicable laws and policies); **or**
- Associated with a person or group of persons who are members of a protected class; **or**
- Made a complaint or assisted or participated in any manner in an investigation or process with the EEOC, the U.S. Department of Education (OCR), the MN Dept of Human Rights or other enforcement agencies, under any federal or state nondiscrimination law.

# Consensual Relationships

An employee of Minnesota State **shall not** enter into a consensual relationship with a student or an employee over whom the person exercises direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority or influence.

# System Procedure 1B.1.1

## Investigation and Resolution

### Reporting Discrimination/Harassment

- Encourage report as soon as possible
- Administrators and supervisors **must** report incidents of discrimination/harassment
- Students, faculty and employees are strongly encouraged to report incidents of discrimination/harassment

# Special Cases

- » Complaints against a president
  - Complaints should be filed with the system office's designated officer. The case will be investigated by an investigator appointed by the Chancellor.
  - Campus investigation - If president's role in the incident was limited to a decision on a recommendation made by another administrator, such as tenure, promotion or non-renewal and the president had no other involvement in the matter
- » Complaints against system office employees or the Board of Trustees.
  - Complaints that involve allegations against the chancellor or a member of the Board of Trustees must be referred to the board chair or vice chair for processing. Such complaints may be assigned to a Minnesota State investigator or outside investigatory assistance may be designated
- » Complaints against college or university vice presidents, deans or provosts are filed at the campus level with the president as decisionmaker

# Procedure Overview 1B.1.1



# Board Policy 1B.3

## Sexual Misconduct Policy

The **1B.3 Policy** addresses:

- » Dating, intimate partner, and relationship violence
- » Non-forcible sex acts
- » Sexual Assault
  - Affirmative Consent
- » Sexual exploitation
- » Stalking
- » Title IX Sexual Harassment
- » Retaliation

# Jurisdiction

- » All **students** (applied, admitted, or enrolled; has a continued relationship with the institution; or lives on campus)
- » And **employees** (including student workers)
- » On **campus property\*** (owned, leased, or under the primary control of the institution)
- » Within **educational programs and activities** (substantial control by institution: courses, housing, dining areas, bookstore, events, activities, etc.)
- » \*Locations other than campus property are covered by policy but may be resolved through an alternative procedure (e.g. 1B.1.1, student conduct, Human Resources).

# Dating, intimate partner, and relationship violence

## Dating, intimate partner, and relationship violence (DIRV)

Any physical or sexual harm or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a person, including verbal, psychological, economic, or technological abuse that may be classified as a sexual assault, dating violence, or domestic violence caused by:

1. a current or former spouse of the individual; or
2. a person in a sexual, romantic, or intimate relationship with the individual.

# Non-forcible Sex Acts

Unlawful sexual acts where consent is not relevant, such as sexual contact with an individual under the statutory age of consent, as defined by Minnesota law, or between persons who are related to each other within degrees wherein marriage is prohibited by law.

# Sexual Assault, Sexual Act

An actual, attempted, or threatened sexual act with another person without that person's affirmative consent.

1. Sexual act includes but is not limited to the following:
  - a. Intentional and unwelcome touching of a person's intimate parts (defined as primary genital area, groin, inner thigh, buttocks, or breast) both over and under clothing; or coercing, forcing, or attempting to coerce or force another to touch a person's intimate parts.
  - b. Sexual intercourse or penetration, no matter how slight, of the vagina or anus of a person, with any body part or object, or oral penetration of a sex organ of another person.

# Sexual Assault, Affirmative Consent

2. Consent is **informed, freely given, and mutually understood** willingness to participate in sexual activity that is expressed by **clear, unambiguous, and affirmative words or actions**. Affirmative consent is subject to the following:

- » The person who wants to engage in sexual activity is responsible for ensuring that the other person has consented to the sexual activity.
- » Consent must be present throughout the entire sexual activity and can be revoked at any time.
- » If coercion, intimidation, threats, and/or physical force are used, there is no consent.

# Affirmative Consent, continued

- » If the person is mentally or physically incapacitated or impaired so that the complainant cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes conditions due to alcohol or drug consumption, or being asleep or unconscious.
- » A lack of protest, absence of resistance, or silence alone does not constitute consent, and past consent to sexual activities does not imply ongoing future consent.
- » The existence of a dating relationship between the people involved or the existence of a past sexual relationship does not prove the presence of, or otherwise provide the basis for, an assumption of consent.
- » Whether an individual has taken advantage of a position of influence over another person may be a factor in determining consent.

# Sexual Exploitation

Abuse or attempting to abuse another person's vulnerability, power, or trust and that is for another person's benefit or the benefit of anyone other than the person being exploited. This includes, but is not limited to, sexual voyeurism, sexual extortion, nonconsensual distribution of sexual images, creating or disseminating deepfake or synthetic media depicting intimate parts or sexual acts, prostituting another person, and sex trafficking.

# Stalking

Course of conduct (two or more acts) directed at a specific person that is unwanted, unwelcome, or unreciprocated and that would cause reasonable people to fear for their safety or the safety of others or to suffer substantial emotional distress

Some examples:

- » Unwanted Phone Calls
- » Unwanted Voicemails
- » Unwanted Text Messages
- » Spying
- » Sending unwanted gifts
- » Letters
- » E-mails
- » Social media use
- » Showing up at a location

# Title IX Sexual Harassment

For the purpose of Title IX, sexual harassment is conduct on the basis of sex that occurs in the United States and: (1) on Minnesota State property; (2) as part of the college's or university's programs or activities; (3) in locations, at events, or in circumstances over which the college or university has exercised substantial control over both the individual who engaged in the prohibited conduct and the context in which the prohibited conduct occurred; and/or (4) in buildings owned or controlled by a student organization that is officially recognized by a college or university. Title IX sexual harassment includes conduct that satisfies at least one of the following:

1. An employee of the college or university conditioning the provision of an aid, benefit, or service of Minnesota State on an individual's participation in unwelcome sexual conduct [Title IX Sexual Harassment: Quid Pro Quo]; or
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's or university's education program or activity [Title IX Sexual Harassment: Hostile Environment].

## Retaliation, 1B.3

Taking an adverse action against a person, which includes, but is not limited to, engaging in any form of intimidation, reprisal, or harassment because the person:

1. reported or made a complaint under this policy;
2. expressed opposition to suspected or alleged conduct prohibited by this policy;
3. assisted or participated in any manner in an investigation or process under this policy;
4. opposed or refused to participate in an informal resolution or investigation under this policy; or

# Retaliation, 1B.3 continued

5. accessed the college or university investigation or informal resolution process to address a conflict related to this policy; or
6. made a complaint or assisted or participated in any manner in an investigation or process with the Equal Employment Opportunity Commission, the U.S. Department of Education Office for Civil Rights, the Minnesota Department of Human Rights or other enforcement agencies, under any federal or state nondiscrimination law, including the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Minnesota Human Rights Act, Minn. Stat. Ch. 363A, and their amendments.

Retaliation may occur whether or not there is a power or authority differential between the individuals involved.

# System Procedure 1B.3.1

## Response to Sexual Misconduct

### » Reporting Sexual Misconduct

- Prompt reporting is encouraged
- Assistance in reporting: law enforcement, local services, campus Title IX Coordinator
- Campus security authorities, supervisors, advisors **must** report incidents

# Procedure Overview 1B.3.1

Complaint to Title IX Coordinator	Resolution path	Investigation	Formal Hearing	Decision	Appeal	Final decision
<ul style="list-style-type: none"> <li>Supportive measures</li> </ul>	<ul style="list-style-type: none"> <li>Formal: investigation</li> <li>Informal</li> <li>Refer</li> </ul>	<ul style="list-style-type: none"> <li>Appointed investigator</li> <li>Conduct interviews</li> <li>Gather evidence</li> <li>Draft investigation report</li> <li>Review &amp; comment</li> <li>Title IX Coordinator reviews Report</li> <li>Finalize report</li> </ul>	<ul style="list-style-type: none"> <li>Report and relevant evidence goes to parties &amp; DM</li> <li>Advisors*</li> <li>Pre-hearing meetings</li> <li>Formal hearing with hearing administrator</li> </ul>	<ul style="list-style-type: none"> <li>Finding/no finding</li> <li>Statements, prior- if relevant</li> <li>DM provides draft letters to OGC &amp; TIXC; consults re findings</li> <li>DM authors</li> <li>Decision letters sent</li> </ul>	<ul style="list-style-type: none"> <li>For both complainant and respondent</li> <li>Appeal Decision-maker appointed <ul style="list-style-type: none"> <li>Review of appeal submission</li> <li>Consult with OGC</li> <li>Author &amp; send decision letters</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>CBA: Grievance</li> <li>Student: CH 14</li> <li>DM= President</li> </ul>



# Informal Resolution (1B.3.1)

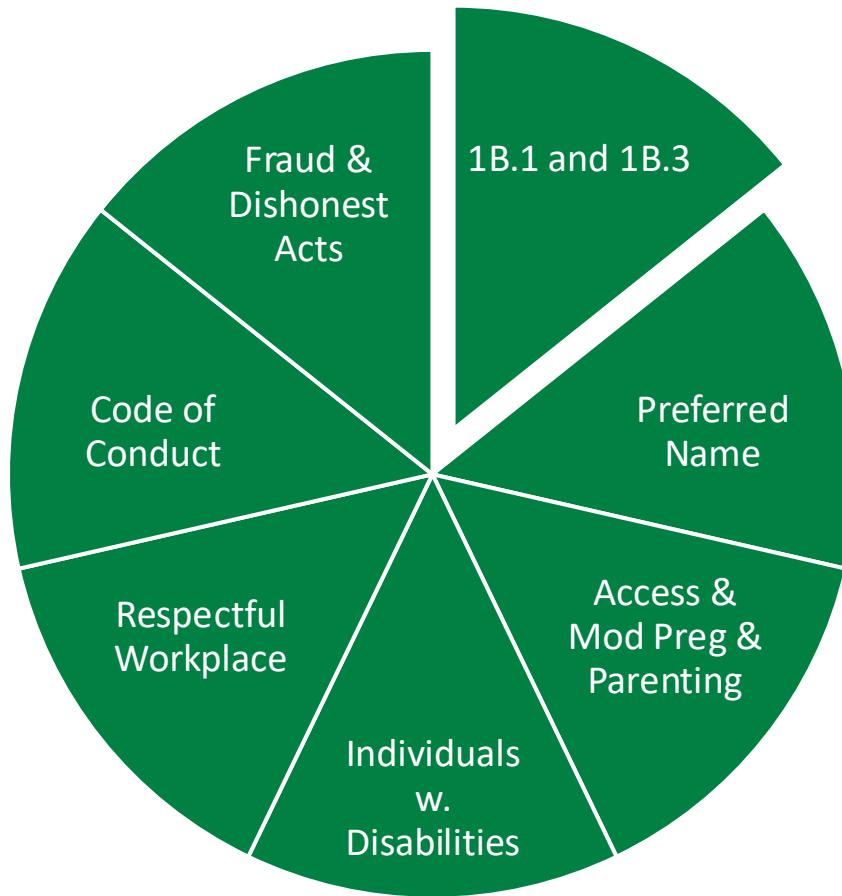
**Subpart A.** Informal resolution. A college or university may offer an informal resolution process if a formal complaint is filed and after providing both parties a notice of allegations. The parties must **voluntarily consent, in writing, to the informal resolution process.** At any time before agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the process with respect to the formal complaint. This procedure neither prevents nor requires the use of informal resolution by individuals who believe they have been subject to conduct in violation of Board Policy 1B.3. Informal resolution shall not be used to resolve allegations that an employee sexually harassed a student.

# Informal Resolution (cont.)

## Examples of Possible Educational and Restorative Activities

- » Contact restrictions
- » Geographic restrictions
- » Preferential registration with Housing, Course Schedules
- » Educational programming or training
- » Supported direct (or indirect) conversation or interaction between the Parties
- » Acknowledgment of Harm (without punitive sanctions)
- » Terms related to confidentiality and/or non-disparagement
- » Terms related to what will be reflected on record, eligibility for future admission/hire
- » Additional individual or community remedies of mutual agreement

# Other Policies and Procedures



# Preferred Name

## **SYSTEM PROCEDURE 1B.1.2**

- » Chosen name that is different, in whole or in part, from legal name
- » Each college, university shall have a procedure
  - Registrar: responsible for students and alumni
  - Human resources: responsible for employees
- » Used when and where technically and legally possible

# Access & Modifications, Pregnant and Parenting Students

## SYSTEM PROCEDURE 1B.1.3

- » Ensuring programs, services, and activities are accessible to students who may be
  - pregnant,
  - experiencing a pregnancy-related condition, or
  - parenting a child under the age of 18
- » Information sharing requirements: students' rights
- » Reasonable modifications for students
- » Lactation space access
- » Absences: excused and leaves

# Access & Accommodations for Individuals w. Disabilities

## BOARD 1B.4 POLICY

- » Programs, services, and activities shall be accessible to individuals with disabilities, in compliance with state and federal laws
- » Individuals with disabilities may need accommodations to have equally effective opportunities
- » Reasonable accommodations will be made to ensure access (with some noted limitations), including modifications to rules, policies, and practices
- » Provide qualified student with a disability access to services and activities
- » College, University must have process to request an accommodation

# Respectful Workplace

## SYSTEM 1C.0.2 PROCEDURE

- » Objectively respectful and professional workplace
- » **Professionalism:** Displaying the good judgment and proper behavior that is reasonably expected in the workplace
- » **Respect:** Behavior or communication that demonstrates positive consideration and treats individuals in a manner that a reasonable person would find appropriate
- » **Prohibitions:** aggressive behaviors; deliberately destroying, damaging, or obstructing work performance; knowingly making a false complaint; retaliation

# Code of Conduct and Ethics

## SYSTEM 1C.0.1 PROCEDURE

- » All employees of Minnesota State must meet public expectations for excellence
- » Ethics
  - Conflicts of interest
  - Compensation, benefits or gifts
  - Personal advantage
  - Use of Minnesota State property
  - Political activities and influence
  - Purchasing and contracting
- » Employees must comply with all board policies and system procedures (including 9 noted areas)

# Fraud or Other Dishonest Acts

## SYSTEM 1C.2 POLICY

- » Fraudulent and other dishonest acts
  - Ex. Theft or misuses of college or university assets, time, property
  - Conflicts of interest
  - Double employment, where employee is working two jobs at the same time
- » State of Minnesota Code of Ethics
- » Fraud inquiries and investigations
- » Remedial actions
- » Whistleblower protections

# Different Allegations, Different Processes

The processes for different types of allegations are NOT THE SAME

Do not use the 1B.1 decision maker process for 1C.2 allegations:

- Can result in incorrect conclusions and re-investigations
- Minnesota State is required by law to report evidence of fraud, waste, and abuse to the Office of the Legislative Auditor and (if applicable) federal authorities.

Considerations

- Differences between the types of investigations
- Different reporting responsibilities by law or policy



# Federal and State Laws and policies

# Violence Against Women Act

**Reauthorized and effective Oct. 2014:**

- » Prompt, fair, and impartial process: initial investigation to final result
- » Process must be consistent with institution's policies and transparent to both parties
- » Both parties shall have:
  - Equal opportunities to have others present, including advisor of choice
  - Timely notice of meetings and who will be present
  - Timely and equal access to information used during disciplinary meetings and hearings

# VAWA, continued

- » Officials shall be **trained annually**, including having no conflict of interest or bias for or against either party
- » **Reasonably prompt timeframe**, which may be extended for good cause with written notice to both parties, stating the delay and the reason
- » Both parties shall receive **simultaneous notification**, in writing, of the result of the proceeding, including rationale, sanctions, available appeal, and any changes to the results, and when the results become final

# Clery Act, amended

## Amended by VAWA, Campus SaVE Act, effective July 1, 2015

- » Inclusion in crime report of the following: sexual assault, domestic violence, dating violence, and stalking
  - Required updates to policy and procedure
  - Required documentation maintenance of these matters
- » Requires reporting of crime stats: daily crime log, annual security report
- » Includes a duty to warn/timely warnings
- » Primary prevention and awareness programs for all incoming students and new employees
- » Campus brochure (VAWA § 304): info for victims, shared with mandated reporters and OWAs

# Campus Sexual Misconduct Policy

## Minnesota State Statute 135A.15

- » Required policy, including sexual assault definition, victims' rights, and uniform amnesty
- » Coordination with local law enforcement
- » Online reporting system, including anonymous reports
- » Data collection and reporting to OHE (due Oct 1)

# Minnesota Policy 135A.15, continued

- » Comprehensive training
  - For new, incoming students: 10-day deadline
  - Requires **annual training** for campus administrators responsible for investigating or adjudicating complaints on sexual assault or persons responsible for responding to reports of sexual assault—including investigators and decisionmakers
  - Individuals responding to reports of sexual assault
- » Student health services screening; counseling designated staff

# Roles in the Investigation Process

Designated Officer | Investigator | Decision-maker | President

# Designated Officer

- » Completed training provided by the system office within the past three years.
- » Is designated by the president or chancellor to be primarily responsible for conducting an initial inquiry,
- » Determines whether to offer informal resolution,
- » Determines whether to proceed with an investigation under 1B.1 procedure, and
- » Investigates or coordinates the investigation of reports/complaints of discrimination, harassment and retaliation as defined by Board Policy 1B.1.

# Designated Officer, cont.

- » Jurisdiction and scope
- » Conflicts of interest
- » Interim actions re: health, safety concerns
- » Primary person to ensure process moves forward through each relevant step of the procedure
- » Release of information requests

# Title IX Coordinator

- » Completed training provided by the system office within the past 12 months.
- » Is designated by the president to be primarily responsible for receiving formal complaints of sex-based harassment,
- » Determines whether to offer informal resolution,
- » Determines whether to proceed with an investigation under 1B.3.1 procedure, and
- » Investigates or coordinates the investigation of reports/complaints of discrimination, harassment and retaliation as defined by Board Policy 1B.3.

# Title IX Coordinator, cont.

- » Jurisdiction and scope
- » Conflicts of interest
- » Interim actions re: health, safety concerns
- » Primary person to ensure process moves forward through each relevant step of the procedure
- » Release of information requests

# Investigator's Role

- » Has completed training by the system office within the past three years for 1B.1.1 and past 12 months for 1B.3.1,
- » Is designated by the designated officer to conduct an inquiry, investigate or coordinate the investigation of reports/complaints of discrimination, harassment, and retaliation as defined by Board Policy in accordance with the procedure,
- » Determines or recommends whether to proceed with an investigation under this procedure,
- » Prepares investigation reports, and
- » May be the Designated Officer or Title IX Coordinator.

# Investigator's Role, cont.

- » Conducts a fact-finding inquiry or investigation of the complaint, including appropriate interviews and meetings or delegate this responsibility to a trained investigator.
- » Informs individuals that they are permitted to have a union representative or support person to accompany them during investigative interviews as appropriate;
- » Informs the witnesses and other involved individuals of the prohibition against retaliation;
- » Creates, gathers, and maintains investigative documents as appropriate.

# Investigator

- » Writes investigation report with organized attachments
- » Outlines facts in the investigative report based on information collected through the interview process and review of gathered documents
- » Primary person to ensure process moves forward through the investigation steps
- » Handles all data in accordance with applicable federal and state privacy laws, consulting with the campus Data Practices Officer when necessary
- » Provides all investigation materials to the Designated Officer for recordkeeping

## *Role of the Advisor (1B.3.1)*

- » Provide information by helping students understand their rights and responsibilities under the policy, procedure, and student code of conduct.
- » Provide assistance by aiding students in organizing their information to be used during an investigation and reviewing materials shared through the investigation process.
- » Provide support by helping students find resources and counseling services that may benefit them and by being present/sitting with the student when they participate in the investigation and resolution process if the student wants them to be there.

# The Investigation

- » Provides enough information for the decision-maker to make a reasoned decision about whether policy has been violated
- » Maintains integrity of process
  - Timely
  - Fair to both parties
  - Provide confidentiality as required by law
  - Thorough
  - Tailored to individual circumstances

# Decision-Making Authority

- » Completed decisionmaker training provided by the system office within the past three years and past 12 months for 1B.3.1,
- » Is designated by the president or chancellor to review investigation reports,
- » Determines whether Board Policy 1B.1 or 1B.3 has been violated based upon the investigation, and
- » Determines or recommends the appropriate action for the college, university, or system office to take based upon the findings.

# Role of the Decision-maker

- » Determines whether there is any real or perceived conflict of interest
- » Makes sure the investigator has complied with Minnesota State procedures
- » Receives and reviews the investigation report
- » Decides whether policy has been violated based on information provided in report

# Decision-maker, cont.

- » May meet with parties or request additional information from the investigator
- » Writes reasoned decision based on facts, guidance, and policies
- » Written notification to complainant, respondent and Designated Officer or Title IX Coordinator of their findings of whether a policy violation
- » Provides all related report materials to the Designated Officer or Title IX Coordinator for recordkeeping

# Decision Factors

- » Weigh evidence and evaluate credibility
- » Consider the totality of circumstances
  - History of complaints/grievances
  - Treatment of others (those who are different and those who are similarly situated)
  - Skills/competencies of supervisors demonstrated by past actions
- » What is more convincing, more credible, and has greater probability

# Credibility Considerations

- » Assessing and determining credibility is an important DM role
- » Credibility is often a function of **corroboration and consistency**
- » Credibility does **not** necessarily equate to honesty or truthfulness:
  - Believability does not equal truthfulness
- » Credibility impacts the **reliability of evidence and its weight**
- » Specific credibility issues that a DM may consider:
  - Relationships between the parties and witnesses
  - Whether a witness was exposed to information (e.g. in the case of a parent or Advisor) that may have influenced their testimony

# Credibility: Parties and Witnesses

- » **Credibility** impacts likeliness
  - Would a reasonable person do the same?
  - Are there more likely alternatives?
- » **Credibility Assessment** involves evaluating whether evidence is believable and reliable
  - Refrain from focusing on irrelevant inaccuracies and inconsistencies

**NOTE:** Memory errors alone do not necessarily diminish witness credibility, nor does some evasion

# Deciding if Misconduct Occurred

- » Standard of proof in determining a 1B.1 and 1B.3 violation
  - Preponderance of evidence; i.e. more likely than not to have occurred
  - Secondary information has value
  - Reasonable inferences also are used

# Policy Violation

- » Decisionmaker recommends discipline for a policy violation finding
- » For students: Decisionmaker may consult with student conduct folks on campus to recommend sanctions or outcomes
- » For employees: Decisionmaker informs Human Resources of finding; relevant CBA followed
- » Campus metrics- past decisions
  - Supports consistency
  - Increases equitable decisions

# Discipline

- » Prompt
- » Equitable
- » Stop (as well as prevent and remedy – might be more global and less-case specific pieces for the college or university to consider)

# Appeal Process

- » Complainant and Respondent have right to appeal decision
- » Appeal timeframe: 10 business days
- » Grounds for appeal
  - Procedural irregularity, affected decision
  - New evidence, not reasonably available before
  - Conflict of interest or bias
  - Insufficient evidence for decision (only 1B.1.1)

# Appeal Process, cont.

- » Appeal decision timeframe
- » Decision notification
- » The decision on appeal is final under 1B.1.1 Procedure and 1B.3.1 Procedure
- » Disciplinary action imposed on a member of a collective bargaining unit is processed in accordance with that agreement
- » Filing an appeal concerning a report against a college/university president

# President

- » **Removed** from initial investigation and decision-making
- » Serves as the final decisionmaker (appeal) for the Minnesota State

# Role of President on Appeal

- » Review of investigation report
- » Review of any new evidence
- » Quality review - consults with:
  - Minnesota State General Counsel and/or AGO
  - Minnesota State Human Resources/Labor Relations
- » Notify complainant, respondent and Designated Officer of decision within a reasonable time

# Serving impartially: Check yourself

# Recognizing Implicit Bias

## » What is it?

- Attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner

## » Who has it?

- Implicit biases are pervasive. Everyone possess them
- The implicit associations a person has do not necessarily align with their declared beliefs or even reflect stances they would explicitly endorse
- A person generally tends to hold implicit biases that favor their own “in” group (although research shows that people can hold biases against their own “in” group too)

# Sexual Misconduct Case Specific Biases

- » The subject matter of these cases is often personal and very intimate
- » Most of us hold our own conscious beliefs and practices when it comes to this content area and it is important not to intentionally or unintentionally cast your lens on the matters you investigate
  - Your own sexual experiences
  - Moral or religious views about sex
  - Comfort level in using terms – subject matter

# Alcohol and Drug Use Biases

- » You may have your own views on and experiences with:
  - Alcohol use
  - Drug use
- » These things may have impacted your life

# Biased Investigations Dangers

- » Selective gathering of information
- » Misinterpretation of behavior or conduct
- » Confirmation of stereotypes
- » Inadequate interventions
- » Inconsistent application of policies
- » Retaliation risks
- » Missed opportunities for prevention

(Source: L Crockett)

# Counteracting Bias

## » What can we do to counteract it?

- Implicit biases are malleable and can be unlearned
- Be conscious of the reality of implicit bias
- Be aware of our own implicit bias
  - Educate yourself – Consider taking the Implicit Association Test (IAT) at [implicit.Harvard.edu](http://implicit.harvard.edu)
  - Flip it to test it ([TED Talk](#))
- Check ourselves in our work – Be accountable
  - When confronted with bias, take the time to examine your action or beliefs. Think of how you would explicitly justify them to other people.
- Consider perspective taking—how a situation appears to another person

# Avoid Prejudgment

- » Passing judgment prematurely or without sufficiently gathering of available information or consideration
  - Prominent when alcohol or other drugs are involved
  - Social ideas or norms, such as sex stereotypes
- » Must avoid for both the Complainant and the Respondent
- » Keep an open mind throughout the entire process
- » Investigators: seek out additional facts or witnesses to avoid jumping to conclusions
- » Check assumptions, use of language and phrases

# Best Practices

- » Rely on the policy and procedure
- » Adhere to the policy and procedure
- » Let the evidence lead you



# Conflicts of Interest

- » Personal or private interest may compromise one's judgement, decisions, or actions (friendships, relationships, social factors)
- » Conflicts can be actual, perceived, or potential
  - Actual
  - Perceived
  - Potential
- » Self-check
  - Personal gain or lose from the outcome?
  - How might the parties feel about it? If you were a party?

# Investigation Reports

# Value of Investigation Reports

- » Relevant available information gathered together
- » Official documentation
- » Audience
  - Decision
  - Appeal
  - Grievance
  - Chapter 14

# Thank you.



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