

requirements in M.S. Section 626.556 (reporting of maltreatment of minors) and M.S. Section 626.557 (Vulnerable Adult Protection Act). Nothing in this policy will prohibit the system office or any college or university from taking immediate action to protect victims of alleged sexual abuse.

Subpart E. Non-consensual relationships.

Substantial risks are involved even in seemingly consensual romantic/sexual relationships where a power differential exists between the involved parties. The respect and trust accorded a faculty or other employee by a student, as well as the power exercised by faculty in giving grades, advice, praise, recommendations, and opportunities for further study or other forms of advancement may greatly diminish the student's actual freedom of choice concerning the relationship. Similarly, the authority of the supervisor to hire, fire, evaluate performance, reward, make recommendations, assign and oversee the work activities of employees may interfere with the employee's ability to choose freely in the relationship. Further, it is inherently risky where age, background, stature, credentials, or other characteristics contribute to the perception that a power differential exists between the involved parties which limits the student or employee's ability to make informed choices about the relationship.

Claims of consensual romantic/sexual relationships will not protect individuals from sexual harassment charges nor guarantee a successful defense if charges are made. It is the faculty member, supervisor, or staff who will bear the burden of accountability because of his/her special power and responsibility, and it may be exceedingly difficult to use mutual consent as a defense. Therefore, all employees should be aware of the risks involved in entering into a romantic/sexual relationship where there is a superior/subordinate relationship.

**Sexual Orientation Discrimination/Harassment
Part 3. Definitions.**

Subpart A. Sexual Orientation

discrimination is prohibited by state law. Sexual orientation discrimination is defined as conduct that is directed at an individual because of his/her sexual orientation and that subjects the individual to different treatment by agents or employees so as to interfere with or limit the ability of the individual to participate in, or benefit from, the services, activities, or privileges provided by the system, colleges, and universities or otherwise adversely affects the individual's employment or education.

Subpart B. Sexual orientation harassment

is a form of sexual orientation discrimination which is prohibited by state law. Sexual orientation harassment is defined as verbal or physical conduct that is directed at an individual because of his/her sexual orientation and that is sufficiently severe, pervasive, or persistent so as to have the purpose or effect of creating a hostile work or educational environment. Sexual orientation harassment may occur in a variety of relationships, including faculty and student, supervisor and employee, student and student, staff and student, employee and employee, and other relationships with other persons having business at or visiting the educational environment.

Disability discrimination/Harassment

Part 4. Definitions.

Subpart A. Disability discrimination is prohibited by the state and federal law. Disability discrimination as defined by law is conduct that is directed at an individual because of his/her mental/physical disability or that of his/her spouse and that subjects the individual to different treatments by agents or employees without legitimate non-discriminatory reason so as to

interfere with or limit the ability of the individual to participate in, or benefit from, the services, activities, or privileges provided by the system or colleges and universities or otherwise adversely affects the individual's employment or education.

Subpart B. disability harassment is

a form of discrimination which is prohibited by state and federal law. Disability harassment is defined as verbal or physical conduct that is directed at an individual because of his/her mental/physical disability or that of his/her spouse and that is sufficiently severe, pervasive, or persistent so as to have the purpose or effect of creating a hostile work or educational environment. Disability harassment may occur in a variety of relationships, including faculty and student, supervisor and employee, student and student, staff and student, employee and employee, and other relationships with other persons having business at or visiting the educational environment.

**1B.1.1 Report/complaint of Discrimination/
Harassment Investigation and Resolution
Procedure**

Part 1. Procedure objective.

This procedure is designed to further implement Minnesota State Colleges and Universities policies relating to nondiscrimination by providing a process through which individuals alleging violation of system non-discrimination policies may pursue a complaint. This includes allegations of discrimination or harassment based on sex, race, age, disability, color, creed, national origin, religion, sexual orientation, marital status, status with regard to public assistance or membership or activity in a local commission. This procedure is not applicable to allegations of sexual violence which should be handled under appropriate system and college or university policies and procedures.

A single act of discrimination may be based on more than one protected class status. For example, discrimination

based on anti-Semitism may relate to religion, national origin, or both; discrimination against a pregnant woman might be based on sex, marital status, or both.

This procedure shall apply to all individuals affiliated with Minnesota State Colleges and Universities, including its students, employees, and applicants for employment, and is intended to protect the rights and privacy of both the complainant and respondent and other involved individuals, as well as to prevent retaliation/reprisal. Individuals who violate this procedure shall be subject to disciplinary or other corrective action. Not every act that may be offensive to an individual or group constitutes discrimination or harassment. In determining whether discrimination or harassment has occurred, the totality of the circumstances surrounding the incident must be carefully reviewed and due consideration must be given to the protection of individual rights, freedom of speech, academic freedom and advocacy.

The system office, colleges, and universities shall maintain and encourage full freedom, within the law, of expression, inquiry, teaching, and research. Academic freedom comes with a responsibility that all members of our education community benefit from it without intimidation, exploitation, or coercion. Discrimination and harassment are not within the protections of academic freedom.

Part 2. Definitions.

Subpart A. Designated officer. A designated officer is an individual designated by the president or chancellor to be primarily responsible for investigating or coordinating the investigation of reports and complaints of discrimination/ harassment in accordance with this procedure. Designated officers may include individuals in the affirmative action or equity office, the campus security office, the student affairs or student

life office, academic or administrative offices of the system office, college, or university. The president or chancellor may designate other individuals to assume the role of the designated officer as deemed necessary.

Designated officers must attend investigator training conducted by the Office of the Chancellor.

Subpart B. Decision-making authority.

A decision-maker is an individual designated by the president or chancellor to review investigative reports, to make findings whether the discrimination/harassment policies have been violated based upon the investigation and other measures deemed necessary to reach a decision, and to determine the appropriate action for the institution to take based upon the findings. The decision-maker shall be a top level administrator such as a college or university vice president, dean or provost. At the system office, the decision-maker shall be a top level administrator such as a chancellor, vice chancellor, associate vice chancellor or other appropriate system office personnel. The president or chancellor may designate other individuals to assume the role of the decision-maker as deemed necessary.

Designated decision-makers for complaints under this procedure, including presidents, must attend decision-maker training conducted by the Office of the Chancellor.

Part 3. Reporting incidents of discrimination/harassment.

Subpart A. Reporting an incident. The system office, colleges, and universities encourage any individual, including any student, employee, applicant for employment (as defined by Minnesota Statutes section 43A.02), who feels she or he has been or is being subjected to discrimination/harassment to report the incident to the designated officer. Any student, faculty member or employee who knows of, receives information about or receives

a complaint of discrimination/harassment is urged to report the information or complaint to the designated officer of the system office, college, or university.

Subpart B. Personal resolution.

In instances where an individual believes she/he personally has been subjected to behavior prohibited by the 1B.1 Nondiscrimination policy, that individual may voluntarily choose to directly address the offensive behavior. In such a situation, she or he should clearly explain to the alleged offender as soon as possible after the incident that the behavior is objectionable and that it stop. Communication with the alleged offender may be in person, on the telephone, or in writing. If the behavior does not stop or if the individual believes some employment or education consequences may result from the discussion, she or he should go to the designated officer to process the complaint. Under no circumstances shall an individual be required to use personal resolution to address prohibited behaviors rather than reporting the behavior to the designated officer.

Subpart C. Duty to report. Unless the matter already has been referred to the designated officer, administrators and supervisors must inquire into allegations or behaviors that they reasonably believe may constitute discrimination or harassment and, when a report/complaint appears to be warranted, refer the matter to the designated officer. The duty to report shall not be construed to prevent immediate corrective action by an administrator or supervisor when appropriate.

Subpart D. Institutional responsibility

1. Colleges and universities. This procedure applies to all members of the educational community including students. Reports/complaints against a president of a college or university shall be filed with the system office. Complaints against a president shall be processed by the college or university if the president's role in the alleged 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 substantial involvement in the matter. Reports and complaints against college or university vice presidents, deans, or provosts are filed at the campus level with the president or the president's designee as decision-maker.

2. **System office.** For reports/complaints which involve allegations against system office employees, the responsibilities identified in this procedure as those of the president are the responsibilities of the chancellor. Reports/complaints which involve allegations against the chancellor or a member of the Board of Trustees shall be referred to the chair or vice chair of the Board of processing. Such reports/complaints may be assigned to appropriate system office personnel or outside investigatory assistance may be designated.

Subpart E. Retaliation and reprisal. No retaliation, reprisal or intimidation in conjunction with a complaint of discrimination/harassment shall be tolerated by the system office, colleges, and universities. State law prohibits reprisal by a respondent, employer, labor organization, educational institution, employee, agent of the above and others as specified in statute. (Minnesota Statutes section 363.03). Any individual who retaliates against any person who testifies, assists, or participates in an investigation, proceeding or hearing in relation to a discrimination/harassment complaint shall be subject to disciplinary or other action.

Retaliation includes, but is not limited to, any form of intimidation, reprisal, coercion, discrimination, harassment, or unwanted sexual contact toward a complainant, or the complainant's relatives, friends or associates. Retaliation may occur whether or not there is a power or authority differential between the individuals involved. Reprisal also includes discrimination against an individual

because that person is associated with a protected group member. Allegations of retaliation or reprisal shall be reported to the designated officer for appropriate action.

Subpart F. False statements prohibited.

Any individual who provides false statements regarding the filing of a discrimination report/complaint or during the investigation of such a report/complaint may be subject to disciplinary or corrective action.

Subpart G. Withdrawn Complaints. If a complainant no longer desires to pursue a complaint, the system office, colleges, and universities reserve the right to investigate and resolve the complaint.

Part 4. Right to representation.

In accordance with federal law and applicable collective bargaining agreement and personnel plan language, represented employees may have the right to request and receive union representation during an investigatory meeting.

Nothing in this procedure is intended to expand, diminish or alter in any manner whatsoever any right or remedy available under a collective bargaining agreement, personnel plan or law. Any disciplinary action imposed as a result of an investigation conducted under this procedure will be processed in accordance with the applicable collective bargaining agreement or personnel plan.

Part 5. Investigation and resolution.

The system office, college or university has an affirmative duty to take timely and appropriate action to stop inappropriate behavior, conduct investigations and facilitate resolutions as appropriate.

Subpart A. Making a report/complaint.

The designated officer must be contacted in order to initiate a report/complaint. The report/complaint should be brought as soon as possible after an incident occurs. The designated officer shall retain control of the investigatory process and determine whether and/or how to proceed.

Subpart B. Initial inquiry and review

process. After receiving a report/complaint, the designated officer shall take the steps listed below:

1. **Jurisdiction.** The designated officer shall determine whether the report/complaint is one which should be processed through another system office, college or university procedure available to the complainant; if appropriate, the designated officer shall direct the complainant to that procedure as soon as possible.
2. **Conflicts.** If the designated officer determines that the report/complaint falls within the scope of the institution's nondiscrimination policies and this procedure, the designated officer shall first determine who will conduct the complaint process. The designated officer should identify to the president or chancellor any real or perceived conflict of interest in proceeding as the designated officer for a specific complaint. If the president determines that a conflict exists, another designated officer shall be assigned.
3. **Information provided to complainant.** At the time the report/complaint is made, the designated officer shall:
 - a. inform the complainant of the provisions of the nondiscrimination policy;
 - b. provide a copy of the policy and the report/complaint procedure to the complainant;
 - c. advise the complainant of other options such as alternative dispute resolution or mediation and that the complainant may also choose to pursue other legal options; and
 - d. determine whether other individuals are permitted to accompany the complainant during investigatory interviews and the extent of their involvement.
4. **Complaint Form.** The designated officer shall insure that the complaint is documented in writing on the complaint form available from system office, college, or university authorities. The complaint form must include:

- a. a detailed description of the facts upon which the charge is based;
- b. name(s) of the respondent(s), if known;
- c. a list of possible witnesses as deemed appropriate by the designated officer; and
- d. other information pertinent to the complaint.

At the conclusion of the process, the final disposition of the complaint shall be included on the complaint form.

5. **Information provided to the respondent.** At the time initial contact is made with the respondent, the designated officer shall:
 - a. inform the respondent in writing of the existence and general nature of the complaint and the provisions of the nondiscrimination policy;
 - b. provide a copy of the policy and the report/complaint procedure to the respondent;
 - c. advise the respondent of other options such as alternative dispute resolution or mediation;
 - d. explain to the respondent that in addition to being interviewed by the designated officer, the respondent may provide a written response to the allegations; and
 - e. determine whether other individuals are permitted to accompany the respondent during investigative interviews and the extent of their involvement.
6. **Processing the complaint.** The designated officer shall:
 - a. conduct a fact-finding inquiry or investigation into the complaint, including appropriate interviews and meetings;
 - b. investigate the complaint without identifying the complainant, if in the judgment of the designated officer, this would increase the likelihood of satisfactory resolution of the complaint;
 - c. inform the complainant, respondent, witnesses and other involved individuals of the prohibition against retaliation and reprisal;
 - d. create, gather and maintain investigative documentation as appropriate;

- e. disclose appropriate information to others only on a need to know basis consistent with state and federal law, and provide a data privacy notice (Tennessee warning) in accordance with state law; and
- f. inform the complainant and respondent of the status of the investigation at reasonable times until final disposition of the complaint.

- Subpart C. Initial inquiry and informal resolution.** After conducting an initial inquiry and review, if the designated officer determines that the issue can be resolved without further investigation, the designated officer may use one or more of the following methods to resolve the complaint:
1. suggest counseling or sensitivity training;
 2. conduct training for the unit, division, or department, calling attention to the consequences of engaging in such behavior;
 3. facilitate meetings between the parties;
 4. separate the parties, after consultation with appropriate system office, college or university personnel;
 5. prepare a written letter of agreement confirming that the respondent has been informed of the policy and complaint procedure, identifying and documenting the respondent's acceptance of the designated officer's resolution of the complaint, and stating that retaliation is prohibited;
 6. other possible outcomes may include explicit agreements about future conduct, a letter of apology to the complainant, changes in workplace assignments, enrollment in a different course or program, or other appropriate action.

- Subpart D. Investigation and decision process.** If the above methods do not resolve the complaint within a reasonable period of time to the satisfaction of the designated officer, or the designated officer feels additional steps should be taken, the procedures in this subpart shall be followed.
1. **Designated officer.** The designated officer shall:
 - a. conduct further investigation

- as deemed appropriate by the designated officer;
 - b. prepare an investigation report for review by the decision-maker;
 - c. take additional investigative measures as requested by the decision-maker;
 - d. provide sufficient information to the respondent consistent with federal and state data privacy laws to allow the respondent to respond to the substance of the complaint; and
 - e. provide the investigation report to the complainant or respondent upon request unless the information is protected under state or federal law.
2. **Decision-maker.** After receiving the investigation report prepared by the designated officer, the decision-maker shall:
 - a. determine whether additional steps should be taken, at the discretion of the decision-maker, prior to making the decision. Additional steps may include:
 1. a request that the designated officer take additional investigative measures;
 2. a meeting with the complainant, respondent or other involved individuals. If a meeting involving a represented employee is convened, the complainant or respondent may choose to be accompanied by the bargaining unit representative, in accordance with the applicable collective bargaining agreement and federal and state law. Other employees may be accompanied by an attorney or other support person at the discretion of the decision-maker;
 3. a request for additional information which may include a written response from the complainant or respondent relating to the allegations of the complaint;
 - b. take other measures deemed necessary to reach a decision;
 - c. when making the decision, take

into account the surrounding circumstances, the nature of the behaviors, the relationship(s) between the parties, the context in which the alleged incident(s) occurred, and other relevant factors;

- d. determine the nature, scope and timing of disciplinary or corrective action and the process for implementation if a violation of the nondiscrimination policy occurs. This may include consultation with human resource or supervisory personnel to determine appropriate discipline;
- e. report in writing to the complainant, respondent and the designated officer her or his findings as to whether or not the nondiscrimination policy has been violated. The written answer to the complainant shall be provided within 60 days after a complaint is made unless reasonable cause for delay exists.

Subpart E. Confidentiality.

Confidentiality cannot be guaranteed; however, care will be taken to keep investigation discussions sufficiently broad to protect the complainant's identity when appropriate. There may be instances in which the system office, college, or university has a responsibility to act even if the complainant requests that no action be taken. In such instances, the system office, college or university may investigate and take appropriate action on the basis of the facts or evidence available.

Subpart F. Investigative data. Information gathered during the investigation will be handled in accordance with federal and state data privacy laws.

Subpart G. Other remedies.

1. Reassignment or administrative leave.

Under appropriate circumstances, the president or chancellor may reassign or place an employee on administrative leave at any point in time during the report/complaint process. In determining whether to place an employee on administrative leave or reassignment, consideration shall be given to the nature of the alleged

behavior, the relationships between the parties, the context in which the alleged incidents occurred and other relevant factors. Any action taken must be consistent with the applicable collective bargaining agreement or personnel plan.

2. Summary suspension or other action.

Under appropriate circumstances, the president or designee may impose on a student a summary suspension or other temporary measures at any point in time during the report/complaint process. A summary suspension may be imposed when, in the judgment of the president or designee, the accused student's presence on the college or university campus would constitute a threat to the safety and well-being of members of the campus community. Before implementing the summary suspension, the accused student shall be given notice of the intention to impose the summary suspension and, except in an emergency, shall be given an opportunity to present oral or written arguments against the imposition of the suspension. After the student has been summarily suspended, the report/complaint process should be completed within the shortest reasonable time period, not to exceed nine (9) class days. During the summary suspension, the student may not enter the campus or participate in any college or university activities without obtaining prior permission from the administrator. Other temporary measures may be taken in lieu of summary suspension where the president or designee determines such measures are appropriate.

3. Alternative dispute resolution and mediation.

The system office, colleges, and universities, in consultation with the system, Office of Equal Opportunity and Diversity, may use alternative dispute resolution or mediation services as a method of resolving discrimination/harassment complaints. Alternative dispute resolution and mediation options require the voluntary participation of all parties to the complaint.

Part 6. System office, college, or university action.

The system office, college, or university shall take the appropriate corrective action based on results of the investigation and shall follow up as appropriate to ensure that the corrective action is effective. Complainants are encouraged to report any recurrences of conduct which were found to violate the system nondiscrimination policies.

The decision-maker shall notify the complainant and respondent in writing of the final disposition of the complaint. Written notice to parties relating to discipline, resolutions, and/or final dispositions resulting from the report/complaint process is deemed to be official correspondence from the system office, college or university.

Part 7. Appeal.

Subpart A. Filing an appeal.

The complainant and the respondent may appeal the decision of the decision-maker. An appeal must be filed in writing to the president or designee within ten (10) business days after notification of the decision. The appeal must state specific reasons why the complainant or respondent believes the decision was improper. An appeal concerning a report or complaint against a college or university vice president, dean or provost must be filed with the chancellor or designee. In a complaint against a president or other official who reports directly to the chancellor, an appeal may be considered by the chancellor whether or not the chancellor served as the decision-maker.

Subpart B. Effect of review.

For employees represented by a collective bargaining agreement, an appeal under this procedure is separate and distinct from, and is not in any way related to, any contractual protections or procedures. During the pendency of the appeal disciplinary or corrective action taken as a result of the decision shall be enforced. In addition, in cases involving sanctions of suspension for ten (10) days or longer, students

shall be informed of their right to a contested case hearing under Minnesota Statutes, Chapter 14.

Subpart C. Appeal process. The president or designee shall review the record provided and determine whether the complaint is substantiated or not substantiated. The president or designee may receive additional information if the president or designee believes such information would aid in the consideration of the appeal. The decision on appeal will be made within a reasonable time and the complainant, respondent and designated officer shall be notified in writing of the decision. The decision on appeal exhausts the complainant's and respondent's administrative remedies under this procedure except as provided herein.

Part 8. Education and training.

The system office, colleges and universities shall provide education and training programs to promote awareness and prevent discrimination/harassment, such as education seminars, peer-to-peer counseling, operation of hotlines, self-defense courses, and informational material development and distribution. Education and training programs should include education about the system office, colleges and universities non-discrimination policies as well as conducting investigations, management and implementation of this procedure.

Part 9. Dissemination of report/complaint procedure.

Information regarding this procedure and the system office, college or university nondiscrimination policies must be provided to each student during student registration and each employee on acceptance of employment. Copies of the policies shall be conspicuously posted at appropriate locations at the system office and on college and university campuses at all times and shall include the designated officers' names, locations and telephone numbers.

Designated officers also must be identified by name, location and phone number in informational publications such as student catalogs, student and employee handbooks, bulletin boards, campus websites or other appropriate public announcements.

Part 10. Maintenance of report/complaint procedure documentation.

During and upon the completion of the complaint process, the complaint file shall be repositied in a secure location in the office of the designated officer for the system office, college or university. Access to the data shall be in accordance with the respective collective bargaining agreement or personnel plan, the Minnesota Government Data Practices Act, the Family Educational Rights and Privacy Act or other applicable law.

Designated Officers at MSU Moorhead

1. Allegations Against Employees, Including Student Employees
Barbara Seiler,
Affirmative Action Officer
Owens 214B
(218)477.2229
2. Allegations Against Students
Kathy Scott, Associate Director of Student Support Services
Comstock Memorial Union 222
(218)477.2174

Allegations of violence, including sexual violence, will be handled under other appropriate policies/procedures, including the University's Zero Tolerance of Workplace Violence Policy and Plan, or the University's Student Conduct Code.

Zero Tolerance of Workplace Violence Policy and Plan

Ferman Woodberry, Director of Campus Security
Campus Security Office
1616 9th Ave. S.
(218)477.5869

Edward Choate, Director of Human Resources
Owens 210
(218)477.2066

In compliance with the Jeanne Clery Act, all alleged criminal activity will be reported to the MSUM Campus Security Office and/or the appropriate law enforcement agency.

Rights of Student or Employee who Files a Complaint of Sexual Violence.

Minnesota State University Moorhead will take appropriate action to protect a student or employee who files a complaint of sexual violence. Complainants of sexual violence will be informed of the following rights and ensured that the following responsibilities of Minnesota State Colleges and Universities or its institutions are met within the confines of law:

1. The complainant has the right to file criminal charges with local law enforcement officials.
2. Upon request, the complainant will be provided prompt assistance in notifying the appropriate law enforcement officials and disciplinary authorities of any incident of sexual violence.
3. At the direction of law enforcement authorities, the campus security office will provide complete and prompt assistance in obtaining, securing, and maintaining evidence in connection with an incident of sexual violence.
4. The complainant will be provided assistance in preserving materials relevant to a campus disciplinary proceeding.
5. All sexual violence complaints will be investigated and resolved by the appropriate campus disciplinary authorities.
6. The complainant and respondent may be accompanied by an attorney or other support person at any campus disciplinary proceeding concerning the sexual violence complaint and may participate in any meetings to the extent permitted by the decision-making authority.
7. The complainant and respondent will be informed of the outcome of any campus disciplinary proceeding concerning the sexual violence complaint, consistent with laws relating to date practices.
8. Upon request of the complainant and in cooperation with appropriate law enforcement authorities, the