

# DISCRIMINATION/ HARASSMENT POLICY AND PROCEDURE

Equal Opportunity and Nondiscrimination in Employment and Education

## Policy Statement

### Equal Opportunity for students and employees

Minnesota State Colleges and Universities has an enduring commitment to enhancing Minnesota's quality of life by developing and fostering understanding and appreciation of a free and diverse society and providing equal opportunity for all its students and employees. Southwest Minnesota State University is committed to a policy of equal opportunity and nondiscrimination in employment and education (see **Minnesota State Board Policy 1B.1 Equal Opportunity and Nondiscrimination in Employment and Education**).

### Nondiscrimination

Southwest Minnesota State University prohibits discrimination and harassment against persons in the terms and conditions of employment, personnel practices, or access to and participation in educational programs, services, and activities on the basis of membership or perceived membership in any of the following protected classes: race, sex (including pregnancy, child birth, and related medical conditions), color, creed, religion, age, national origin, disability, marital status, status with regard to public assistance, sexual orientation, gender identity, gender expression, veteran status, familial status, and membership or activity in a local human rights commission. Protected class also includes genetic information for employees.

Southwest Minnesota State University shall maintain and encourage full freedom of expression, inquiry, teaching and research. Academic freedom comes with a responsibility that all members of our education community benefit without intimidation, exploitation, or coercion. This policy is directed at conduct that constitutes discrimination or harassment under this policy and is not directed at the content of speech. In cases in which statements and other forms of expression are involved, Southwest Minnesota State University must consider an individual's constitutionally protected right to free speech and academic freedom. However, discriminatory or harassing conduct is not within the protections of academic freedom or free speech.

### Applicability

This policy applies to all individuals affiliated with Southwest Minnesota State University, 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.

Complaints of conduct by a student occurring at a location other than on system property, including online, are covered by this policy pursuant to the factors listed in Board Policy 3.6, Part 2.

Complaints of conduct by a system employee at locations other than system property, including online, are covered by this policy.

Complaints of conduct on system property, including online, by individuals who are not students or employees are subject to appropriate

actions by Southwest Minnesota State University, including but not limited to, pursuing civil action against them, referral to law enforcement, or pursuing a no trespass.

Individuals who violate this policy will be subject to disciplinary or other corrective action. Allegations of conduct in violation of Policy 1B.1 may be submitted through the process identified in System Procedure 1B.1.1 Intervention and Resolution.

This policy supersedes all existing college, university, and Minnesota State equal opportunity and nondiscrimination policies.

Additional information defining employee, student, discrimination, harassment, discriminatory harassment, sexual harassment, consensual relationships and protected class, can be reviewed in the complete policy: 1B.1 Equal Opportunity and Nondiscrimination in Employment and Education policy <http://www.minnstate.edu/board/policy/1b01.html>.

### Retaliation

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

1. made a complaint or other communication under this policy or opposes conduct prohibited by this policy;
2. assisted or participated in any manner in an investigation, or process under this policy, regardless of whether a claim of discrimination or harassment is substantiated;
3. associated with a person or group of persons who are members of a protected class; or
4. 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. Retaliation is prohibited at Southwest Minnesota State University. Any individual covered by this policy who engages in retaliation is subject to disciplinary or other corrective action as appropriate.

## Investigation and Resolution (1B.1.1 Procedure)

### Purpose

This procedure is designed to support the implementation of the Board Policy 1B.1 Equal Opportunity and Nondiscrimination in Employment and Education and provide a process for investigating and resolving allegations of violations of the policy.

Additional information defining the complainant, respondent, decision-maker, designated officer, and investigator, can be reviewed in the complete procedure: <http://www.minnstate.edu/board/procedure/1b01p1.html>.

### Reporting Discrimination, Harassment or Retaliation

Individuals who believe they or others have been or are being subjected to conduct prohibited by Board Policy 1B.1 are encouraged to make a report of the incident to a designated officer. Reports should be made as soon as possible after the alleged conduct occurs.

Any student, faculty member, or employee who knows of, receives information about or receives a report/complaint of discrimination, harassment, or retaliation is strongly encouraged to report the information or complaint to the designated officer at Southwest Minnesota State University.

### Reporting to Designated Officers

Individuals who believe they or others have been or are being subjected to conduct prohibited by the Equal Opportunity and Nondiscrimination in Employment and Education policy can contact the following offices:

Dr. Erin Kline, AVP/CDO/Affirmative Action Officer (Employees and Students)

Founders Hall (FH) 216

507-537-6657

Erin.Kline@smsu.edu

Laura O'Rourke, Campus Human Resources Officer/Affirmative Action Office (Designee) (Employees)

Bellows Academic (BA) 257

507-537-7550

Laura.Orourke@smsu.edu

Mike Munford, Director of University Public Safety (Employees and Students)

Founders Hall (FH) 116

507-537-7858

Mike.Munford@smsu.edu

Reporting Form (<https://forms.office.com/pages/responsepage.aspx?id=xscRULQKq0ae9PrnSplafxUMZT6A1gJC0RGUFcY70LIUOUhGTIICQVFIWVBfVE5XODYYTJjVR0PLSY4u&route=shorturl>)

### Duty to Report

Administrators and supervisors shall report allegations of conduct that they reasonably believe may constitute discrimination, harassment, or retaliation as defined by Board Policy 1B.1 to the designated officer. Additionally, administrators and supervisors, in consultation with the designated officer, may inquire into and resolve such matters.

Additional information on reporting expectations can be reviewed in the complete procedure: <https://www.minnstate.edu/board/procedure/1b01p1.html>.

### Right to Representation

#### Employee

In accordance with the law and applicable collective bargaining agreements, represented employees may have the right to request and receive union representation during an investigatory meeting and otherwise throughout the 1B.1.1 procedure.

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

### Student

Students have the opportunity to have an appropriate support person or advisor present at any interview or hearing, in a manner consistent with the governing procedures and applicable data practices law.

### Investigation and Resolution

Southwest Minnesota State University shall take timely action to stop behavior prohibited by 1B.1 policy, conduct investigations, and take appropriate action to prevent recurring misconduct.

### Personal Resolution

This procedure neither prevents nor requires the use of personal resolution by individuals who believe they have been subjected to conduct in violation of Board Policy 1B.1. If an individual believes they are unsafe or fears retaliation, personal resolution should not be used. If there are questions regarding personal resolution, contact the designated officer.

### Processing the Complaint

The complainant should contact the designated officer to initiate a complaint under this procedure. Upon receipt of the complaint, the designated officer shall first undertake an initial inquiry. Based on the initial inquiry, the designated officer shall determine whether there is no basis to proceed, to offer informal resolution, or to proceed with formal investigation. If proceeding with formal investigation, the designated officer shall determine the scope of the process used in each complaint based on the complexity of the allegations, the number and relationship of individuals involved, and other pertinent factors.

Reports/complaints not arising from alleged violations of Board Policy 1B.1, may be addressed under other appropriate policies and practices.

Additional information about jurisdiction, conflicts of interest, information provided to the complainant, documentation, no basis to proceed, information provided to the respondent, interim actions, timely completion, and support for designated officers can be reviewed in the complete procedure: <https://www.minnstate.edu/board/procedure/1b01p1.html>.

### Investigation Process

The designated officer shall:

1. Conduct a fact-finding inquiry or investigation of the complaint, including appropriate interviews and meetings or delegate this responsibility to a training investigator. In the latter situation, the investigator shall perform the duties of this part;
2. Inform individuals that they are permitted to have a union representative or support person to accompany them during investigative interviews as appropriate;
3. Inform the witnesses and other involved individuals of the prohibition against retaliation;
4. Create, gather, and maintain investigative documentation as appropriate; and

5. Handle all data in accordance with applicable federal and state privacy laws.

### Informal Resolutions

After processing the report/complaint the designated officer may consider informal resolution to resolve the report/complaint as appropriate. The designated officer may consider, but is not limited to, use one or more of the following methods to resolve the report/complaint:

1. Conduct or coordinate education and training;
2. Facilitate voluntary meetings, if requested by the complainant, between the parties;
3. Recommend separation of the parties, after consultation with appropriate college, university, or system office personnel;
4. Other possible outcomes may include recommending changes in workplace assignments, enrollment in a different course or program, or other appropriate action;
5. A college or university may offer mediation and other alternative dispute resolutions to the complainant and respondent. The parties must voluntarily consent, in writing, to participate in processes that include mediation and other alternative dispute resolutions. At any time before agreeing to a resolution, any party has the right to withdraw from the process and resume the formal complaint process.

### Formal Decision Process

If the above methods have not resolved the complaint within a reasonable period of time to the satisfaction of the designated officer, or the designated officer determines additional steps should be taken, the procedures in this subpart must be followed.

1. **Designated officer.** The designated officer or the investigator shall:
  - a. prepare an investigation report and forward it to the decision-maker for review and decision; and
  - b. take additional investigative measures as requested by the decision-maker.
2. **Decision-maker.** After receiving the investigation report prepared by the designated officer or the investigator, the decision-maker shall:
  - a. determine whether additional steps should be taken prior to making the decision. Additional steps may include:
    - i. a request that the designated officer or investigator conduct further investigative measures; and
    - ii. 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 determine whether a violation of Board Policy 1B.1 occurred;
  - c. when making the decision, use a preponderance of evidence standard, meaning that it is more likely than not that the policy has been violated, taking into account the totality of the circumstances, including the nature and extent of the behaviors, the relationship(s) between the parties, the context in which the alleged incident(s) occurred, and other relevant factors;
  - d. as appropriate, consistent with applicable state and federal data privacy laws, issue a decision in writing to the complainant, respondent, and the designated officer of the determination, and the basis for the determination, as to whether Board Policy 1B.1 has been violated.

- e. determine the nature, scope, and timing of disciplinary or corrective action and the process for implementation if a violation of Board Policy 1B.1 occurred. This may include consultation with student affairs, human resources or supervisory personnel to determine appropriate discipline;
- f. conduct that is determined not to have violated Board Policy 1B.1 may be considered under another procedure, if appropriate.
- g. prior to issuing decision letters, decision-makers shall submit drafts of the written decision and the investigation report to the Office of General Counsel for review.

### Appeal

The complainant or the respondent may appeal the decision of the decision-maker. An appeal must be filed in writing with the president or designee within ten (10) business days from the receipt of the decision. The appeal timeline may be extended for reasonable cause. The appeal must state specific reasons why the complainant or respondent believes the decision was improper.

Grounds for appeal of the decision include; (1) procedural irregularity that affected the decision issued by the decision-maker, (2) new evidence that was not reasonably available at the time when the determination regarding violation of policy or sanction was made that could affect the decision issued by the decision-maker, (3) a conflict of interest or bias by the designated officer, investigator, or decision-maker that affected the decision issued by the decision-maker, or (4) insufficient evidence to support the decision-maker.

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.

Additional information about the effect of appeal and appeal process can be reviewed in the complete procedure: <https://www.minnstate.edu/board/procedure/1b01p1.html>.

### Education and Training

Southwest Minnesota State University shall provide education and training programs to promote awareness and prevent discrimination, harassment, and retaliation such as educational seminars, peer-to-peer counseling, and informational resources. Education and training programs should include Board Policy 1B.1, this procedure, and may include training on trauma-informed investigations and restorative practices. Southwest Minnesota State University shall promote awareness of Board Policy 1B.1 and this procedure and shall publicly identify the designated officers.

Additional information about the distribution of Board Policy 1B.1 and System Procedure 1B.1.1, maintenance of report/complaint documentation, and annual report to Board of Trustees can be reviewed in the complete procedure: <https://www.minnstate.edu/board/procedure/1b01p1.html>.