



### Procedure 1B.3.1 Response to Sexual Misconduct

#### Part 1. Purpose

To provide a process through which individuals alleging sexual misconduct or retaliation may pursue a complaint, pursuant to Board Policy 1B.3 Sexual Misconduct Policy prohibiting sexual misconduct and retaliation. This procedure provides guidelines for implementing the Title IX regulations for discrimination based on sex, which includes sexual misconduct as described in Board Policy 1B.3. For conduct that does not meet these definitions of sexual misconduct or is outside the scope of the jurisdiction as described within this procedure, another process may be used, including System Procedure 1B.1.1 Investigation and Resolution or other disciplinary procedures for students and employees.

#### Part 2. Definitions

The definitions in Board Policy 1B.3 also apply to this procedure.

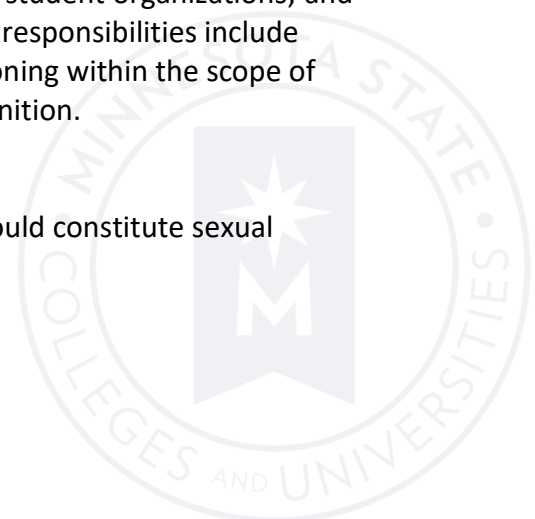
##### **Campus security authority**

Campus security authority includes the following categories of individuals at a college or university:

1. A college or university security department;
2. Any individual who has campus security responsibilities in addition to a college or university security department;
3. Any individual or organization identified in a college or university security policy as an individual or organization to which students and employees should report criminal offenses;
4. An official of a college or university who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings; advisors to recognized student organizations; and athletic coaches. Professional counselors, whose official responsibilities include providing mental health counseling, and who are functioning within the scope of their license or certification, are not included in this definition.

##### **Complainant**

An individual who is alleged to be the subject of conduct that could constitute sexual misconduct or retaliation.



**Decision-maker**

A person trained by the system office who reviews evidence, determines relevance, serves as the hearing administrator during the formal hearing, and makes the final determination of whether the alleged conduct has violated policy.

**Educational program or activity**

Includes locations, events, or circumstances over which the college or university exercises substantial control over both the respondent and the context in which the sexual misconduct or retaliation occurs, and includes any building owned or controlled by any officially recognized student organization of the college or university.

**Formal complaint**

A document filed by a complainant or signed by the Title IX Coordinator alleging sexual misconduct or retaliation against a respondent and requesting that the college or university investigate the allegation. At the time of filing the formal complaint of sexual misconduct, a complainant must be participating in or attempting to participate in the education program or activity of the college or university with which the formal complaint is filed.

**Respondent**

An individual who is alleged to have engaged in conduct that could constitute sexual misconduct or retaliation.

**Sexual misconduct**

A continuum of conduct that includes sexual assault; non-forcible sex acts; dating, relationship, and intimate partner violence; stalking; sexual exploitation; Title IX sexual harassment as well as aiding acts of sexual misconduct.

**Supportive measures**

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint, or where no formal complaint has been filed. Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus.

**Title IX Coordinator**

Employee(s) designated by the president to coordinate the college or university's efforts to comply with its Title IX responsibilities and Board Policies 1B.1 Equal Opportunity and Nondiscrimination in Employment and Education and 1B.3 Sexual Misconduct. A campus can delegate Title IX responsibilities to, for example, a deputy or deputies, and/or an investigator.

### **Uniform amnesty**

While students are encouraged to abide by all institutional policies and state and federal laws, a witness or victim/survivor of an incident of sexual misconduct who reports the incident in good faith must not be sanctioned for admitting in the report or during an investigation to a violation of the institution's student conduct policy for the personal use of drugs or alcohol. However, the institution may initiate an educational discussion with any student regarding any behavior that, without uniform amnesty, could violate the student conduct policy.

## **Part 3. Reporting Incidents of Sexual Misconduct**

### **Subpart A. Prompt reporting encouraged**

Complainants of sexual misconduct and retaliation may report incidents at any time, but are strongly encouraged to make reports promptly in order to best preserve evidence for a potential disciplinary or legal proceeding.

Complainants are encouraged to report incidents of sexual misconduct to law enforcement in the location where the incident occurred. Complainants are also encouraged to contact the local advocacy services and agencies, counseling and health care providers, campus Title IX coordinators, or Minnesota State Colleges and Universities campus security authorities for appropriate action.

### **Subpart B. Required reports**

Any campus security authority, or college or university employee with supervisory or student-advising responsibility who has been informed of an alleged incident of sexual misconduct shall follow college or university procedures for making a report for the annual crime statistics report. In addition, the campus security authority or any college or university employee with supervisory or student-advising responsibility who has been informed of an alleged incident of sexual misconduct shall report to the Title IX Coordinator in order to initiate any applicable supportive measures, investigation, or other resolution procedures.

Campus security authorities may be obligated to report to law enforcement the allegation that an incident of sexual misconduct has occurred. The complainant's name or other personally identifiable information will be provided only with the consent of the complainant, except as may be required or permitted by law.

When the college or university receives a report of sexual misconduct, it has an obligation to respond in a timely and appropriate manner. Making a report to the Title IX Coordinator does not require an individual to begin or participate in the process outlined in this procedure or to report to local law enforcement. However, based on the information gathered, the Title IX Coordinator may determine that there is a responsibility to move forward with the process (even without the participation of the complainant). If a complainant requests that their name or other identifiable information not be shared or

that no action be taken against the respondent, the Title IX coordinator will evaluate the request.

### **Subpart C. Anonymous reports**

Each college and university has an online option to allow for anonymous reporting of sexual misconduct. When made, there are limits to the Title IX Coordinator's ability to investigate, respond, and provide remedies, depending on the information provided; only formal complaints are guaranteed the process outlined in this procedure. Measures intended to protect the community or redress or mitigate harm may be enacted. It also may not be possible to provide supportive measures to complainants who are the subject of anonymous reports. However, contact information for any on-campus departments and off-campus organizations serving victims of sexual misconduct will be provided, as feasible.

## **Part 4. Confidentiality of Reporting**

### **Confidential reports and resources**

Because of laws concerning government data contained in Minn. Stat. Ch. 13 Government Data Practices, colleges and universities cannot guarantee confidentiality to those who report incidents of sexual misconduct or retaliation except where those reports are privileged communications with licensed healthcare professionals. Some off-campus reports also may be legally privileged by law, such as reports to clergy, private legal counsel, or healthcare professionals.

Students may seek confidential resources at colleges or universities that offer student health or counseling services on campus. A staff member(s) is designated to serve as confidential resources for victims of sexual misconduct; communication with a designated confidential resource is considered private. Alternatively, complainants may speak with individuals not affiliated with the college or university without concern that these individuals will be required to disclose information to the institution without permission. These individuals may include licensed professional counselors and other medical providers, local rape crisis counselors, domestic violence resources, and other local or state assistance agencies. Students may request information about confidential resources from the Title IX Coordinator.

## **Part 5. Procedure Principles**

### **Subpart A. Notice of report or complaint**

A report provides the college or university notice of an allegation or concern about sexual misconduct or retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures. A formal complaint informs the college or university that the complainant would like to initiate an investigation or other appropriate resolution procedures. A complainant or individual may initially make a report and may decide at a later time to make a Formal Complaint.

### **Subpart B. Notice of complainant's rights**

Complainants must be notified of the following:

- a. Their right to make a report to local law enforcement officials in sexual misconduct cases that may constitute criminal behavior.
- b. Rights under the crime victims bill of rights, Minn. Stat. §§ 611A.01 – 611A.06, including the right to assistance from the Crime Victims Reparations Board and the commissioner of public safety.
- c. Availability of prompt assistance from campus officials, upon request, in notifying the appropriate campus investigating authorities and law enforcement officials, and, at the direction of law enforcement authorities, assistance in obtaining, securing, and maintaining evidence in connection with a sexual misconduct incident.
- d. Assistance available from campus authorities in preserving for a sexual misconduct complainant materials relating to a campus disciplinary proceeding.
- e. Their right to decide whether to report a case to law enforcement or not report altogether; participate in a campus investigation, disciplinary proceeding, or informal resolution; or not participate altogether.
- f. Their right to decide when to repeat a description of the incident of sexual misconduct.
- g. The prohibition of any campus authority to suggest the complainant was at fault for the sexual misconduct or should have behaved differently to prevent the misconduct;
- h. The availability of a campus or local program providing victim advocacy services and information on free legal resources and services.
- i. Complaints of incidents of sexual misconduct made to campus security authorities must be promptly and appropriately resolved.
- j. Upon a complainant's request, the college, university, or system office may take action and other supportive measures to prevent unwanted contact with the respondent, including, but not limited to, transfer of the complainant and/or the respondent to alternative classes, or to a work site or to alternative college-owned housing, if such alternatives are available and feasible.
- k. Upon request and consistent with laws governing access to student records, provide a complainant who reported an incident of sexual misconduct with access to their description of the incident as it was reported to the institution, including if that student transfers to another postsecondary institution.
- l. Upon request, students who report sexual misconduct to the college or university and subsequently choose to transfer to another college or university will be provided with information about resources for victims of sexual misconduct at the college or university to which the complainant is transferring.

### **Subpart C. Equitable procedural rights**

College and university investigation and disciplinary procedures concerning allegations of sexual misconduct against employees or students must:

1. Be respectful of the needs and rights of individuals involved and treat them with dignity;

2. Proceed as promptly as possible;
3. Provide copies of the applicable policy and procedure, including available supportive measures;
4. Ensure impartiality during the process and for the procedure to be conducted by an individual who does not have a conflict of interest or bias and who will have not less than annual training on the applicable policy and procedure;
5. Permit a student complainant and a student respondent to have the same opportunity to have an advisor of their choice present at any interview or hearing, in a manner consistent with these procedures and applicable data privacy law;
6. Afford employees the right to representation consistent with the appropriate collective bargaining agreement or personnel plan;
7. Be conducted in accordance with applicable due process standards and privacy laws;
8. Provide the process for submission and consideration of evidence that may be used during a hearing or disciplinary meeting;
9. Provide equal opportunities to the complainant and the respondent to inspect and review evidence obtained in an investigation that is directly related to the allegations;
10. Provide equal opportunities to the complainant and the respondent to present evidence and witnesses on their behalf during a hearing or proceeding;
11. Provide each party with timely and equal access to relevant evidence that will be used during the formal hearing process, conducted in a manner consistent with this procedure;
12. Prohibit and restrict the complainant and the respondent from personally and directly questioning each other during the investigation, hearing, or disciplinary meeting conducted under this procedure;
13. Simultaneously inform both the complainant and respondent of the outcome in a timely manner in writing, as permitted by applicable privacy law, and include the right to appeal the decision as provided in this procedure;
14. Be based on a preponderance of evidence standard, meaning that it is more likely than not that the policy, procedure, or code has been violated;
15. Prohibit retaliation and follow the established process in this procedure to investigate complaints of retaliation.

The past sexual history of the complainant and respondent must be deemed irrelevant except as that history may directly relate to the incident being considered.

A respondent's use of any drug, including alcohol, judged to be related to an offense, may be considered an exacerbating, rather than mitigating circumstance.

#### **Subpart D. False statements prohibited**

Colleges, universities, and the system office take allegations of sexual misconduct very seriously and recognize the consequences such allegations may have on a respondent as well as the complainant. Any individual who knowingly provides false information regarding the filing of a complaint or report of sexual misconduct, or who provides false information

during the investigation of such a complaint or report, may be subject to discipline or, under certain circumstances, legal action. Complaints of conduct that are found not to violate policy are not assumed to be false.

## **Part 6. Investigation and Resolution**

The college, university or system office has a duty to take timely and appropriate action to stop behavior prohibited by Board Policy 1B.3, conduct investigations and take appropriate action to prevent recurring misconduct.

### **Subpart A. Information privacy**

Confidentiality of information obtained during an investigation cannot be guaranteed. However, the information will be handled in accordance with applicable federal and state data privacy laws.

### **Subpart B. Processing the complaint**

The Title IX Coordinator must be contacted to initiate a complaint under this procedure. The Title IX Coordinator shall determine the process used in each complaint based on the complexity of the allegations, the number and relationship of individuals involved, and other pertinent factors.

- 1. Jurisdiction.** The Title IX Coordinator shall:
  - a. Determine whether the complaint meets the elements of prohibited conduct as outlined in Board Policy 1B.3 to proceed under this procedure;
  - b. Determine if the complaint involves the education program or activity of the college or university and whether the incident occurred in the United States;
  - c. Determine if the complaint occurred outside of the context of employment or education program or activity but has continuing adverse effects on Minnesota State property or in any Minnesota State employment or education program or activity;
  - d. Determine whether the complaint is one that should be processed through another college, university, or system procedure available to the complainant; and
  - e. If appropriate, direct the complainant to that procedure as soon as possible.
- 2. No basis to proceed.** At any point during the processing of the complaint, the Title IX Coordinator may determine that there is no basis to proceed under this procedure. The Title IX Coordinator may refer the complaint as appropriate to another college or university process. If the conduct alleged in the formal complaint would not constitute sexual misconduct as defined by Board Policy 1B.3, even if proved, did not occur in the college or university's education program or activity, or did not occur against a person in the United States, then the college or university must dismiss the formal complaint.

The Title IX Coordinator may dismiss a formal complaint or any allegations therein any time during the investigation or hearing if a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the college or university; or specific circumstances prevent the college or university from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. The college or university must promptly notify both the complainant and the respondent of any dismissal.

- 3. Conflicts.** The Title IX Coordinator should identify to the president any real or perceived conflict of interest in proceeding as the Title IX Coordinator. If the president determines that a conflict exists, another Title IX Coordinator or Deputy Coordinator must be assigned.

The Title IX Coordinator will evaluate and address any concerns of conflicts of interest or bias for those serving in the roles of investigator, informal resolution facilitator, and decision-maker.

#### **Subpart C. Informal resolution**

A Title IX Coordinator may offer an informal resolution process if a formal complaint is filed and after providing both parties with 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 prohibited in Board Policy 1B.3. Informal resolution must not be used to resolve allegations of sexual misconduct by an employee toward a student.

#### **Subpart D. Formal resolution**

The formal resolution process involves two stages: (1) an investigation concluding with an investigation report, which is a summary of the relevant evidence gathered during the investigation; and (2) a live hearing with questioning of both parties, after which a written determination regarding responsibility and disciplinary action will be issued.

- 1. Information provided to the complainant.** At the time the complaint is made, the Title IX Coordinator shall:
  - a. Inform the complainant of the provisions of the Board Policy 1B.3 and this procedure;
  - b. Provide a copy of or a weblink for Board Policy 1B.3 and this procedure to the complainant;
  - c. Inform the complainant of their right to have an advisor present during investigatory interviews and the extent of the advisor's involvement;
  - d. Inform the complainant of the provisions of Board Policy 1B.3 prohibiting retaliation;



- e. Discuss the availability of supportive measures; and
  - f. Explain the process for filing a formal complaint.
- 2. Complaint documentation.** The Title IX Coordinator shall ensure that the complaint is documented in writing. The Title IX Coordinator may request, but not require, the complainant to document the complaint in writing using the complaint form of the college, university, or system office. Following the documentation of the formal complaint, the Title IX Coordinator will provide a notice of allegations and investigation to the complainant and the respondent.
- 3. Information provided to the respondent.** At the time initial contact is made with the respondent, the Title IX Coordinator shall inform the respondent in writing of the existence and general nature of the complaint and the provisions of the sexual misconduct policy, including the name of the complainant. At the initial meeting with the respondent, the Title IX Coordinator shall:
- a. Provide a copy of or a weblink for Board Policy 1B.3 and this procedure to the respondent;
  - b. 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;
  - c. Explain to the respondent that in addition to being interviewed by the investigator, the respondent may provide a written response to the allegations;
  - d. Inform the respondent of their right to have an advisor present during investigative interviews and the extent of the advisor's involvement;
  - e. Discuss the availability of supportive measures;
  - f. Inform the respondent of the provisions of Board Policy 1B.3 prohibiting retaliation; and
  - g. Inform them of the presumption that the respondent is not responsible for the alleged conduct, as a determination regarding responsibility is made at the conclusion of the investigation process.
- 4. Investigatory process.** The investigator, who may also be the Title IX Coordinator, shall:
- a. Conduct a fact-finding inquiry or investigation into the complaint, including appropriate interviews and meetings;
  - b. Inform the witnesses and other involved individuals of the prohibition against and protection from retaliation;
  - c. Create, gather, and maintain investigative documentation as appropriate;
  - d. Disclose appropriate information to others only on a need-to-know basis consistent with state and federal law, and provide a data privacy notice in accordance with state law;
  - e. Handle all data in accordance with applicable federal and state privacy laws

- f. Conduct an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence.
  - g. Neither consider nor inquire about the complainant's sexual predisposition, regardless if either party provides information or reference to such.
  - h. 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.
  - i. Before completing the investigation report, send to both the complainant and the respondent and their advisors, if any, the evidence subject to inspection and review. Both the complainant and the respondent must have at least ten (10) business days to submit a written response to the evidence, which the investigator will consider before completing the investigative report. Both parties and their advisors may use the information solely for purposes of proceedings pursuant to this policy.
  - j. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) calendar days prior to a formal hearing, send to each party and the party's advisor, the investigative report in an electronic format or a hard copy, for their review and written response.
- 5. Witness participation in the investigation.** Both the complainant and respondent have an equitable opportunity through the investigation process to suggest witnesses and identify what information the individuals may contribute to the investigation. Witnesses are encouraged to cooperate with the investigation and to share what they know about the allegations of the formal complaint. Witnesses may also provide written statements in addition to or in lieu of interviews. Generally, witnesses shall be interviewed by the investigator before they would be considered to participate in the formal hearing.
- 6. Interview documentation.** It is standard practice for investigators to create a record of all interviews pertaining to the investigatory process, by recording, transcript, or written summary. The complainant and respondent may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings. All interviews are documented, and all involved should be made aware if there is an audio and/or video recording created. The recording and/or transcript of those meetings will be provided to the complainant and respondent for their review, after which the complainant and respondent may suggest additional questions to be asked of another party or witness or additional witnesses. Those subsequent meetings or interviews are also recorded and/or transcribed.
- 7. Interim actions**
- a. **Employee reassignment or administrative leave.** Under appropriate circumstances, the president or chancellor may, in consultation with system

legal counsel and labor relations, 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.

- b. Student summary suspension or other action.** Under appropriate circumstances, the president or designee may summarily suspend a student at any point during the report/complaint process. A summary suspension may be imposed only in accordance with Board Policy 3.6 and associated system procedures. 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) school or business 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 president or designee. Other temporary measures may be taken in lieu of summary suspension where the president or designee determines such measures are appropriate.

- 8. Timely completion.** Colleges, universities, and the system office shall provide resources sufficient to complete the investigative process and issue a written response in a timely manner after a complaint is made, unless reasonable cause for delay exists. Reasonable cause may include considerations such as the absence of a party, party's advisor or witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities. The Title IX Coordinator shall notify the complainant and respondent if the written response is not expected to be issued within a timely manner. The college, university, or system office must meet any applicable shorter time periods, including those provided within the applicable collective bargaining agreement.

#### **Subpart E. Decision process**

If the above methods, including the informal resolution process, have not resolved the complaint within a reasonable period of time to the satisfaction of the Title IX Coordinator, the procedures in this subpart must be followed.

- 1. Title IX Coordinator.** The Title IX Coordinator shall:
  - a. Issue the final investigation report.
  - b. Refer the matter for a formal hearing.
- 2. Formal Hearing.**

- a. For formal hearings under this procedure, the Title IX Coordinator will select an appropriate decision-maker who has been properly trained to serve as the hearing administrator to preside over the formal hearing.

The decision-maker, the complainant, the respondent, and their respective advisors will be provided electronic copies of the final investigation report and all relevant but not impermissible evidence, including the names of all parties, witnesses, and advisors, at least ten (10) business days in advance of the hearing.

Pre-hearing meetings will be offered to the complainant and the respondent, along with their advisors, to review the formal hearing process.

Parties should contact the Title IX Coordinator at least three (3) business days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, if possible.

- b. The formal hearing is a live meeting that may occur in person or via video technology. During the formal hearing, the decision-maker, complainant, and respondent must be able to simultaneously see and hear each other or a witness while that person is speaking.

All formal hearings will be recorded, and the complainant and respondent may request a copy of the recording from the Title IX Coordinator following the hearing, which may only be used in relation to the formal hearing and decision, including any appeal. No unauthorized recordings are permitted.

Persons who may be present for a formal hearing include the Title IX Coordinator or designee, decision-maker, investigator(s), the complainant and their advisor, and the respondent and their advisor, as well as anyone providing authorized accommodations, interpretation, and/or assistive services. Witnesses are present only during their portion of the testimony.

A decision-maker has discretion to respond to evidence or witnesses not included in the investigation report; the decision-maker may decide to proceed without the information or to allow for its inclusion. However, this may delay the hearing, result in the hearing being rescheduled, and or result in the formal complaint being sent back to the investigator for further investigation or verification.

As the hearing administrator at the formal hearing, the decision-maker will facilitate questioning of the parties and witnesses first by the decision-maker and then by the parties through their advisors. The decision-maker must permit the complainant's and the respondent's advisors to ask the other party and any

witnesses all relevant questions and follow-up questions, including those regarding credibility. This cross-examination must be conducted directly (the questions may not be asked by the decision-maker), orally, and in real time by the party's advisor and never by a party personally.

- i. Prior to the complainant, respondent, or witness answering a question, the decision-maker must rule on the relevance of the question and explain any decision to exclude a question as not relevant.
- ii. The decision-maker may request, but may not require, that questions by the complainant or respondent be submitted in advance.
- iii. The Title IX Coordinator may otherwise limit the extent to which the party's advisor may participate in the hearing.
- iv. Questions and evidence about the complainant's sexual predisposition or sexual history are not relevant, unless such questions are offered to prove that someone other than the respondent committed the alleged conduct, or regard specific incidents of the prior sexual behavior with respect to the respondent, and are offered to prove consent. These questions may be submitted prior to the start of the formal hearing.

During the formal hearing, the decision-maker may enforce rules to ensure hearing decorum, such as requiring respectful treatment, specifying any objection process, governing the timing of the hearing, and the length of breaks, etc.

If deemed reliable and relevant by the decision-maker, and not otherwise subject to exclusion under this procedure, the decision-maker may consider the statements of persons who were not present at the hearing, or persons who were present at the hearing but refused to answer a cross-examination question. This includes, but is not limited to, opinions and statements in police reports or other official reports, medical records, court records and filings, investigation notes of interviews, emails, written statements, affidavits, text messages, and social media postings. The decision-maker shall determine the appropriate weight to afford the statements under the circumstances and will do so in a fair and equitable manner. The decision-maker may not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence or refusal to answer cross-examination or other questions. There are no exceptions to this exclusion as there are in legal proceedings.

**3. Deliberation and determination.** Following the formal hearing, the decision-maker shall:

- a. Decide whether the policy has been violated using the preponderance of evidence standard;
- b. Determine appropriate disciplinary actions if the policy has been violated; and
- c. Issue a written determination that must include;
  - i. Identification of the allegations potentially violating Board Policy 1B.3;

- 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 hearing help;
- iii. Findings of fact supporting the determination;
- iv. Conclusions regarding application of the policy to the facts;
- v. A statement of, and rationale for the result as to each allegation, including determination regarding responsibility, any disciplinary actions the college or university imposes on the respondent, and whether remedies designed to restore or preserve equal access to the college's or university's education program or activity will be provided by the college or university to the complainant; and
- vi. The college's or university's procedures and permissible bases for the complainant and respondent to appeal.

- 4. Disciplinary actions.** May be imposed if a finding is made that sexual misconduct or retaliation has occurred. These include, but are not limited to, sanctions up to and including suspension or expulsion of students, or discipline, up to and including termination from employment, as provided in the applicable bargaining agreement or personnel plan, for employees. The appropriate disciplinary actions will be determined on a case-by-case basis, taking into account the severity of the conduct, the student's or employee's previous disciplinary history, and other factors as appropriate.

The written determination may satisfy the determination elements by adopting portions of the report and recommendation. The decision-maker shall provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the college or university provides the parties with written determination of the result of an appeal, or the date on which an appeal would no longer be considered timely, regardless of whether an appeal was or was not filed.

The college, university, or system office shall take the appropriate corrective action based on results of the investigation, and the Title IX Coordinator shall make appropriate inquiries to ascertain the effectiveness of any corrective or disciplinary action. Complainants are encouraged to report any subsequent conduct that violates Board Policy 1B.3, including allegations of retaliation.

#### **Subpart F. Resolution**

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 college, university, or system office.

## **Part 7. Appeals**

### **Subpart A. Appeal of dismissal**

The decision to dismiss a formal complaint is appealable by either the complainant or the respondent. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal decision. The appeal should specify at least one of the grounds noted in Subpart D and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request, the Title IX Coordinator will share the request and supporting documentation with the other party and provide three (3) business days for the other party and the Title IX Coordinator to respond to the request. At the conclusion of the response period, the Title IX Coordinator will forward the request, as well as any response provided by the other party and/or the Title IX Coordinator to the president or designee for consideration.

### **Subpart B. Appeal of formal hearing decision**

The complainant or the respondent may appeal the decision made by the decision-maker of the formal hearing. An appeal must be filed in writing with the president or designee within ten (10) business days after notification of the decision. The appeal shall specify at least one of the grounds available for appeal, which are provided in Subpart D, and shall provide any reasons or supporting evidence for why the ground is met. 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 C. Effect of appeal**

For employees covered by a collective bargaining agreement, an appeal of the decision under this procedure is separate and distinct from contractual grievance procedures. During the pendency of the appeal, disciplinary or corrective action taken as a result of the decision may be enforced. In cases involving disciplinary action of suspension for ten (10) days or longer, students must be informed of their right to a contested case hearing under Minn. Stat. Ch. 14.

### **Subpart D. Appeal process**

The president or designee shall review the record and determine whether to affirm or modify the decision. Grounds for appeal include the following:

- procedural irregularity that affected the outcome or decision,
- 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, and
- a conflict of interest or bias by the Title IX Coordinator or decision-maker that affected the outcome of the matter.

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 must be made within a reasonable time, and the complainant, respondent, and Title

IX Coordinator must be notified in writing of the decision, consistent with applicable state and federal data privacy laws. The decision on appeal exhausts the complainant's and respondent's administrative remedies under this procedure except as provided herein.

#### **Part 8. Maintenance of Report/Complaint Procedure Documentation**

During and upon the completion of the complaint process, the complaint file must be maintained in a secure location in the office of the Title IX Coordinator for the college, university, or system office, for a period of seven (7) years, in accordance with the applicable records retention schedule. Access to data must 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, and other applicable law. Information on reports of incidents of sexual misconduct made to campus security authorities must be documented in accordance with the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, codified at 20 U.S.C. § 1092 (f). The information will be used to report campus crime statistics on college and university campuses as required by the Clery Act.

Each college, university, and the system office shall annually report statistics on sexual assaults to the Minnesota Office of Higher Education. Additionally, the report must be published on each college and university website in accordance with state law.

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Date of Adoption: 05/17/04  
Date of Implementation: 05/17/04  
Date of Last Review: 08/11/25

#### **Date and Subject of Amendments:**

- 8/11/25 – Updated language to reflect recent changes to the 1B.3 Board Policy; changed language to reflect the hearing process to be moved away from the Administrative Law Judge to the college or university; updated language to reflect changes in relevant state and federal laws.
- 8/25/20 – Updated the language to comply with the requirements of the new Department of Education regulations effective August 14, 2020.
- 7/13/16 - The procedure was amended to comply with recent state legislation regarding sexual assault. Applied the new formatting and writing styles which resulted in multiple technical edits.

No Additional HISTORY.