

**MINNESOTA STATE COLLEGES AND UNIVERSITIES
BOARD OF TRUSTEES**

Agenda Item Summary Sheet

Committee: Diversity and Equity

Date of Meeting: November 14, 2012

Agenda Item: Proposed Amendments to Board Policy 1B.1 Nondiscrimination in Employment and Education Opportunity (Second Reading) [Proposed rename: Equal Opportunity and Nondiscrimination in Employment and Education]

- Proposed Policy Change Approvals Required by Policy Other Approvals Monitoring
- Information

Cite policy requirement, or explain why item is on the Board agenda:

Amendment to Board policy requires approval of the Board.

Scheduled Presenter(s):

Renée Hogoboom, Associate Director for Diversity Equity

Outline of Key Points/Policy Issues:

The proposed amendments to Board Policy 1B.1 Nondiscrimination in Employment and Education Opportunity renames the policy to include equal opportunity, and adds an equal opportunity statement to the beginning of the policy. In addition, the proposed policy has been amended to specifically include gender identity and gender expression in the nondiscrimination statement and the definition of student has also been amended to concur with the definition of student in the student conduct code.

Background Information:

This is a second reading to amend Board Policy 1B.1 Nondiscrimination in Employment and Education Opportunity [Proposed rename: Equal Opportunity and Nondiscrimination in Employment and Education].

**BOARD OF TRUSTEES
MINNESOTA STATE COLLEGES AND UNIVERSITIES**

BOARD ACTION

Proposed Amendments to Board Policy 1B.1 Nondiscrimination in Employment and Education Opportunity (Second Reading) [Proposed rename: Equal Opportunity and Nondiscrimination in Employment and Education]

BACKGROUND: The Board of Trustees approved this policy initially in 1994 and amended the policy in 2006. Now as part of the cyclical review of policy, it is proposed the language be amended to include gender identity and gender expression in the nondiscrimination statement and to reflect the definition of student that is in the student conduct policy.

CONSULTATION

Consultation has occurred as follows:

The policy has been broadly distributed to allow for review and comment by as many stakeholders as possible. A draft of the proposed policy was electronically distributed to the following group listservs on August 29, 2012:

- Presidents
- Cabinet
- Chief Academic Officers
- Chief Diversity Officers
- Chief Human Resources Officers
- Affirmative Action Officers
- Chief Student Affairs Officers
- Academic Deans
- Inter Faculty Organization State Leadership
- Minnesota State College Faculty State Leadership
- Minnesota State University Association of Administrative and Service Faculty State Leadership
- Minnesota State College Student Association State Leadership
- Minnesota State University Student Association State Leadership
- Minnesota Association of Professional Employees State Leadership
- Middle Management Association State Leadership
- American Federation of State, County and Municipal Employees State Leadership

RECOMMENDED COMMITTEE ACTION

The Diversity and Equity Committee recommends that the Board of Trustees adopt the following motion:

RECOMMENDED MOTION

The Board of Trustees approves the proposed amendments to Board Policy 1B.1 Nondiscrimination in Employment and Education Opportunity.

**BOARD OF TRUSTEES
MINNESOTA STATE COLLEGES & UNIVERSITIES**

BOARD POLICY		1B.1
Chapter	1B.	SYSTEM ORGANIZATION AND ADMINISTRATION EQUAL EDUCATION AND EMPLOYMENT OPPORTUNITY
Section	1.	<u>Equal Opportunity and Nondiscrimination in Employment and Education Opportunity</u>

1B.1 EQUAL OPPORTUNITY AND NONDISCRIMINATION IN EMPLOYMENT AND EDUCATION OPPORTUNITY.

Part 1. Policy Statement

Subpart A. 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. To help effectuate these goals, Minnesota State Colleges and Universities is committed to a policy of equal opportunity and nondiscrimination in employment and education opportunity.

Subpart B. Nondiscrimination. No person shall be discriminated against in the terms and conditions of employment, personnel practices, or access to and participation in, programs, services, and activities with regard to race, sex, color, creed, religion, age, national origin, disability, marital status, status with regard to public assistance, ~~or~~ sexual orientation, gender identity, or gender expression. In addition, discrimination in employment based on membership or activity in a local commission as defined by law is prohibited.

Harassment on the basis of race, sex, color, creed, religion, age, national origin, disability, marital status, status with regard to public assistance, ~~or~~ sexual orientation, gender identity, or gender expression is prohibited. 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 persons having business at, or visiting the educational or working environment.

This policy is directed at verbal or physical conduct that constitutes discrimination/ harassment under state and federal law and is not directed at the content of speech. In cases in which verbal statements and other forms of expression are involved, Minnesota State Colleges and Universities will give due consideration to an individual’s constitutionally protected right to free speech and academic freedom. However, discrimination and harassment are not within the protections of academic freedom or free speech. 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

39 education community benefit from it without intimidation, exploitation or coercion.

40

41 This policy shall apply to all individuals affiliated with Minnesota State Colleges and
42 Universities, including but not limited to, its students, employees, applicants, volunteers,
43 agents, and Board of Trustees, and is intended to protect the rights and privacy of both the
44 complainant and respondent and other involved individuals, as well as to prevent retaliation or
45 reprisal. Individuals who violate this policy shall be subject to disciplinary or other corrective
46 action.

47

48 This policy supersedes all existing system, college, and university equal opportunity and
49 nondiscrimination policies.

50

51 **Part 2. Definitions.**

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53 **Subpart A. Consensual Relationship.** Consensual relationship means ~~A~~ a sexual or romantic
54 relationship between two persons who voluntarily enter into such a relationship. Employees
55 who are members of the same household should also refer to ~~the Board~~ Policy 4.10, ~~of~~
56 ~~Trustees Nepotism policy 4.10.~~

57

58 **Subpart B. Discrimination.** Discrimination means ~~is defined as~~ conduct that is directed at an
59 individual because of his or her protected class and that subjects the individual to different
60 treatment by agents or employees so as to interfere with or limit the ability of the individual to
61 participate in, or benefit from, the services, activities, or privileges provided by the system or
62 colleges and universities or otherwise adversely affects the individual's employment or
63 education.

64

65 **Subpart C. Discriminatory harassment.** Discriminatory harassment means ~~is defined as~~
66 verbal or physical conduct that is directed at an individual because of his or her protected
67 class, and that is sufficiently severe, pervasive, or persistent so as to have the purpose or effect
68 of creating a hostile work or educational environment.

69

70 As required by law, Minnesota State Colleges and Universities ~~has further defined~~ sexual
71 harassment as a form of sexual discrimination which is prohibited by state and federal law.

72 Sexual harassment includes ~~is defined as~~ unwelcome sexual advances, requests for sexual
73 favors, sexually motivated physical conduct, and other verbal or physical conduct of a sexual
74 nature when:

75

76 1. Submission to such conduct is made either explicitly or implicitly a term or condition
77 of an individual's employment or education, evaluation of a student's academic
78 performance, or term or condition of participation in student activities or in other
79 events or activities sanctioned by the college or university; or

79

80 2. Submission to or rejection of such conduct by an individual is used as the basis for
81 employment or academic decisions or other decisions about participation in student
82 activities or other events or activities sanctioned by the college or university; or

82

83 3. Such conduct has the purpose and effect of threatening an individual's employment;
84 interfering with an individual's work or academic performance; or creating an
intimidating, hostile, or offensive work or educational environment.

85 **Subpart D. Employee.** Employee means any individual employed by Minnesota State
86 Colleges and Universities, ~~personnel~~ including all faculty, staff, administrators, teaching
87 assistants, graduate assistants, residence directors and student employees.
88

89 **Subpart E. Protected Class.** For purposes of this policy:

- 90 1. Protected class includes for the purpose of this policy means that discrimination and
91 harassment in employment and education are prohibited on the basis of: race, sex,
92 color, creed, religion, age, national origin, disability, marital status, status with regard
93 to public assistance, ~~or~~ sexual orientation, gender identity, or gender expression. In
94 addition, membership or activity in a local human rights commission is a protected
95 class in employment.
96 2. This policy prohibits use of protected class status as a factor in decisions affecting
97 education and employment where prohibited by federal or state law.
98

99 **Subpart F. Retaliation.** Retaliation includes, but is not limited to, intentionally engaging in
100 any form of intimidation, reprisal or harassment against an individual because he or she:

- 101 a) made a complaint under this policy;
102 b) ~~or~~ assisted or participated in any manner in an investigation, or process under this
103 policy, regardless of whether a claim of discrimination or harassment is substantiated;
104 c) ~~or~~ associated with a person or group of persons who are disabled or are of a different
105 race, color, creed, religion, sexual orientation, gender identity, gender expression, or
106 national origin; or-
107 d) Made a complaint or assisted or participated in any manner in an investigation or
108 process with the Equal Employment Opportunity Commission, the U.S. Department
109 of Education Office for Civil Rights, the Minnesota Department of Human Rights or
110 other enforcement agencies, under any federal or stated nondiscrimination law,
111 including the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973;
112 the Minnesota Human Rights Act, Minn. Stat. Ch. 363A, and their amendments.
113

114 ~~-Retaliation may occur whether or not there is a power or authority differential between the~~
115 ~~individuals involved.~~
116

117 **Subpart G. Sexual harassment and violence as sexual abuse.** Under certain
118 circumstances, sexual harassment or violence may constitute sexual abuse according to
119 Minnesota law. In such situations, the system office and colleges and universities shall
120 comply with the reporting requirements in Minnesota Statutes Section 626.556 (reporting of
121 maltreatment of minors) and Minnesota Statutes Section 626.557 (Vulnerable Adult
122 Protection Act). Nothing in this policy will prohibit any college or university or the system
123 office ~~or any college or university~~ from taking immediate action to protect victims of alleged
124 sexual abuse. Minnesota State Colleges and Universities Board Policy 1B.3 Sexual Violence
125 Policy addresses sexual violence.
126

127 **Subpart H. Student.** For purposes of this policy, tThe term “student” includes all persons who:

- 128 1. Are enrolled in one or more courses, either credit or non-credit, through a college or
129 university-;
130 2. Withdraw, transfer or graduate, after an alleged violation of the student conduct code-;

