

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

**Agenda Item Summary Sheet**

**Committee:** Diversity and Equity

**Date of Meeting:** October 17, 2012

**Agenda Item:** Proposed Amendments to Board Policy 1B.1 Nondiscrimination in Employment and Education Opportunity (First Reading)

- 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 and Equity  
Gail Olson, General Counsel

**Outline of Key Points/Policy Issues:**

This amendment modifies Board Policy 1B.1 Nondiscrimination in Employment and Education Opportunity to specifically include gender identity and gender expression in the nondiscrimination statement. In addition, the definition of student has also been amended to be consistent with the definition of student in System Procedure 3.6.1, Student Conduct Code.

**Background Information:**

The proposed action is a first reading to amend Board Policy 1B.1, Nondiscrimination in Employment and Education Opportunity.

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

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

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

**Part 1. Policy Statement**

Minnesota State Colleges and Universities is committed to a policy of nondiscrimination in employment and education opportunity. 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 education community benefit from it without intimidation, exploitation or coercion.

This policy shall apply to all individuals affiliated with Minnesota State Colleges and Universities, including but not limited to, its students, employees, applicants, volunteers, agents, and Board of Trustees, and is intended to protect the rights and privacy of both the

38 complainant and respondent and other involved individuals, as well as to prevent retaliation or  
39 reprisal. Individuals who violate this policy shall be subject to disciplinary or other corrective  
40 action.

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42 This policy supersedes all existing system, college, and university nondiscrimination policies.  
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## 44 **Part 2. Definitions.**

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46 **Subpart A. Consensual Relationship.** A sexual or romantic relationship between two  
47 persons who voluntarily enter into such a relationship. Employees who are members of the  
48 same household should also refer to the Board of Trustees Nepotism policy 4.10.

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50 **Subpart B. Discrimination.** Discrimination is defined as conduct that is directed at an  
51 individual because of his or her protected class and that subjects the individual to different  
52 treatment by agents or employees so as to interfere with or limit the ability of the individual to  
53 participate in, or benefit from, the services, activities, or privileges provided by the system or  
54 colleges and universities or otherwise adversely affects the individual's employment or  
55 education.

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57 **Subpart C. Discriminatory harassment.** Discriminatory harassment is defined as verbal or  
58 physical conduct that is directed at an individual because of his or protected class, and that is  
59 sufficiently severe, pervasive, or persistent so as to have the purpose or effect of creating a  
60 hostile work or educational environment.

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62 As required by law, Minnesota State Colleges and Universities has further defined sexual  
63 harassment as a form of sexual discrimination which is prohibited by state and federal law.  
64 Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors,  
65 sexually motivated physical conduct, and other verbal or physical conduct of a sexual nature  
66 when:

- 67 1. Submission to such conduct is made either explicitly or implicitly a term or condition  
68 of an individual's employment or education, evaluation of a student's academic  
69 performance, or term or condition of participation in student activities or in other  
70 events or activities sanctioned by the college or university; or
- 71 2. Submission to or rejection of such conduct by an individual is used as the basis for  
72 employment or academic decisions or other decisions about participation in student  
73 activities or other events or activities sanctioned by the college or university; or
- 74 3. Such conduct has the purpose and effect of threatening an individual's employment;  
75 interfering with an individual's work or academic performance; or creating an  
76 intimidating, hostile, or offensive work or educational environment.

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78 **Subpart D. Employee.** Minnesota State Colleges and Universities personnel include all  
79 faculty, staff, administrators, teaching assistants, graduate assistants, residence directors and  
80 student employees.

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82 **Subpart E. Protected Class.** Protected class for the purpose of this policy means that

83 discrimination and harassment in employment and education are prohibited on the basis of:  
84 race, sex, color, creed, religion, age, national origin, disability, marital status, status with  
85 regard to public assistance ~~or~~ sexual orientation, gender expression or gender identity. In  
86 addition, membership or activity in a local human rights commission is a protected class in  
87 employment.

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

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

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

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107 **Subpart G. Sexual harassment and violence as sexual abuse.** Under certain  
108 circumstances, sexual harassment or violence may constitute sexual abuse according to  
109 Minnesota law. In such situations, the system office and colleges and universities shall  
110 comply with the reporting requirements in Minnesota Statutes Section 626.556 (reporting of  
111 maltreatment of minors) and Minnesota Statutes Section 626.557 (Vulnerable Adult  
112 Protection Act). Nothing in this policy will prohibit the system office or any college or  
113 university from taking immediate action to protect victims of alleged sexual abuse.  
114 Minnesota State Colleges and Universities 1B.3 Sexual Violence Policy addresses sexual  
115 violence.

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117 **Subpart H. Student.** The term “student” includes all persons who:

- 118 1. Are enrolled in one or more courses, either credit or non-credit, through a college or  
119 university;
- 120 2. Withdraw, transfer or graduate, after an alleged violation of the student conduct code;
- 121 3. Are not officially enrolled for a particular term but who have a continuing relationship  
122 with the college or university;
- 123 4. Have been notified of their acceptance for admission or have initiated the process of  
124 application for admission or financial aid; or
- 125 5. Are living in a college or university residence hall although not enrolled in the  
126 institution.

127 “Student” means an individual who is:  
128 1. ~~admitted, enrolled, registered to take or is taking one or more courses, classes, or~~  
129 ~~seminars, credit or noncredit, at any System college or university; or~~  
130 2. ~~between terms of a continuing course of study at the college or university, such as~~  
131 ~~summer break between spring and fall academic terms; or~~  
132 3. ~~expelled or suspended from enrollment as a student at the college or university, during~~  
133 ~~the pendency of any adjudication of the student disciplinary action.~~

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136 **Part 3. Consensual Relationships.** An employee of Minnesota State Colleges and  
137 Universities shall not enter into a consensual relationship with a student or an employee over  
138 whom he or she exercises direct or otherwise significant academic, administrative,  
139 supervisory, evaluative, counseling, or extracurricular authority or influence. In the event a  
140 relationship already exists, each college and university and system office shall develop a  
141 procedure to reassign evaluative authority as may be possible to avoid violations of this  
142 policy. This prohibition does not limit the right of an employee to make a recommendation on  
143 personnel matters concerning a family or household member where the right to make  
144 recommendations on such personnel matters is explicitly provided for in the applicable  
145 collective bargaining agreement or compensation plan.

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148 **Part 4. Retaliation.** Retaliation as defined in this policy is prohibited in the system office,  
149 colleges and universities. Any individual subject to this policy who intentionally engages in  
150 retaliation shall be subject to disciplinary or other corrective action as appropriate.

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152 **Part 5. Policies and procedures.** The chancellor shall establish procedures to implement this  
153 policy. The nondiscrimination in employment and education opportunity policy and  
154 procedures of colleges and universities shall comply with Policy 1B.1 and Procedure 1B.1.1.

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157 *Date of Adoption:* 9/20/94

158 *Date of Implementation:* 9/20/94

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160 ***Date & Subject of Revisions:***

161 *6/21/06 - Amended policy to streamline and clarify language. Part 3 was amended to prohibit relations between employees*  
162 *and students or employees over whom the employee exercises direct or significant authority or influence. Amendments do*  
163 *not take effect until November 1, 2006.*

164 *12/20/95 - Added everything after the first paragraph.*

165 *There is no additional HISTORY for policy 1B.1.*