

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

Agenda Item Summary Sheet

Committee: Diversity and Equity

Date of Meeting: January 28, 2015

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

Outline of Key Points/Policy Issues:

On May 11, 2014, Governor Mark Dayton signed the Women’s Economic Security Act (WESA), which expands the Minnesota Human Rights Act to cover “familial status.” Previously, familial status was limited only to the housing context: landlords could not deny housing to an individual who was living with a minor child or who was pregnant. Now, with the passage of the Women’s Economic Security Act, an individual who is living with a minor child or who is pregnant will have protection under Minnesota employment law: an employer cannot treat such individuals differently from other employees based on their familial status. In response to that legislation, we propose the above change to the policy.

Background Information:

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

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

BOARD ACTION

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

BACKGROUND: The Board of Trustees approved this policy initially in 1994 and amended the policy in 2006 and in 2012. Due to a recent Legislative change, it is proposed the language be amended to include familial status as a protected class in employment.

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 November 3, 2014:

- 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 Equal Opportunity and Nondiscrimination in Employment and Education.

BOARD OF TRUSTEES
MINNESOTA STATE COLLEGES AND UNIVERSITIES

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

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

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.

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, sexual orientation, gender identity, or gender expression. In addition, discrimination in employment based on [familial status or](#) 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, sexual orientation, gender identity, ~~or~~ gender expression, [or familial status](#) 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

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

35
36 This policy shall apply to all individuals affiliated with Minnesota State Colleges and
37 Universities, including but not limited to, its students, employees, applicants, volunteers,
38 agents, and Board of Trustees, and is intended to protect the rights and privacy of both the
39 complainant and respondent and other involved individuals, as well as to prevent retaliation or
40 reprisal. Individuals who violate this policy shall be subject to disciplinary or other corrective
41 action.

42
43 This policy supersedes all existing system, college, and university equal opportunity and
44 nondiscrimination policies.

45 46 **Part 2. Definitions.**

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

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

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

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

77 **Subpart D. Employee.** Employee means any individual employed by Minnesota State

78 Colleges and Universities, including all faculty, staff, administrators, teaching assistants,
79 graduate assistants, residence directors and student employees.

80
81 **Subpart E. Protected Class.** For purposes of this policy:

- 82 1. Protected class includes- race, sex, color, creed, religion, age, national origin,
83 disability, marital status, status with regard to public assistance, sexual orientation,
84 gender identity, or gender expression. In addition, familial status and membership or
85 activity in a local human rights commission are is-a protected classes in employment.
- 86 2. This policy prohibits use of protected class status as a factor in decisions affecting
87 education and employment where prohibited by federal or state law.

88
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) assisted or participated in any manner in an investigation, or process under this policy,
93 regardless of whether a claim of discrimination or harassment is substantiated;
- 94 c) 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.

103
104 Retaliation may occur whether or not there is a power or authority differential between the
105 individuals involved.

106
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 any college or university or the system
113 office from taking immediate action to protect victims of alleged sexual abuse. Board Policy
114 1B.3 Sexual Violence addresses sexual violence.

115
116 **Subpart H. Student.** For purposes of this policy, the term “student” includes all persons
117 who:

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

3. Are not officially enrolled for a particular term but who have a continuing relationship with the college or university;
4. Have been notified of their acceptance for admission or have initiated the process of application for admission or financial aid; or
5. Are living in a college or university residence hall although not enrolled in, or employed by, the institution.

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

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

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

Date of Adoption: 9/20/94

Date of Implementation: 9/20/94

Date & Subject of Revisions:

[1/28/15 – Amended to include familial status as a protected class protected from discrimination in employment.](#)

5/15/13 - Amended a technical error in 1B.1, Part 2, Subpart C3, changing "purpose and effect" to "purpose or effect" to be consistent with the requirement of state and federal law and with Board Policy 1B.1, in the first section of Part 2.

11/14/12 - Amended the name of the policy to include equal opportunity. Amended policy by expanding language on equal opportunity; adding gender expression and gender identity as protected classes protected from discrimination; specifically prohibiting retaliation on the basis of participation in a discrimination complaint under state or federal law; modifying the definition of student for purposes of the policy; and other changes to streamline or clarify language. Amendments take effect upon adoption.

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

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

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