

## Bemidji State University Policies

<b>Policy Name: Report/Complaint of Discrimination/Harassment Investigation and Resolution Procedure</b>	<b>Effective Date: July 1, 2018</b>
<b>Policy Owner: Assistant to the President - Affirmative Action</b>	Last Review: 4/1/2018
	Next Review: 9/1/2021

### Policy Statement

This procedure is designed to further implement Bemidji State University's policy relating to nondiscrimination by providing a process through which individuals alleging violation of the Equal Opportunity and Nondiscrimination in Employment and Education policy may pursue a complaint. This includes allegations of retaliation, or discrimination or harassment based on sex, race, age, disability, color, creed, national origin, religion, sexual orientation, gender identity, gender expression, marital status, or status with regard to public assistance. In addition, discrimination in employment based on membership or activity in a local commission as defined by law is prohibited.

### Scope and Purpose of Policy

#### Subpart A. Purpose.

**1. General information.** This procedure shall apply to all individuals affiliated with Bemidji State University, including its students, employees, and applicants for employment, and is intended to protect the rights and privacy of both the complainant and respondent and other involved individuals, as well as to prevent retaliation/reprisal.

Individuals who violate this procedure shall be subject to disciplinary or other corrective action.

A single act of discrimination or harassment may be based on more than one protected class status. For example, discrimination based on anti-Semitism may relate to religion, national origin, or both; discrimination against a pregnant woman might be based on sex, marital status, or both; discrimination against a transgender or transsexual individual might be based on sex or sexual orientation.

Not every act that may be offensive to an individual or group constitutes discrimination or harassment. Harassment includes action beyond the mere expression of views, words, symbols or thoughts that another individual finds offensive. To constitute a violation of the Equal Opportunity and Nondiscrimination in Employment Policy conduct must be considered sufficiently serious to deny or limit a student's or employee's ability to participate in or benefit from the services, activities, or privileges provided by Bemidji State University.

**2. Consensual Relationships.** Bemidji State University's Equal Opportunity and Nondiscrimination in Employment and Education prohibits consensual relationships between an employee and a student or another employee over whom he or she exercises direct or otherwise significant academic,

administrative, supervisory, evaluative, counseling, or extracurricular authority or influence, whether or not both parties appear to have consented to the relationship, except as noted.

Examples of prohibited consensual relationships include, but are not limited to:

- An employee and a student if the employee is in a position to evaluate or otherwise significantly influence the student's education, employment, housing, participation in athletics, or any other college or university activity (employee includes, for example, graduate assistants, administrators, coaches, advisors, program directors, counselors and residence life staff);
- A faculty member and a student who is enrolled in the faculty member's course, who is an advisee of the faculty member, or whose academic work is supervised or evaluated by the faculty member; and
- A supervisor and an employee under the person's supervision.

A faculty member or other employee is prohibited from undertaking a romantic or sexual relationship or permitting one to develop with a student or supervisee who is enrolled in the person's class or is subject to that person's supervision or evaluation.

#### **Subpart B. Scope.**

**1. Allegations of sexual violence.** This procedure is not applicable to allegations of sexual violence; allegations of sexual violence are handled pursuant to Bemidji State University' Sexual Violence Policy and Response to Sexual Violence Policy.

**2. Complaints not based on membership in a protected class.** In addition, harassment and discrimination complaints not arising from alleged violations of the Equal Opportunity and Nondiscrimination in Employment Policy, are to be addressed under other appropriate policies and established practices.

#### **3. Consensual relationships.**

- a. If a consensual, romantic or sexual relationship exists between an employee and another individual and subsequent events create a supervisor/supervisee, faculty/student or similar relationship between them, the person with evaluative or supervisory authority is required to report the relationship to his or her supervisor so that evaluative functions can be reassigned if possible.
- b. This procedure does not cover consensual relationships between individuals that do not require one to exercise direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority or influence over the other.
- c. This prohibition does not limit the right of an employee to make a recommendation on personnel matters concerning a person with whom they have a consensual relationship where the right to make recommendations on such personnel matters is explicitly provided for in the applicable collective bargaining agreement or compensation plan.

## Definitions

The definitions in Bemidji State University's Equal Opportunity and Nondiscrimination in Employment and Education Policy also apply to this procedure.

**Subpart A. Designated officer.** Designated officer means an individual designated by the president or chancellor to be primarily responsible for conducting an initial inquiry, determining whether to proceed with an investigation under this procedure, and investigating or coordinating the investigation of reports and complaints of discrimination/harassment in accordance with this procedure.

Prior to serving as the designated officer, the individual must complete investigator training provided by the system office.

**Subpart B. Decisionmaker.** Decision maker means a high level administrator designated by the president or chancellor to review investigative reports, to make findings whether Bemidji State University's Equal Opportunity and Nondiscrimination in Employment and Education Policy has been violated based upon the investigation, and to determine the appropriate action for the institution to take based upon the findings.

Prior to serving as a decision maker for complaints under this policy and procedure, administrators must complete decision maker training provided by the system office.

**Subpart C. Retaliation.** Retaliation is as defined in Bemidji State University's Equal Opportunity and Nondiscrimination in Employment and Education policy.

## Procedures

### Part 1. Reporting Incidents of Discrimination/Harassment.

**Subpart A. Reporting an incident.** Any individual who believes she or he has been or is being subjected to conduct prohibited by the Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy is encouraged to report the incident to the designated officer. The report/complaint should be brought as soon as possible after an incident occurs.

Any student, faculty member or employee who knows of, receives information about or receives a complaint of discrimination/harassment is strongly encouraged to report the information or complaint to the designated officer of the university.

**Subpart B. Duty to report.** Administrators and supervisors shall refer allegations of conduct that they reasonably believe may constitute discrimination or harassment under the Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy to the designated officer, or in consultation with the designated officer may inquire into and resolve such matters.

**Subpart C. Reports against a president.** A report/complaint against a president of a college or university shall be filed with the system office. However, complaints against a president shall be processed by Bemidji State University if the president's role in the alleged incident was limited to a

decision on a recommendation made by another administrator, such as tenure, promotion or non-renewal, and the president had no other substantial involvement in the matter.

**Subpart D. Reports against system office employees or Board of Trustees.** For reports/complaints that involve allegations against system office employees, the responsibilities identified in this procedure as those of the president are the responsibilities of the chancellor. Reports/complaints that involve allegations against the chancellor or a member of the Board of Trustees shall be referred to the chair or vice chair of the Board for processing. Such reports/complaints may be assigned to appropriate system personnel or outside investigatory assistance may be designated.

**Subpart E. False statements prohibited.** Any individual who is determined to have provided false information in filing a discrimination report/complaint or during the investigation of such a report/complaint may be subject to disciplinary or corrective action.

**Subpart F. Withdrawn complaints.** If a complainant no longer desires to pursue a complaint, Bemidji State University reserves the right to investigate and take appropriate action.

## **Part 2. Right to Representation.**

In accordance with federal law and applicable collective bargaining agreement and personnel plan language, represented employees may have the right to request and receive union representation during an investigatory meeting.

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.

## **Part 3. Investigation and Resolution.**

Bemidji State University has an affirmative duty to take timely and appropriate action to stop behavior prohibited by the Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy, conduct investigations and take appropriate action to prevent recurring misconduct.

**Subpart A. Personal resolution.** This procedure neither prevents nor requires the use of informal resolution by an individual who believes he or she has been subject to conduct in violation of Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy. In such a situation, the individual should clearly explain to the alleged offender as soon as possible after the incident that the behavior is objectionable and must stop. If the behavior does not stop or if the individual believes retaliation may result from the discussion, the individual should report to the designated officer. Under no circumstance shall an individual be required to use personal resolution to address prohibited behaviors.

**Subpart B. Information privacy.** Confidentiality of information obtained during an investigation cannot be guaranteed; such information, however, will be handled in accordance with applicable federal and state data privacy laws.

**Subpart C. Processing the complaint.** The designated officer must be contacted in order to initiate a report/complaint under this procedure. The scope of the process used in each complaint/report shall be determined by the designated officer based on the complexity of the allegations, the number and relationship of individuals involved, and other pertinent factors.

1. **Jurisdiction.** The designated officer shall determine whether the report/complaint is one which should be processed through another system office or university procedure available to the complainant; if appropriate, the designated officer shall direct the complainant to that procedure as soon as possible.
2. **Conflicts.** The designated officer should identify to the president or chancellor/designee any real or perceived conflict of interest in proceeding as the designated officer for a specific complaint. If the president or chancellor/designee determines that a conflict exists, another designated officer shall be assigned.
3. **Information provided to complainant.** At the time the report/complaint is made, the designated officer shall:
  - a.) inform the complainant of the provisions of the Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy and this procedure;
  - b.) provide a copy of or Web address for the Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy and this procedure to the complainant;
  - c.) determine whether other individuals are permitted to accompany the complainant during investigatory interviews and the extent of their involvement; and
  - d.) inform the complainant of the provisions of Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy prohibiting retaliation.
4. **Complaint documentation.** The designated officer shall insure that the complaint is documented in writing. The designated officer may request, but not require the complainant to document the complaint in writing using the complaint form of the university.
5. **Information provided to the respondent.** At the time initial contact is made with the respondent, the designated officer shall inform the respondent in writing of the existence and general nature of the complaint and the provisions of the nondiscrimination policy. At the initial meeting with the respondent, the designated officer shall:
  - a.) provide a copy of or Web address for Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy 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 designated officer, the respondent may provide a written response to the allegations;
- d.) determine whether other individuals are permitted to accompany the respondent during investigative interviews and the extent of their involvement; and
- e.) inform the respondent of the provisions of Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy prohibiting retaliation.

**6. Investigatory process.** The designated officer 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 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; and
- e.) handle all data in accordance with applicable federal and state privacy laws.

**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, in consultation with system legal counsel, summarily suspend a student at any point in time 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) class 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. **No basis to proceed.** At any point during the processing of the complaint, the designated officer may determine that there is no basis to proceed under Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy. The designated officer shall refer the complaint as appropriate. The designated officer shall notify the complainant and respondent of the outcome as appropriate, in accordance with applicable data privacy laws.
9. **Timely Completion.** Colleges, universities and the system office must provide resources sufficient to complete the investigative process and issue a written response within 60 days after a complaint is made, unless reasonable cause for delay exists. The designated officer shall notify the complainant and respondent if the written response is not expected to be issued within the 60 day period. The college, university or system office must meet any applicable shorter time periods, including those provided in the applicable collective bargaining agreement.

**Subpart D. Resolution.** After processing the complaint the designated officer may consider one or more of the following methods to resolve the complaint as appropriate:

1. conduct or coordinate education/training;
2. facilitate voluntary meetings between the parties;
3. recommend separation of the parties, after consultation with appropriate system office or university personnel;
4. other possible outcomes may include recommending changes in workplace assignments, enrollment in a different course or program, or other appropriate action;
5. the system office or university may use alternative dispute resolution or mediation services as a method of resolving discrimination or harassment complaints. Alternative dispute resolution and mediation options require the voluntary participation of all parties to the complaint;
6. upon completion of the inquiry, the designated officer may dismiss or refer the complaint to others as appropriate.

**Subpart E. 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 feels additional steps should be taken, the procedures in this subpart shall be followed.

1. **Designated officer.** The designated officer shall:

a.) prepare an investigation report and forward it to the decisionmaker for review and decision;

b.) take additional investigative measures as requested by the decisionmaker; and

c) be responsible for coordinating responses to requests for information contained in an investigation report in accordance with the Minnesota Government Data Practices Act and other applicable law including, but not limited to, the Family Educational Rights and Privacy Act (FERPA). In determining the appropriate response, the designated officer shall consult with the campus data practice compliance official and/or the Office of General Counsel.

2. **Decisionmaker.** After receiving the investigation report prepared by the designated officer, the decisionmaker shall:

a.) determine whether additional steps should be taken prior to making the decision.

Additional steps may include:

1. a request that the designated officer conduct further investigative measures;
2. a meeting with the complainant, respondent or other involved individuals. If a meeting involving a represented employee is convened, the complainant or respondent may choose to be accompanied by the bargaining unit representative, in accordance with the applicable collective bargaining agreement and federal and state law; and
3. 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 the Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy has been established;

c.) when making the decision, take 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.) determine the nature, scope and timing of disciplinary or corrective action and the process for implementation if a violation of the nondiscrimination policy occurs. This may include consultation with human resources or supervisory personnel to determine appropriate discipline;

e.) As appropriate, consistent with applicable state and federal data privacy laws, report in writing to the complainant, respondent and the designated officer her or his findings, and the basis for those findings, as to whether the Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy has been violated.

f.) Conduct that is determined not to have violated the Bemidji State University Equal



Opportunity and Nondiscrimination in Employment and Education Policy shall be referred to another procedure for further action, if appropriate.

#### **Part 4. System Office or University Action.**

The system office, college, or university shall take the appropriate corrective action based on results of the investigation, and the designated officer shall make appropriate inquiries to ascertain the effectiveness of any corrective or disciplinary action. Complainants are encouraged to report any subsequent conduct that violates Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy, as well as allegations of retaliation.

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 system office or university. In accordance with state law, the system office or university is responsible for filing the complaint disposition concerning complaints against employees with the Commissioner of Employee Relations within 30 days of final disposition.

#### **Part 5. Appeal.**

**Subpart A. Filing an appeal.** The complainant or the respondent may appeal the decision of the decisionmaker. An appeal must be filed in writing with the president or designee within ten (10) business days after notification of the decision. The appeal must state specific reasons why the complainant or respondent believes the decision was improper. 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 decisionmaker.

**Subpart B. Effect of review.** For employees represented by a collective bargaining agreement, an appeal under this procedure is separate and distinct from, and is not in any way related to, any contractual protections or procedures. During the pendency of the appeal disciplinary or corrective action taken as a result of the decision shall be enforced. In addition, in cases involving sanctions of suspension for ten (10) days or longer, students shall be informed of their right to a contested case hearing under Minnesota Statutes §14.

**Subpart C. Appeal process.** The president or designee shall review the record and determine whether to affirm or modify the decision. 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 shall be made within a reasonable time and the complainant, respondent and designated officer shall 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 6. Education and Training.**

The system office and universities shall provide education and training programs to promote awareness and prevent discrimination/harassment, such as educational seminars, peer-to-peer counseling, operation of hotlines, self-defense courses, and informational resources. Education and training programs should include education about Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy and this procedure. The university shall

promote awareness of Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy and this procedure, and shall publicly identify the designated officer.

**Part 7. Distribution of Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy and this Procedure.**

Information regarding Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy and this procedure shall, at a minimum, be distributed to students at the time of registration and to employees at the beginning of employment. Distribution may be accomplished by posting on an internet Web site, provided all students and employees are directly notified of how to access the policy and procedure by an exact address, and that they may request a paper copy. Copies of the policy and procedure shall be conspicuously posted at appropriate locations at the system office and on college and university campuses at all times and shall include the designated officers' names, locations and telephone numbers.

Designated officers also must be identified by name, location and phone number in informational publications such as student catalogs, student and employee handbooks, bulletin boards, campus Web sites and other appropriate public announcements.

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

During and upon the completion of the complaint process, the complaint file shall be maintained in a secure location in the office of the designated officer for the system office, college or university in accordance with the applicable records retention schedule. Access to the data shall 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 or other applicable law.

**Rationale**

Bemidji State University 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, Bemidji State University is committed to a policy of equal opportunity and nondiscrimination in employment and education.

**Supporting References**

- Minnesota State Board Policy 1B.1 Equal Opportunity and Nondiscrimination in Employment and Education <http://www.minnstate.edu/board/Policy/1b01.html>
- Minnesota State Board Procedure 1B.1.1 Report/Complaint of Discrimination/Harassment Investigation and Resolution <http://www.minnstate.edu/board/procedure/1b01p1.html>
- Bemidji State University Equal Opportunity and Nondiscrimination in Employment and Education Policy
- Minnesota State Board Policy 3.6 Student Conduct <http://www.minnstate.edu/board/Policy/3-06.pdf>
- Bemidji State University Student Code of Conduct <https://www.bemidjistate.edu/offices/development-enrollment/handbook/conduct/>

<b>Policy:</b>		
<b>Formal Review Process</b>	<b>Date Submitted</b>	<b>Date Reviewed</b>
<b>MSUAASF</b>		
<b>BSUFA</b>		
<b>Classified Meet and Confer</b>		
<b>BSUSA</b>		
<b>Provost/Vice President Recommendation</b>		<b>Date</b>
<b>Presidents Approval</b>		<b>Date</b>