

BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES
ITEMS FOR DISCUSSION AND ACTION\ACADEMIC AND PERSONNEL

ACTION: **Final Round Approval of Revisions to Board Policy 5007;
Anti-Harassment/Discrimination Policy and New Board Policy
5012; Chosen Name and Gender Identity**

Policy 5007 has been revised to incorporate state law protections against color and race discrimination that were passed in LB451 during the last legislative session. Since Policy 5007 needed to be revised to provide clarification related to color and race discrimination to communicate expectations to employees, we took the opportunity to improve the policy by including definitions for all types of prohibited discrimination. Except for the addition of pregnancy, no changes are being made to the current list of protected classes of employees approved by the Board 2015. The list of protected classes aligns closely with those listed by other higher education institutions in Nebraska, both public and private. Current federal Equal Employment Opportunity Commission (EEOC) guidance related to protected classes was used to develop the definitions depicted in Section B. The current language in Policy 5007 reflected in Attachment I has been updated since the original posting of this item in response to constituent feedback.

Policy 5012 is a new policy to address chosen names and gender identity issues for employees, similar to the policy provisions that were adopted for students when Policy 3660 was approved in July 2021. The policy is intended to address recent changes to the PeopleSoft SAP platform (current Human Resource information system) which added the functionality for permitting employees to provide a chosen name, specify their gender identity, and preferred pronouns.

The System Office recommends approval of the Revisions to Board Policy 5007 and New Board Policy 5012..

ATTACHMENTS:

- Revisions to Board Policy 5007 (PDF)
- Board Policy 5012 (PDF)

NEBRASKA STATE COLLEGES

Personnel

POLICY: Anti-Harassment/Discrimination Policy

NUMBER: 5007

A. BOARD POLICY PURPOSE

—The purpose of this policy is to establish clearly and unequivocally that the Nebraska State
—College System prohibits every form of unlawful harassment and discrimination and to set
—forth procedures for ~~employees to reporting~~ workplace harassment or discrimination and
responding to such reports.

B. DEFINITIONS

- 1. Age Discrimination:** Age discrimination involves unfavorable treatment due to age. Protections from age discrimination apply to people who are age forty (40) or older.
- 2. Color Discrimination:** Color discrimination involves unfavorable treatment because of skin color complexion. *Also see race discrimination below.*
- 3. Disability Discrimination:** –Disability discrimination involves unfavorable treatment because of a history of a disability or because a person is believed to have a physical or mental impairment that is not transitory and minor (even if they do not have such and impairment).
- 4. Gender Identity Discrimination:** Gender identity discrimination involves unfavorable treatment because of a person's gender identity, appearance, mannerisms, or other gender-related characteristics.
- 5. Pregnancy Discrimination:** Pregnancy discrimination involves unfavorable treatment due to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth warranting similar accommodations consistent with temporarily disabled employees.
- 6. National Origin Discrimination:** National origin discrimination involves unfavorable treatment because a person is from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).
- 7. Race Discrimination:** Race discrimination involves unfavorable treatment because of their race, or because of personal characteristics associate with race. Race is inclusive of characteristics such as skin color, hair texture, and protective hairstyles or certain facial features. Race/color discrimination can also involve treating people unfavorably because they are married to (or associated with) a person of a certain race or color. Protective hairstyles include braids, locks and twists.
- 8. Religion Discrimination:** Religion discrimination involves unfavorable treatment because of religious practices or beliefs (or because a person does not have religious practices or beliefs).
- 9. Sex Discrimination:** Sex discrimination involves unfavorable treatment based on sex. This includes discrimination and harassment based on sexual orientation or gender identity.
- 10. Sexual Orientation Discrimination:** Sexual orientation discrimination includes offensive jokes or comments related to sexual orientation, homophobic slurs or name calling, and

unwelcome touching or sexual gestures.

C. POLICY

It is the policy of the ~~Nebraska State College~~ Board ~~of Trustees~~ to provide a workplace free of tensions involving matters which do not relate to the System's business. In particular, an atmosphere of tension created by unlawful discrimination or harassment does not belong in the workplace. Discrimination and harassment based on race, color, religion, sex, sexual orientation, gender identity, pregnancy, disability, age, marital-status, national origin, and any other categories protected by relevant federal, state, or local law are unlawful and prohibited by the ~~Nebraska State College~~ Board ~~of Trustees~~.

Unlawful discrimination against or harassment of employees, students, applicants for employment and admission, and any visitors to campus are prohibited. Unlawful discrimination includes, without limitation, the unjust or prejudicial treatment of individuals based on their belonging to a protected category. Unlawful harassment includes, without limitation, verbal harassment (derogatory comments and/or slurs, negative stereotyping, intimidating behavior), physical harassment (assault or physical interference), visual harassment (posters, cartoons, drawings, or improper written or graphic material), sexual/gender harassment, and innuendo. Further, other forms of unlawful harassment include actions that have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Each College has designated an individual to coordinate the College's nondiscrimination efforts to comply with regulations implementing Title II of the Americans with Disabilities Act, Titles VI and VII of the Civil Rights Act, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act. Inquiries regarding nondiscrimination policies and practices may be directed to the Compliance Coordinators assigned at each College and identified on each College website. Complaints of sexual harassment are addressed separately by Board Policy 5011 and should be directed to the College's Title IX Coordinator. Complaints of other discrimination on the basis of sex are addressed in this policy.¹

B.D. PROCEDURES

If any employee has reason to believe that they or another employee has been unlawfully harassed or discriminated against, that employee should report the violation to a supervisor, the Director of Human Resources, Title IX Coordinator, or Vice President. If the reporting employee feels that the report does not achieve satisfactory results, a second report should be made to another administrator. Reports from employees in the System Office can be directed to the Chancellor or Vice Chancellor for Employee Relations.

Any complaints reported will be kept confidential to the extent possible and the reporting employee shall be assured that no negative consequences will be suffered as a result of making a report in good faith. All complaints are to be promptly and thoroughly investigated. If the

¹ The Office for Civil Rights can be contacted by the following methods: Email – OCR@ed.gov; Telephone – 800-421-3481; FAX – 202-453-6012; TDD – 800-877-8339; Website – <https://ocrcas.ed.gov/contact-ocr>. The OCR National Headquarters is located at U.S. Department of Education, Office for Civil Rights, Lyndon Baines Johnson Department of Education Building, 400 Maryland Avenue, SW, Washington, DC 20202-1100.

investigation reveals that unlawful workplace harassment or discrimination has occurred, disciplinary action is to be immediately taken against the appropriate person or persons.

If the victim requests confidentiality, asks that the report not be pursued, or declines to participate in an investigation or disciplinary proceeding, the College will document the request. The College will take reasonable steps to investigate and respond to reports consistent with such a request, if possible. Requests will be evaluated and weighed against the College's responsibility to provide a safe and nondiscriminatory environment.

Victims will be informed that the College has a legal duty to include information about reports of criminal sexual misconduct in annual security report statistics which do not identify either the person claiming to have been subject to criminal sexual misconduct or the alleged perpetrator.

In addition to promptly investigating and addressing all reports of harassment or discrimination, ongoing educational efforts and training on the issues of unlawful harassment, sexual abuse, and child molestation shall continue for employees.

Policy Adopted: October 1984/10/26/84

Policy Revised: March 1994, September 2004, April 2014, November 2014, March 2015 – Effective July 2015, March 2017, June 2017, July 2020, November 2021

~~3/11/94~~

~~Policy Revised: 9/17/04~~

~~Policy Revised: 4/25/14~~

~~Policy Revised: 11/7/14~~

~~Policy Revised: 3/26/15 Effective: 7/1/15~~

~~Policy Revised: 3/24/17~~

~~Policy Revised: 6/16/17~~

~~Policy Revised: 7/24/20~~

NEBRASKA STATE COLLEGES

Personnel

POLICY: Chosen Name and Gender Identity

NUMBER: 5012

A. PURPOSE

The purpose of this policy is to create a respectful and inclusive working environment for all employees. The Board recognizes some employees in the NSCS community use chosen names to identify themselves and may self-assert a gender other than their sex. Therefore, employees should respect the chosen name and gender identity of other employees wherever possible within the course of College, education, business and communication.

B. DEFINITIONS

- 1. Official Name of Record (or Legal Name):** The name that appears on an employee's passport, driver's license, birth certificate, or U.S. Social Security Card.
- 2. Chosen Names:** Names that an employee wants to be known by or identifies with that are different from the individual's Official Name of Record.
- 3. Sex:** Assigned at birth (Male [M], Female [F], Non-Binary and/or Intersex [X]) and may be legally changed within a lifetime. For the purpose of this policy, sex means both an employee's sex assigned at birth or an employee's legally recognized sex, which may be found on a passport, driver's license, or birth certificate.
- 4. Gender Identity:** An employee's internal knowledge of their own gender (e.g., being a man, a woman, nonbinary, or another gender). For example, transgender people's gender identity may be different from their sex.

C. POLICY

Employees may use a chosen name to identify themselves where possible and appropriate. Employees may identify and use a Gender Identity instead of, or in addition to, their sex where possible and appropriate.

1. Permissible Use of Chosen Names

Except as prohibited in this Policy, employees may use chosen names to identify themselves.

2. Prohibited Use of Chosen Names

Employees will be required to provide their full legal name when they apply for employment or complete employment and benefit forms. Chosen names shall not be used for the purpose of misrepresentation, avoiding legal obligations, or otherwise in any manner that violates NSCS policies or federal, state, or local laws. Chosen names that are not administratively possible to implement, including, without limitation, symbols or images, are prohibited. The Colleges reserve the right to remove any chosen name without

prior notice to the individual due to misuse or abuse of this chosen name policy, including, but not limited to, misrepresentation, attempting to avoid legal obligations, or the use of highly offensive or derogatory names.

3. Use and Display of Chosen Names

At this time, chosen names will appear in all NSCS systems where available and technically feasible. Going forward, the NSCS will attempt to display chosen names where feasible and appropriate and will make a good faith effort to update reports, documents, and systems designated to use chosen names. Designating a chosen name is not a legal name change.

- Instances in which chosen names will be displayed include, but are subject to change and not limited to:
 - Employee Directories
 - NSCS Email Name and Address
 - Awards Certificates
 - Human Resources and Business Systems where applicable and where a legal name is not required
- Instances in which the Official Name of Record will be used include, but are subject to change and not limited to:
 - IRS Documentation (e.g. W2, 1095C)
 - Human Resources Systems (e.g., Remuneration, Insured Benefits)
 - Public Directory Information Requests from Third Parties
 - Benefit Vendor Documents.
 - Data Transmitted to Governmental Agencies or Servicing Agencies
 - When Required by Law

4. Permissible Use of Gender Identity

An employee's gender identity may be referenced in NSCS communications and information materials, except where the use of sex is required for a business or legal need. Not all information systems, databases, and processes may be able to store or display a separate gender identity, and there may be uses that require display of sex; therefore, employees should always be prepared to reference their sex as well and may need to provide corresponding identification when necessary.

5. Use and Display of Gender Identity

Employees are free to determine the gender identity they want to be known by in NSCS information systems. In instances where an employee uses a gender identity in various NSCS systems, it should be understood that for business, it will still be necessary that sex be used wherever sex is required for a business or legal need.

Policy Adopted: November 2021