

PERSONNEL, NEBRASKA STATE COLLEGE SYSTEM

POLICY: 5007

Anti-Harassment/Discrimination Policy

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BOARD 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 harassment or discrimination based on race, color, religion, sex, sexual orientation, gender identity, disability, age, marital-status, national origin, and any other categories protected by relevant federal, state, or local law do not belong in the workplace. 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.

Unlawful harassment or discrimination of employees, job applicants, or any visitors to a campus by other employees or students is prohibited. 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.

This policy elaborates further on the definition and scope of sex/gender harassment.

Sex harassment includes Dating Violence, Domestic Violence, Sexual Assault, Sexual Violence, Stalking and Retaliation as defined below.

Sex/Gender Harassment: Sex/gender harassment is unwelcome conduct of a sexual nature that is sex or gender based. It is a violation of state and federal law. Sex/gender harassment can include (but is not limited to) the following:

- Unwelcome sexual advances;
- Requests for sexual favors;
- Cyberbullying;
- Other verbal, nonverbal, online, or physical conduct of a sexual nature; and
- Physical aggression, intimidation, or hostility based on sex or sex-stereotyping, sexual orientation and/or gender identity, even if those acts do not involve conduct of a sexual nature.

Harassment does not have to include an intent to harm, be directed at a specific target, or involve repeated incidents. Sex/gender harassment is a violation of this policy.

i. Quid Pro Quo Harassment

Quid Pro Quo harassment is defined as unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature, by a person who has authority or power over another, when submission to the sexual conduct is made (either explicitly or implicitly) a condition of a person's employment, participation in College programs or activities, or is used in evaluating a person's employment performance, development, or progress or in making another decision that will affect the person's relationship with the Colleges.

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ii. *Hostile Environment Harassment*

Sex and/or gender harassment creates a hostile environment for a person when it is so severe, pervasive, or persistent that it interferes with, denies, or limits the person's ability to perform their job duties, or to participate in or benefit from the College's services, activities, or opportunities because of their sex or gender. A single incident, if sufficiently severe, can constitute a hostile environment. If conduct is sufficiently severe, it can create a hostile environment without being repetitive. Likewise, conduct that is less severe may not be sufficient to create a hostile environment without repeated incidents.

The determination regarding whether a hostile environment has been created requires objective and subjective consideration of the pertinent circumstances, including the type of conduct alleged, its severity, duration, and frequency, the context, including the person's age, sex, and relationship to each other, and any history of similar behavior.

iii. *Retaliatory Harassment*

Retaliation is any adverse or negative action taken against a person due to their report of a policy violation, their cooperation in an investigation into an alleged policy violation, or their engagement in any other protected activity.

Dating Violence: Dating violence is violence (*violence includes, but is not limited to sexual or physical abuse or the threat of such abuse*) committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, (iii) the frequency of interaction between the persons involved in the relationship.

Dating violence can occur when one person purposely hurts or scares someone they are dating. Dating violence can be physical, emotional, and/or sexual abuse.

Domestic Violence: Domestic violence shall mean felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws.

Domestic violence includes patterns of abusive behavior in relationships used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behavior that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, coerces, threatens, blames, hurts, injures, or wounds someone.

Under Neb. Rev. Stat. §28-323, domestic assault occurs when a person; (a) intentionally and knowingly causes bodily injury to his or her intimate partner; (b) threatens an intimate partner with imminent bodily injury; or, (c) threatens an intimate partner in a menacing manner. Intimate partner means a spouse; a former spouse; persons who have a child in common whether or not they have been married or lived together at any time; and persons who are or were involved in a dating relationship.

Sexual Assault: Sexual assault shall mean an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sexual assault is contact or sexual penetration that occurs without the consent of the recipient.

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Sexual contact means the intentional touching of a person's intimate parts or the intentional touching of a person's clothing covering the immediate area of the person's intimate parts. Sexual contact also includes when a person is forced to touch another person's intimate parts or the clothing covering the immediate area of the person's intimate parts. Sexual contact shall include only such contact which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party.

Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse or any intrusion of any part of the person's body or of a manipulated object into the genital or anal openings of another person.

Sexual Violence: Any intentional act of sexual contact (touching or penetration) that is accomplished toward another without their consent. Such acts may include, but are not limited to, forced oral sex, forced anal penetration, insertion of foreign objects into the body, and any act of sexual intercourse "against someone's will." This includes, but is not limited to, the use of a weapon, physical violence or restraint, verbal threats, intimidation, and threats of retaliation or harm. Sexual violence includes Sexual Assault as defined in this policy. *Note:* It is never appropriate for allegations of sexual violence to be resolved by mediation.

Stalking: Stalking shall mean engaging in a course of conduct directed at a specific person that would cause a reasonable person to; (a) fear for their safety or the safety of others; or, (b) suffer substantial emotional distress.

- i. "Course of conduct" is defined as two or more acts (including, but not limited to) acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- ii. "Reasonable Person" is defined as a reasonable person under similar circumstances and with similar identities to the victim.
- iii. "Substantial emotional distress" is defined as significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Stalking includes a pattern of repeated and unwanted attention, harassment, contact or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking may include: threatening, repeatedly communicating with, or following a person who does not want the attention.

Retaliation: Any adverse or negative action taken against an individual due to their report of a policy violation, their cooperation in an investigation into an alleged policy violation, or their engagement in any other protected activity.

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 report workplace harassment or discrimination.

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.

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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 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.

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