



Procedure 1B.1.1 Investigation and Resolution

Part 1. Purpose

To implement Board Policy 1B.1 Equal Opportunity and Nondiscrimination in Employment and Education and provide a process for investigating and resolving allegations of violations of the policy.

Part 2. Definitions

The definitions in Board Policy 1B.1 also apply to this procedure.

Complainant

An individual who alleges they are the subject of discrimination, harassment, or retaliation as defined by Board Policy 1B.1.

Decision-maker

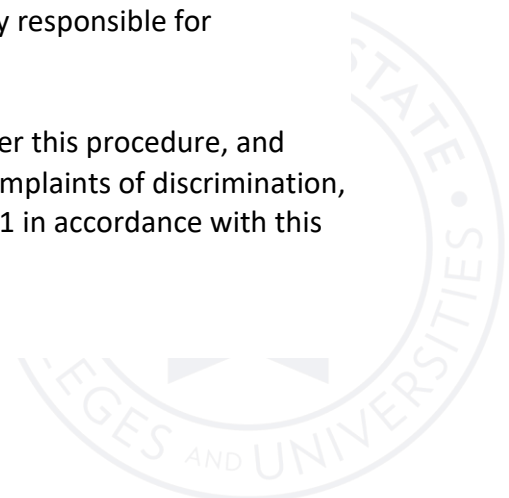
An administrator who:

- Completed decision-maker training provided by the system office within the past three years,
- Is designated by the president or chancellor to review investigation reports,
- Determines whether Board Policy 1B.1 has been violated based upon the investigation, and
- Determines or recommends the appropriate action for the college, university, or system office to take based upon the findings.

Designated officer

An individual who:

- Completed training provided by the system office within the past three years,
- Is designated by the president or chancellor to be primarily responsible for conducting an initial inquiry,
- Determines whether to offer informal resolution,
- Determines whether to proceed with an investigation under this procedure, and
- Investigates or coordinates the investigation of reports/complaints of discrimination, harassment, and retaliation as defined by Board Policy 1B.1 in accordance with this procedure.



Investigator

A person who:

- Has completed training provided by the system office within the past three years,
- Is designated by the designated officer to conduct an inquiry, investigate, or coordinate the investigation of reports/complaints of discrimination, harassment, and retaliation as defined by Board Policy 1B.1 in accordance with this procedure,
- Determines or recommends whether to proceed with an investigation under this procedure,
- Prepares investigation reports, and
- May be the designated officer.

Respondent

An individual who is alleged to have engaged in conduct that could constitute discrimination, harassment, or retaliation as defined in Board Policy 1B.1.

Part 3. Reporting Discrimination/Harassment/Retaliation

Subpart A. Reporting

Individuals who believe they or others have been or are being subjected to conduct prohibited by Board Policy 1B.1 are encouraged to make a report of the incident to a designated officer. Reports should be made as soon as possible after the alleged conduct occurs.

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

Subpart B. Duty to report

Administrators and supervisors shall report allegations of conduct that they reasonably believe may constitute discrimination, harassment, or retaliation as defined by Board Policy 1B.1 to the designated officer. Additionally, administrators and supervisors, in consultation with the designated officer, may inquire into and resolve such matters.

Subpart C. Reports/complaints against a president

A report/complaint against a college or university president must be filed with the system office designated officer. However, complaints against a president may be processed by the college or 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/complaints 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 must be referred to the board chair or vice chair for processing. Such reports/complaints may be assigned to appropriate Minnesota State 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 report/complaint or during the investigation of such a complaint may be subject to disciplinary or corrective action.

Subpart F. Withdrawn complaints

If a complainant withdraws their complaint, colleges, universities, and the system office may, at their discretion, investigate and take appropriate action.

Subpart G. Confidentiality of information not guaranteed

The confidentiality of information in a complaint or obtained during an investigation cannot be guaranteed; such information, however, will be handled in accordance with applicable federal and state data privacy laws.

Part 4. Right to Representation

Subpart A. Relation to collective bargaining agreements and personnel plans

In accordance with the law and applicable collective bargaining agreements, represented employees may have the right to request and receive union representation during an investigatory meeting and otherwise throughout the 1B.1.1 procedure.

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.

Subpart B. Students

Students have the opportunity to have an appropriate support person or advisor present at any interview or hearing, in a manner consistent with the governing procedures and applicable data practices law.

Part 5. Investigation and Resolution

The college, university, or system office shall take timely action to stop behavior prohibited by Board Policy 1B.1, conduct investigations, and take appropriate action to prevent recurring misconduct.

Subpart A. Personal resolution

This procedure neither prevents nor requires the use of personal resolution by individuals who believe they have been subjected to conduct in violation of Board Policy 1B.1. If an individual believes they are unsafe or fears retaliation, personal resolution should not be used. If there are questions regarding personal resolution, contact the designated officer.

Subpart B. Processing the complaint

The complainant should contact the designated officer to initiate a complaint under this procedure. Upon receipt of the complaint, the designated officer shall first undertake an initial inquiry. Based on the initial inquiry, the designated officer shall determine whether there is no basis to proceed, to offer informal resolution, or to proceed with formal investigation. If proceeding with formal investigation, the designated officer shall determine the scope of the process used in each complaint based on the complexity of the allegations, the number and relationship of individuals involved, and other pertinent factors. Reports/complaints not arising from alleged violations of Board Policy 1B.1, may be addressed under other appropriate policies and practices.

- 1. Jurisdiction.** The designated officer shall determine whether the complaint should be processed through a different policy or procedure or combined and resolved with Board Policy 1B.1 and this procedure. The designated officer shall direct the complainant to the different policy or procedure as soon as possible.
- 2. Conflicts.** The designated officer should identify to the president or chancellor or their designee any real or perceived conflict of interest in proceeding as the designated officer, investigator, or decision-maker for a specific complaint, including any conflict raised by the complainant or respondent. If the president or chancellor, or their designee determines that a conflict exists, another designated officer, investigator, or decision-maker must be assigned.
- 3. Information provided to complainant.** At the time the complaint is made, the designated officer shall:
 - a.) inform the complainant of the provisions of Board Policy 1B.1 including the provision prohibiting retaliation, and this procedure; and
 - b.) provide a copy of or link to Board Policy 1B.1 and this procedure to the complainant.
- 4. Complaint documentation.** The designated officer may request, but not require, the complainant to document the complaint in writing using the complaint form of the college, university, or system office. If the complainant does not document the complaint in writing, the designated officer shall do so.
- 5. No basis to proceed.** At any point during the processing of the complaint, including during the investigation, the designated officer may determine that there is no basis to proceed under Board Policy 1B.1. The designated officer may refer the complaint or complainant as appropriate. The designated officer shall notify the complainant and respondent of the outcome as appropriate, in accordance with applicable data privacy laws.
- 6. 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 Board Policy 1B.1. At the initial meeting with the respondent, the designated officer shall:

- a.) provide a copy of or link to Board Policy 1B.1, including the provision prohibiting retaliation, and this procedure to the respondent;
- b.) provide sufficient information to the respondent consistent with due process and federal and state data privacy laws to allow the respondent to respond to the substance of the complaint; and
- c.) inform the respondent that in addition to being interviewed by the designated officer, the respondent may provide a written response to the allegations;

7. Investigatory process. The designated officer shall:

- a.) conduct a fact-finding inquiry or investigation of the complaint, including appropriate interviews and meetings or delegate this responsibility to a trained investigator. In the latter situation, the investigator shall perform the duties of this part;
- b.) inform individuals that they are permitted to have a union representative or support person to accompany them during investigative interviews as appropriate;
- c.) inform the witnesses and other involved individuals of the prohibition against retaliation;
- d.) create, gather, and maintain investigative documentation as appropriate; and
- e.) handle all data in accordance with applicable federal and state privacy laws.

8. Interim actions.

- a.) Employee reassignment or administrative leave. Under appropriate circumstances, the president, chancellor or designee 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 complaint process. In determining whether to place an employee on administrative leave or reassignment, consideration must 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 summarily suspend a student at any point in time during the complaint process. A summary suspension may be imposed only in accordance with Board Policy 3.6 Student Conduct and associated system procedures. After the student has been summarily suspended, the complaint process should be completed within the shortest reasonable time period. If the process has not been completed within ten (10) days, the president or designee must reevaluate whether or not the summary suspension should remain in place until final completion of the process. During the summary suspension, the student may not enter the campus or participate in any college or university classes and 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.

- 9. Timely completion.** Colleges, universities, and the system office shall complete the investigative process and issue a written response within a timely manner after a complaint is made, unless reasonable cause for delay exists. Reasonable cause includes, but is not limited to, considerations such as the absence of a party or witness, the need for language assistance or accommodation of disabilities, or other similar factors. The designated officer shall notify the complainant and respondent if the written response is not expected to be issued within a timely manner. The college, university, or system office must meet any applicable shorter time periods, including those provided in the applicable collective bargaining agreement.
- 10. Support for designated officers.** If it would aid them in performing their roles under this procedure, designated officers are encouraged to seek counsel and advice, as appropriate, from the Office of Equity and Inclusion, the Office of General Counsel, and/or Labor Relations.

Subpart C. Informal Resolution

After processing the report/complaint the designated officer may consider informal resolution to resolve the report/complaint as appropriate. The designated officer may consider, but is not limited to, use one or more of the following methods to resolve the report/complaint:

1. Conduct or coordinate education and training;
2. Facilitate voluntary meetings, if requested by the complainant, between the parties;
3. Recommend separation of the parties, after consultation with appropriate college, university, or system office personnel;
4. Other possible outcomes may include recommending changes in workplace assignments, enrollment in a different course or program, or other appropriate action;
5. A college or university may offer mediation and other alternative dispute resolutions to the complainant and respondent. The parties must voluntarily consent, in writing, to participate in processes that include mediation and other alternative dispute resolutions. At any time before agreeing to a resolution, any party has the right to withdraw from the process and resume the formal complaint process.

Subpart D. Formal 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 determines additional steps should be taken, the procedures in this subpart must be followed.

- 1. Designated officer.** The designated officer or the investigator shall:
 - a. prepare an investigation report and forward it to the decision-maker for review and decision; and
 - b. take additional investigative measures as requested by the decision-maker.

- 2. Decision-maker.** After receiving the investigation report prepared by the designated officer or the investigator, the decision-maker 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 or investigator conduct further investigative measures; and
 2. 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 Board Policy 1B.1 occurred;
 - c.) when making the decision, use a preponderance of evidence standard, meaning that it is more likely than not that the policy has been violated, taking 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.) as appropriate, consistent with applicable state and federal data privacy laws, issue a decision in writing to the complainant, respondent, and the designated officer of the determination, and the basis for the determination, as to whether Board Policy 1B.1 has been violated.
 - e.) determine the nature, scope, and timing of disciplinary or corrective action and the process for implementation if a violation of Board Policy 1B.1 occurred. This may include consultation with student affairs, human resources or supervisory personnel to determine appropriate discipline;
 - f.) conduct that is determined not to have violated Board Policy 1B.1 may be considered under another procedure, if appropriate.
 - g.) prior to issuing decision letters, decision-makers shall submit drafts of the written decision and the investigation report to the Office of General Counsel for review.

Part 6. College, University, or System Office Action

The college, university, or system office shall take the appropriate disciplinary or corrective action based on the results of the investigation. The designated officer shall make appropriate inquiries to ascertain the effectiveness of any corrective or disciplinary action. Complainants and other individuals are encouraged to report any subsequent conduct they believe violates Board Policy 1B.1, as well as allegations of retaliation to the designated officer.

Written notice to parties relating to discipline, resolutions, or final dispositions resulting from the report/complaint process in this procedure is deemed to be official correspondence from the college, university, or system office. In accordance with Minn. Rule 3905.0500, the college, university, or system office is responsible for filing the complaint disposition concerning complaints against employees with the Commissioner of Management and Budget within 30 days of final disposition.

Part 7. Appeal

Subpart A. Filing an appeal

The complainant or the respondent may appeal the decision of the decision-maker. An appeal must be filed in writing with the president or designee within ten (10) business days from the receipt of the decision. The appeal timeline may be extended for reasonable cause. The appeal must state specific reasons why the complainant or respondent believes the decision was improper.

Grounds for appeal of the decision include; (1) procedural irregularity that affected the decision issued by the decision-maker, (2) new evidence that was not reasonably available at the time when the determination regarding violation of policy or sanction was made that could affect the decision issued by the decision-maker, (3) a conflict of interest or bias by the designated officer, investigator, or decision-maker that affected the decision issued by the decision-maker, or (4) insufficient evidence to support the decision-maker.

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 decision-maker.

Subpart B. Effect of appeal

For employees covered by a collective bargaining agreement, an appeal of the decision under this procedure is separate and distinct from contractual grievance procedures. During the pendency of the appeal, disciplinary or corrective action taken as a result of the decision may be enforced. In cases involving sanctions of suspension for ten (10) days or longer, students must be informed of their right to a contested case hearing under Minn. Stat. Ch. 14.

Subpart C. Appeal process

The president or designee shall review the decision issued by the decision-maker and the investigation report, 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 must be made within a reasonable time and the complainant, respondent, and designated officer must 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 8. Education and Training

The colleges, universities, and system office shall provide education and training programs to promote awareness and prevent discrimination, harassment, and retaliation such as educational seminars, peer-to-peer counseling, and informational resources. Education and training programs should include Board Policy 1B.1, this procedure, and may include training on trauma-informed investigations and restorative practices. All colleges, universities, and the

system office shall promote awareness of Board Policy 1B.1 and this procedure, and shall publicly identify the designated officers.

Part 9. Distribution of Board Policy 1B.1 and System Procedure 1B.1.1

Board Policy 1B.1 and this procedure must, 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 website, provided all students and employees are directly notified of how to access the policy and procedure by an exact web address, and that they may request a paper copy. Copies of the policy and procedure must be conspicuously posted at appropriate locations at the system office and on college and university campuses at all times and 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 websites, and other appropriate public announcements.

Part 10. Maintenance of Report/Complaint Documentation

During and upon the completion of processing the report/complaint, including completing an informal resolution and/or formal process, the report/complaint file must be maintained in a secure location in accordance with the applicable records retention schedule. Access to the data must 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.

Part 11. Annual Report to Board of Trustees

Colleges and universities shall annually submit pertinent Board Policy 1B.1 information to the Office of Equity and Inclusion. The Offices of General Counsel and Equity and Inclusion shall submit an annual report to the Board of Trustees of summary data showing Board Policy 1B.1 complaints, categories of complaints, and findings of violations.

Date of Adoption: 02/17/97
Date of Implementation: 02/17/97
Date of Last Review: 02/03/23

Date and Subject of Amendments:

5/31/13 - The procedure has been amended to support the policy changes in the 1B.1 policy concerning gender identity and gender expression and an amendment to the following:
Part 6, Subpart C, 9 – Clarified and moved language that had been stated included in Part 6, Subpart E. 2.e. Technical changes throughout for consistency.

Additional HISTORY.