

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Harassment including Sexual Harassment

NUMBER: 1:17

1. Educational institutions play a special role in preparing students to lead the complex social organizations through which businesses and professions operate and through which free people govern themselves. Students must be taught, *and they must be shown through the example given by institutional employees*, that stable, effective and prosperous social organizations observe norms of conduct under which all participants are expected to treat one another civilly and to carry out their respective tasks in a constructive and informed manner. Complex social organizations derive their strength from the cooperation of those who participate in them. By virtue of their special role in preparing future generations of leaders, educational institutions have a particular concern with conduct that subjects members of the institutional community to harassment, as herein defined, on the basis of sex, race, color, creed, religion, national origin, ancestry, citizenship, gender, gender identity, transgender, sexual orientation, age, disability, genetic information or veteran status, on any other status that may become protected under law against discrimination or on any other grounds. Such conduct destroys the bonds of cooperation and common purpose on which society rests by demeaning some members of the community, and, it cannot be tolerated in an institution whose very purpose is to shape the skills and conscience of the rising generations. For this reason, the Board strictly proscribes harassing conduct, and those members of the institutional community who have indulged in it shall be subject to discipline pursuant to Board Policy 1:18 or Board Policy 3:4.
2. Harassment on any grounds, directed against individuals, is proscribed.
 - A. Sexual harassment in either of its recognized forms is proscribed:
 - 1) Sexual harassment may be established by showing that an individual has been subjected to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature where:
 - a. Submission to such conduct is made either explicitly or implicitly a term or a condition of an individual's participation in, or use of, an institutionally sponsored or approved activity, employment or resource; or
 - b. Submission to or rejection of such conduct by an individual is used as the basis for educational, employment or similar decisions affecting an individual's ability to participate in or use an institutionally

sponsored or approved activity, employment or resource.

- 2) Sexual harassment may also be established by showing participation in the creation of an intimidating, hostile or demeaning environment established under § 2(B) below.

B. Harassment on the basis of sex, race, color, creed, religion, national origin, ancestry, citizenship, gender, gender identity, transgender, sexual orientation, age, disability, genetic information, veteran status or harassment on any other status that may become protected under law against discrimination or on any grounds, directed against individuals, may be established by showing,

- 1) Conduct toward another person that ~~has the purpose or the effect of creating~~ is severe or pervasive enough to create an objectively and subjectively intimidating, hostile or demeaning environment that substantially interferes with the individual's ability to participate in or to realize the intended benefits of an institutional activity, employment or resource.

- a. Sexual assault, as described in Board Policy No. 1:17.1, or animus-based assault that would constitute a hate crime under state or federal law, or involving conduct towards any individual otherwise protected from harassment under this policy that would constitute a hate crime if directed towards a person protected under state or federal hate crime law, will satisfy the requirement that the assailant's conduct creates an objectively and subjectively intimidating, hostile or demeaning environment that substantially interferes with his or her ability to participate in or to realize the intended benefits of an institutional activity, employment or resource.

- b. In most other cases, harassment consists of more than casual or isolated incidents.

- i. Consideration should be given to the context, nature, scope, frequency, duration and location of the incidents, whether they are physically threatening or humiliating as opposed to merely offensive utterances, as well as to the identity, number and relationships of the persons involved.

- ii. Harassment shall be found where, in aggregate, the incidents are sufficiently pervasive or persistent or severe that a reasonable person with the same characteristics of the victim of the harassing conduct would be adversely affected to a degree that interferes with his or her ability to participate in or to realize the intended benefits of an institutional activity,

employment or resource.

- iii. The reasonable person standard includes consideration of the perspective of persons of the alleged victim's race, gender or other circumstances that relate to the purpose for which he or she has become the object of allegedly harassing conduct.
- iv. If the victim does not subjectively perceive the environment to be hostile, the conduct has not actually altered the conditions of participation and there will be no violation of this policy.
- v. It is not necessary to show psychological harm to the victim to establish that the conduct would interfere with the person's ability to participate in or to realize the intended benefits of an institutional activity, employment or resource.

2) ~~Other conduct that is extreme and outrageous exceeding all bounds usually tolerated by polite society and that has the purpose or the substantial likelihood of interfering with another person's ability to participate in or to realize the intended benefits of an institutional activity, employment or resource.~~ RESERVED

3) Reasonable directions and admonitions by duly authorized institutional agents as to time, place and manner in which employees or volunteers perform assigned responsibilities, students carry out educational assignments or program participants engage in sponsored activities do not constitute prima facie evidence of harassment.

3. The chief executive officer of each institution is responsible for the enforcement of this policy and may delegate the necessary authority to the appropriate campus administrator.

A. Enforcement policies shall provide, at the minimum, for the following:

- 1) Posting of notices to alert students, employees and others of the institution's policies concerning harassment, including its assurance that persons who bring complaints of discrimination and persons who participate in the investigation and disposition of such complaints will not be subject to harassment, interference, intimidation, or retaliation;
- 2) Posting of notices informing students, employees and others of the steps that they must take in order to communicate complaints or concerns to the institution pursuant to Board policy 1:18, including a clear and accurate identification of the person or persons currently serving as the institution's

Title IX/EEO coordinator or deputy coordinators; and

- 3) Sponsoring educational programs for members of the campus community to assure that they are informed of their rights and obligations under this policy and to assist them in understanding the various forms that harassment may take, the effects it has on its victims and the ways in which it interferes with the proper operation of social organizations and society at large.

B. In addition to the procedures compliant with Board Policy No. 1:18, each institution will establish a procedure to encourage persons who have been subjected to unwelcome conduct of a sexual nature, whether or not rising to a level that constitutes harassment as defined in this policy, to contact the Title IX/EEO coordinator designated pursuant to Board Policy No 1:18(7).

- 1) Upon receipt of such a report, the Title IX/EEO coordinator will meet with the individual to discuss the incident, to reiterate the institution's commitment to preventing harassment and the protections afforded under Board policy, and to assess whether the conduct that prompted the report might involve prohibited harassment.
- 2) If the Title IX/EEO coordinator concludes that the conduct may involve prohibited harassment, the coordinator will initiate proceedings under that chapter.
- 3) If the Title IX/EEO coordinator concludes that the conduct, though unwelcome, did not involve prohibited harassment, the coordinator will inform the person of the resources that the institution may be able to provide to assist the person to resolve concerns with the individual whose conduct prompted the report or otherwise to assist the person to become familiar with strategies that may assist in avoiding or responding to such conduct.
 - a. If the reported conduct, while not yet harassment, was targeted at a specific person or persons, was abusive, and served no bona fide academic purpose, the Title IX/EEO coordinator will contact the individual whose conduct prompted the report to discuss the conduct and its relation to federal and state law and to Board and institutional policies.
 - i. Before initiating the contact, the Title IX/EEO coordinator will inform the person who made the report that the contact will be made and will explain that the institution will stress the prohibition against retaliation and will avoid making an express disclosure of confidential information.
 - b. If the reported conduct was not targeted at a specific person or persons,

the Title IX/EEO coordinator will discuss with the person who made the report, options to contact the individual whose conduct prompted the report, with or without the assistance of person who made the report, to discuss the implications of the conduct. The institutional, where appropriate, Title IX/EEO coordinator will also contact the institutional official responsible for the individual whose conduct prompted the report.

- i. The Title IX/EEO coordinator will determine whether the circumstances require that the institution contact the individual whose conduct prompted the report or whether other action may be necessary to assure that the individual understands the obligation to avoid harassment and how certain forms of conduct may interfere with the ability of others to participate fully in institutional employments and programs.

SOURCE: BOR, April 1987; BOR, January 1995; BOR, August 2009; BOR, December 2013.