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## State of Minnesota

## Southwest Minnesota State University

## 2018-2020 Affirmative Action Plan

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## Executive Summary

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This Affirmative Action Plan meets the requirements as set forth in statute, in Administrative Rule, and by Minnesota Management and Budget, and contains affirmative action goals and timetables, as well as reasonable and sufficiently assertive hiring and retention methods for achieving these goals.

This Affirmative Action Review revealed underutilization of the following protected group(s) in the following job categories:

**Table 1: Underutilization Analysis of Protected Groups**

<b>Job Categories</b>	<b>Women</b>	<b>Racial/Ethnic Minorities</b>	<b>Individuals with Disabilities</b>	<b>Veterans</b>
Officials & Administrators		XX		XX
Professionals	XX		XX	XX
Faculty		XX	XX	XX
Office Clerical Paraprofessional		XX	XX	XX
Technicians				
Skilled Craft				
Service Maintenance	XX	XX	XX	XX

Information about how to obtain or view a copy of this Plan will be provided to every employee of the University. Our intention is to make every employee aware of Southwest Minnesota State University's commitments to affirmative action and equal employment opportunity. The Plan will also be posted on the Southwest Minnesota State University's website and maintained in the Human Resources Office.

**Affirmative Action Officer:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_

**Human Resources Director:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_

**President:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_

## Organizational Profile (Brief Overview)

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Southwest Minnesota State University is located in Marshall, Minnesota, a community of 13,680 residents named one of America's best small towns. The University was established by the Minnesota Legislature in 1963. SMSU opened its doors in 1967. A charter class of 509 graduated in 1971. It is the youngest of the seven, four-year institutions within the Minnesota State system, and just celebrated its 50<sup>th</sup> anniversary during the 2017-18 academic year. To date, SMSU has 21,865 alumni.

SMSU was built with accessibility in mind, and continues to be a leader in that area. The 216-acre campus features academic buildings that are connected via tunnels, and the campus community is committed to the success of students with disabilities. SMSU has one of nine college wheelchair basketball programs in the country.

Southwest Minnesota State University offers a diverse undergraduate curriculum in the arts and sciences and selected professional programs, as well as master's degree programs in Business and Education. The University offers 50 different undergraduate majors.

## Statement of Commitment

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This statement reaffirms that Southwest Minnesota State University is committed to Minnesota's statewide affirmative action efforts and providing equal employment opportunity to all employees and job applicants in accordance with equal opportunity and affirmative action laws.

I affirm my personal and official support of these policies which provide that:

- No individual shall be discriminated against in the terms and conditions of employment, personnel practices, or access to and participation in programs, services, and activities, or subject to harassment, on the basis of race, sex (including pregnancy), color, creed, religion, age, national origin, sexual orientation, gender expression, gender identity, disability, marital status, familial status, status with regard to public assistance, or membership or activity in a local human rights commission.
- The prohibition of discrimination on the basis of sex precludes sexual harassment, gender-based harassment, and harassment based on pregnancy.
- This University is committed to the implementation of the affirmative action policies, programs, and procedures included in this plan to ensure that employment practices are free from discrimination. Employment practices include, but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, disciplinary action, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. We will provide reasonable accommodation to employees and applicants with disabilities.

- This University will continue to actively promote a program of affirmative action, wherever minorities, women, and individuals with disabilities are underrepresented in the workforce, and work to retain all qualified, talented employees, including protected group employees.
- This University will evaluate its efforts, including those of its directors, managers, and supervisors, in promoting equal opportunity and achieving affirmative action objectives contained herein. In addition, this University will expect all employees to perform their job duties in a manner that promotes equal opportunity for all.

It is the University's policy to provide an employment environment free of any form of discriminatory harassment as prohibited by federal, state, and local human rights laws. I strongly encourage suggestions as to how we may improve. We strive to provide equal employment opportunities and the best possible service to all Minnesotans.

President: \_\_\_\_\_ Date Signed: \_\_\_\_\_

## Individuals Responsible for Directing/Implementing the Affirmative Action Plan

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### A. President

#### Responsibilities

The President is responsible for establishing an Affirmative Action Program, including goals, timetables and compliance with all federal and state laws and regulations. The President, through the Chancellor of Minnesota State Colleges and Universities and indirectly through the Commissioner of Minnesota Management & Budget (MMB), will report annually to the Governor and the Legislature the University's progress in meeting its affirmative action goals and objectives.

#### Duties

The duties of the President shall include, but not be limited to, the following:

- Appoint the Affirmative Action Officer or designee and include accountability for the administration of the University's Affirmative Action Plan in his or her position description.
- Take action, if needed, on complaints of discrimination and discriminatory harassment.
- Issue a statement affirming the department's commitment to affirmative action and equal employment opportunity, and ensure that such a statement is disseminated to all employees.
- Make such decisions and changes in policies, procedures or physical accommodations as may be needed to implement effective affirmative action in the University.
- Actively promote equal employment opportunity and incorporate diversity and inclusion principles in annual business plans, strategic plan, and University's mission.

- Report annually to the Governor and the Legislature through the Chancellor of Minnesota State Colleges and Universities and indirectly through the Commissioner of MMB the department's progress in affirmative action.
- Notify all contractors and sub-contractors with the department of their affirmative action responsibilities.
- Actively promote the enforcement of equal employment opportunity in affirmative and non-affirmative hiring decisions reviewed in the hiring process.
- Require that all University senior leaders, directors, managers, and supervisors include responsibility statements for the supporting affirmative action, equal opportunity, diversity, and/or cultural responsiveness in their position descriptions and annual objectives.

## **Accountability**

The President is accountable directly to the Chancellor of Minnesota State Colleges and Universities and indirectly to the Commissioner of MMB for affirmative action matters.

## **Name of individual(s) responsible**

**Name:** Connie J. Gores

**Email:** [connie.gores@smsu.edu](mailto:connie.gores@smsu.edu)

**Title:** President

**Phone:** 507-537-6272

## **B. Affirmative Action Officer**

### **Responsibilities**

The Affirmative Action Officer is directly responsible for developing, coordinating, implementing and monitoring the department's affirmative action program.

### **Duties**

The duties of the Affirmative Action Manager shall include, but not be limited to, the following:

- Develop and administer the University's Affirmative Action Plan.
- Develop and set University-wide affirmative action hiring goals.
- Monitor University compliance and fulfill all affirmative action reporting requirements.
- Disseminate the affirmative action policy to employees in the University.
- Inform the President on progress in affirmative action and equal opportunity and report potential concerns.
- Act as the affirmative action liaison between the University, MMB, and the Governor's Office.

- Determine the need for affirmative action training within the University and initiate the development of such training programs with the assistance of internal and external resources, as necessary.
- Review and recommend changes in policies, procedures, programs and physical accommodations to facilitate affirmative action and equal opportunity.
- Develop innovative programs to attract and retain protected group members in the University.
- Support and participate in the recruitment of protected class persons for employment, promotion and training opportunities.
- Manage the University's pre-hire review process.
- Review requests for non-affirmative non-justified hires in the Monitoring the Hiring process and refer unresolved issues to the President for final decision.
- Ensure supervisors and managers are making affirmative efforts to recruit and retain protected group candidates and employees.
- Oversee the administration of the Americans with Disabilities Act Title I and Title II.
- Receive requests for ADA accommodations and work with appropriate supervisors, unions, etc. to approve or deny the request, or provide alternative accommodations.
- Maintain records of requests for reasonable accommodations.
- Oversee the administration of the University diversity recruitment program.

## **Accountability**

The Affirmative Action Officer is accountable to the President for program impacts and for ongoing program activities and direction.

## **Name of individual(s) responsible**

**1. Name:** Nancy Olson

**Email:** nancy.olson@smsu.edu

**Title:** CHRO/AAO

**Phone:** 507-537-6544

## **C. Human Resources Director or Designee(s)**

### **Responsibilities**

The Human Resources Office is responsible for ensuring equitable and uniform administration of all personnel policies. Human Resources Directors are responsible for ensuring timely responses to all Americans with Disabilities Act (ADA) requests for accommodations to remove barriers to equal

employment opportunity with the University, assisting managers and supervisors in human resources management activities.

Staff within Human Resources who work on affirmative action and diversity issues are accountable to the Human Resources Director or designee.

## **Duties**

The duties of Human Resources shall include, but not be limited to, the following:

- Maintain effective working relationships with University affirmative action officers and designees.
- Provide leadership to HR staff and others to ensure personnel decision-making processes adhere to equal opportunity and affirmative action principles.
- Provide guidance in the development and utilization of selection criteria to ensure they are objective, uniform, and job related.
- Assist in recruitment and retention of protected class persons and notify managers and supervisors of existing disparities
- Ensure an Affirmative Action Pre-hire Review process is implemented and followed by hiring managers and supervisors by working effectively with the affirmative action officer.
- Initiate and report on specific program objectives contained in the affirmative action plan;
- Ensure that the reasonable accommodation process is implemented and followed for all employees and applicants in need of reasonable accommodation.
- Assist supervisors, managers and the Affirmative Action Officer in affirmative recruitment of protected group members through career and job fairs and other recruitment efforts, as well as in selection and retention of protected group members.
- Assist supervisors, managers, affirmative action officers, and human resources staff in the intentional creation of Supported worker positions that assist in reduction of University costs by diverting supportive employment duties from higher skilled workers to a supported worker position and thus improve employee morale and retention of individuals with disabilities in integrated employment.
- Request recruitment assistance from MMB's Statewide Director of Diversity Recruitment and Retention in the diversity recruitment and retention of protected group members in hard to fill or executive level positions.
- Include responsibility statements for affirmative action/equal employment opportunity in position descriptions and annual performance objectives.



## Accountability

Human resources staff are accountable to the Human Resource Directors or designees. Additionally, Human Resources Department ensures that aggregate data and trends of complaints of illegal discrimination in hiring are provided and shared with the Affirmative Action Manager on a quarterly basis.

### Name of individual responsible

1. Name: Nancy Olson

Email: nancy.olson@smsu.edu

Title: CHRO

Phone: 507-537-6544

## D. Americans with Disabilities Act Title I Coordinator

### Responsibilities

The Americans with Disabilities Act (ADA) Title I Coordinator is responsible for the oversight of the University's compliance with the ADA Title I – Employment, in accordance with the ADA - as amended and the Minnesota Human Rights Act.

### Duties:

The duties of the ADA Title I Coordinator shall include, but are not limited to, the following:

- Provide guidance, coordination, and direction to University management with regard to the ADA in the development and implementation of University policy, procedures, and practices to ensure University employment practices and programs are accessible and nondiscriminatory.
- Provide training, technical guidance, and consultation to University management and staff on compliance and best practices with regard to hiring and retention of individuals with disabilities as well as the provision of reasonable accommodations to employees and job applicants.
- Track and facilitate requests for reasonable accommodations for job applicants and employees, as well as members of the public accessing University services, and report reasonable accommodations annually to MMB.
- Research case law rules and regulation and update Human Resources Directors on evolving ADA issues. Meet bi-annually with ADA Coordinators and provide updates on ADA.
- Ensure compliance with ADA reporting according to state and federal requirements.
- Assist the Affirmative Action Manager in designing and delivering specific ADA training for targeted groups.

- Submit reasonable accommodation reimbursement under the guidelines of the statewide accommodation fund.
- Provide reasonable accommodations to qualified individuals (as defined by ADA) with known physical or mental disabilities, to enable them to compete in the selection process or to perform the essential functions of the job and/or enjoy equal benefits and privileges. The ADA coordinator and the regional human resources director (RHRD) who also serves as the regional ADA coordinator, in consultation with the employee and supervisor, and other individuals who may need to be involved must:
  - Discuss the purpose and essential functions of the particular job and complete a step-by-step job analysis;
  - Determine the precise job-related limitations;
  - Identify the potential accommodations and assess the effectiveness each would have in allowing the employee to perform the essential functions of the job; and
  - After discussion and review, select and implement the accommodations that are appropriate for both the employee and the employer using the Reasonable Accommodation Agreement.

### **Accountability:**

The ADA Title 1 Coordinator is accountable to the Vice President for Finance and Administration.

### **Name of individual responsible**

**1. Name:** Nancy Olson

**Email:** nancy.olson@smsu.edu

**Title:** CHRO

**Phone:** 507-537-6544

## **E. Americans with Disabilities Act Title II Coordinator**

### **Responsibilities**

The Americans with Disabilities Act (ADA) Title II Coordinator is responsible for the oversight of the University's compliance with the ADA Title II – Public Services, in accordance with the ADA - as amended and the Minnesota Human Rights Act.

### **Duties:**

The duties of the ADA Title II Coordinator shall include, but not limited to, the following:

- Provide guidance, coordination, and direction to University management with regard to the ADA in the development and implementation of University policy, procedures, and practices to ensure University services and programs are accessible and nondiscriminatory for the public.
- Provide training, technical guidance, and consultation to the University's management and staff on compliance and best practices with regards and obligations to members of the public with disabilities as well as the provision of reasonable modifications to visitors.
- Track and facilitate requests for reasonable modifications for members of the public accessing University services, and report reasonable modifications annually to MMB.
- Research case law rules and regulation and update Executive team on evolving ADA issues. Meet bi-annually with state ADA Coordinators and learn updates on ADA.
- Ensure compliance with ADA reporting according to state and federal requirements.
- Assist the Affirmative Action Manager in designing and delivering specific ADA training for University employees assisting ADA modifications for the public.
- Provide reasonable modifications to members of the public (as defined by ADA) with known physical or mental disabilities, to ensure equal access and privileges to programming and services. The ADA Title II coordinator in consultation with the member of the public in need of a modification shall:
  - Discuss the purpose and essential functions of a particular reasonable modification;
  - Identify the potential modifications and assess the effectiveness each request.
  - After discussion and review, select and implement the modifications that are appropriate for both the member of the public and the University. This review shall be documented and reported in the State ADA Annual Report.

### **Accountability:**

The ADA Title II Coordinator is accountable to the Vice President for Finance and Administration.

## **F. Senior Managers and Facility Executive Team Leaders**

### **Responsibilities**

University senior managers and executive team leaders are responsible for implementing all aspects of the University Affirmative Action Plan and the University's commitment to affirmative action and equal opportunity.

### **Duties**

The duties of senior managers and facility executive team leaders shall include, but not be limited to, the following:

- Identify problem areas and eliminate barriers that inhibit equal employment opportunity within their units and the University.
- Communicate the equal opportunity employment policy and the affirmative action program and plan to all employees assigned to their units.
- Assist the Affirmative Action Officer in conducting periodic audits of hiring and promotion patterns to remove impediments to attaining affirmative action goals and objectives.
- Hold regular discussions with supervisors and employees to ascertain that the University's equal employment opportunity policies are being followed.
- Inform and evaluate managers and supervisors on their equal employment opportunity efforts and results in addition to other job performance criteria.
- Demonstrate and practice a discrimination and harassment free work environment for all employees.

### **Accountability**

Senior managers and executive team leaders are accountable directly to the President or Provost.

## **G. Directors, Managers and Supervisors**

### **Responsibilities**

University Directors, Managers, and Supervisors are responsible for implementation of equal opportunity and affirmative action within their respective areas of supervision and compliance with the University's affirmative action programs and policies to ensure fair and equal treatment of all employees and applicants.

## **Duties**

The duties of directors, managers, and supervisors include, but are not limited to the following:

- Assist the Affirmative Action Officer in identifying and resolving problems and eliminating barriers which inhibit equal employment opportunity;
- Communicate the University's affirmative action policy to assigned staff;
- Carry out supervisory responsibilities in accordance with the equal employment opportunity and affirmative action policies embodied in this plan;
- Maintain a consistent standard within the workforce so that employees are evaluated, recognized, developed, and rewarded on a fair and equitable basis;
- Include responsibility statements for supporting affirmative action, equal opportunity, diversity, and/or cultural responsiveness in staff position descriptions and annual objectives;
- To provide a positive and inclusive work environment; and
- To refer complaints of discrimination and harassment to the appropriate parties.

## **Accountability**

Directors, managers, and supervisors are accountable directly to their designated supervisor and indirectly to the President.

## **H. All Employees**

### **Responsibilities**

All employees are responsible for conducting themselves in accordance with the state of Minnesota's policy of equal employment opportunity by refraining from any actions that would subject any employee to negative treatment on the basis of that individual's race, creed, color, sex (including pregnancy), national origin, age, marital status, familial status, disability, sexual orientation, gender expression, gender identity, reliance on public assistance, membership or activity in a local human rights commission, religion, political opinions, or affiliations. Employees who believe they have been subjected to such discrimination or harassment are encouraged to use the University's complaint procedure.

### **Duties:**

The duties of all employees shall include, but are not limited, to the following:

- Exhibit an attitude of respect, courtesy and cooperation towards fellow employees and the public.
- Refrain from any actions that would adversely affect a coworker on the basis of their race, sex, color, creed, religion, age, national origin, disability, marital status, familial status, status with regard to public assistance, sexual orientation, gender identity, gender expression, or membership or activity in a local human rights commission.

### **Accountability:**

Employees are accountable to their designated supervisor and indirectly to the University's President. Employees are responsible for maintaining an environment free from harassment and discrimination. All employees are responsible for conducting themselves in accordance with the Affirmative Action Plan.

## **Communication of the Affirmative Action Plan**

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The following information describes the methods that the University takes to communicate the Affirmative Action Plan to employees and the general public:

### **Internal Methods of Communication**

- A memorandum detailing the location of the Affirmative Action Plan and the responsibility to read, understand, support, and implement equal opportunity and affirmative action will be sent from the University's leadership or alternatively, the Affirmative Action Officer, to all staff on an annual basis.
- The University's Affirmative Action Plan is available to all employees on the University's internal website at <http://www.smsu.edu/administration/affirmativeaction/plan.html> or in print copy to anyone who requests it. As requested, the University will make the plan available in alternative formats.
- A physical copy of the University's Affirmative Action Plan will be available to employees at the following address:

**Human Resources, 1501 State Street, Marshall, MN 56258**

- Nondiscrimination and equal opportunity statements and posters are prominently displayed and available in areas frequented and accessible to employees.

### **External Methods of Communication**

- The University's Affirmative Action Plan is available on the University's public website at <http://www.smsu.edu/administration/affirmativeaction/plan.html> or in print copy to anyone

who requests it. As requested, the University will make the plan available in alternative formats.

- The University’s website homepage, letterhead, publications, and all job postings, will include the statement “an equal opportunity employer” and “women, minorities, and individuals with disabilities are encouraged to apply.” The University will also ensure a representative ratio of diversity is on all diversity marketing materials.
- Nondiscrimination and equal opportunity statements and posters are prominently displayed and available in areas frequented by and accessible to members of the public. Examples of posters displayed include: Equal Employment Opportunity is the law, Employee Rights under the Fair Labor Standards Act, and the Americans with Disabilities Act Notice to the Public.
- A physical copy of the University’s Affirmative Action Plan will be available to contractors, vendors, and members of the public at the following address:

**Human Resources, 1501 State Street, Marshall, MN 56258**

## **Underutilization Analysis and Affirmative Action Goals**

*Through the utilization analysis, the University has determined which job categories are underutilized for women, minorities, and individuals with disabilities within the University and has set the following hiring goals for the next two years (Reference Table 2).*

Table 2. Underutilization Analysis and Hiring Goals for 2018-2020

The second, third, and fourth columns of this chart show the number of underutilized individuals of each group in each category at this University. The fifth, sixth, and seventh columns show the University’s hiring goals for each group in each category.

Job Categories	Underutilization - # of Individuals				Hiring Goals for 2018-2020			
	Women	Racial/ Ethnic Minorities	Persons with Disabilities	Veterans	Women	Racial/ Ethnic Minorities	Persons with Disabilities	Veterans
Officials/ Administrator		1		1		1		1
Professionals	4		2	8	2		1	1
Faculty		22	6	11		2	1	1
Office/Clerical		1	2	3		1	1	1

	Underutilization - # of Individuals				Hiring Goals for 2018-2020			
Job Categories	Women	Racial/ Ethnic Minorities	Persons with Disabilities	Veterans	Women	Racial/ Ethnic Minorities	Persons with Disabilities	Veterans
Technicians								
Skilled Craft								
Service Maintenance	1	4	1	2	1	1	1	1

### Availability:

The University determined the recruitment area to be national availability for the Officials/Administrators, Professional and Faculty categories; statewide availability for the Professional category; and Lyon County availability for the remaining categories. In conducting its underutilization analysis, the University used the one factor analysis. The University determined it was best to use this type of analysis because our internal availability statistics are not very diverse and would dilute the availability.

Underutilization Analysis worksheets are attached in the appendix. Numbers less than 10 are indicated with "<10" in accordance with Minnesota Management and Budget's guidance on data privacy.

### Women:

At the University, the population of women has improved in the following job categories: Officials/Administrators, Technicians and Service Maintenance; stayed the same in the category of Skilled Craft; and has not improved in the categories of Professionals, Faculty and Office/Clerical. While SMSU did not improve Faculty and Office/Clerical, we are not underutilized in either category. The AAO will continue to meet with all search committee members and discuss the SMSU Affirmative Action Plan and the benefits of a diverse workforce. SMSU will implement intentional recruitment strategies to help further us to meeting our goals. Due to anticipated budget constraints for the next fiscal year, SMSU expects to experience a decline in the number of positions filled.

### Minorities:

At the University, the population of minorities has improved in the following job categories: Professionals and Technicians; has stayed the same in Officials/Administrators, Technicians, Skilled



Craft, and Service Maintenance; and has not improved in the categories of Faculty and Office/Clerical. The University was able to make some key affirmative action hiring in the Professional category, however hiring was limited due to budget constraints. SMSU provided Cultural Competency and Anti-Racism Training to employees to heighten the awareness of all employees to the value of diversity and inclusivity. Due to anticipated budget constraints for the next fiscal year, SMSU expects to experience a decline in the number of positions filled. SMSU will implement intentional recruitment strategies to help further us to meeting our goals.

### **Individuals with Disabilities:**

At the University, the population of individuals with disabilities has improved in the following job categories: Officials/Administrators, Professionals, Office/Clerical and Service Maintenance; and has stayed the same in the job categories of Faculty, Technicians, and Skilled Craft. SMSU will continue to review the applicant pool to ensure the inclusion of individuals with disabilities that meet the minimum qualifications of the position. The AAO will continue to meet with all search committee members and discuss the SMSU Affirmative Action Plan and the benefits of a diverse workforce. Due to anticipated budget constraints for the next fiscal year, SMSU expects to experience a decline in the number of positions filled.

### **Veterans:**

At the University, the population of veterans has improved in the following job categories: Professionals, Faculty and Technicians and has stayed the same in the following job categories: Officials/Administrators, Office/Clerical and Skilled Craft. SMSU will implement intentional recruitment strategies to help further us to meeting our goals. The AAO will continue to meet with all search committee members and discuss the SMSU Affirmative Action Plan and the benefits of a diverse workforce. Due to anticipated budget constraints for the next fiscal year, SMSU expects to experience a decline in the number of positions filled.

## **Separation and Retention Analysis by Protected Groups**

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The University is committed to the retention of all employees, including members of the following protected groups: women, racial/ethnic minorities, individuals with disabilities and veterans. The University will strive to affirmatively ensure equal employment opportunity by retaining a diverse composite of talented and qualified employees, with emphasis on under-represented individuals. To be successful, the responsibility for these retention efforts lies with all employees. The University's retention strategy is a multi-faceted approach, guided by the University leadership, Human Resources Director, and Affirmative Action Officer.

**Table 2 Person's Responsible for University Retention Programs/Activities**

Title	Contact Information
Connie J. Gores, President	<a href="mailto:president@smsu.edu">president@smsu.edu</a>
Nancy Olson, CHRO/AAO	<a href="mailto:nancy.olson@smsu.edu">nancy.olson@smsu.edu</a>

Title	Contact Information
Jefferson Lee, CDO	<a href="mailto:jay.lee@smsu.edu">jay.lee@smsu.edu</a>
Dwight Watson, Provost	<a href="mailto:dwight.watson@smsu.edu">dwight.watson@smsu.edu</a>
Bill Mulso, VP for Advancement	<a href="mailto:bill.mulso@smsu.edu">bill.mulso@smsu.edu</a>
Deb Kerkaert, VP for Finance and Administration	<a href="mailto:deb.kerkaert@smsu.edu">deb.kerkaert@smsu.edu</a>
Dan Baun, CIO	<a href="mailto:dan.baun@smsu.edu">dan.baun@smsu.edu</a>
Aimee Shouse, Dean, College of Arts, Letters and Sciences	<a href="mailto:aimee.shouse@smsu.edu">aimee.shouse@smsu.edu</a>
Raphael Onyeaghala, Dean of Business, Education and Professional Studies	<a href="mailto:raphael.onyeaghala@smsu.edu">raphael.onyeaghala@smsu.edu</a>
Robert Forget, VP for Enrollment Management and Student Success	<a href="mailto:robert.forget@smsu.edu">robert.forget@smsu.edu</a>
Chris Hmielewski, Director of Athletics	<a href="mailto:chris.hmielewski@smsu.edu">chris.hmielewski@smsu.edu</a>
Scott Crowell, Associate VP for Student Affairs/Dean of Students	<a href="mailto:scott.crowell@smsu.edu">scott.crowell@smsu.edu</a>

The University will continue to analyze and review separation data for disparate impact on protected group employees. This will include reviewing non-certification trends, layoff trends, resignation trends, and disciplinary discharges. The appendix will include a separation report broken down by EEO4 job category. Below is a snapshot of the University separations throughout the past two years as well as a narrative describing the separation analysis:

**Table 3 Type of Separation**

Type of Separation FY2016-2018	Total Number	Total Percentage	Percentage of Women	Percentage of Minorities	Percent of Persons w/ Disabilities	Percent of Veterans
Dismissals/Non Certification	3	7.23%	66.67%	66.67%	0	0
Resignations	20	48.78%	40%	25%	2%	0
Retirement	16	39.02%	69.23%	7.69%	0	0
Death	2	4.88%	0	0	0	0
Lay Off	0	0	0	0	0	0
Termination w/o Rights	0	0	0	0	0	0
Total Separations	41	100.00%	46.34%	19.54%	4.88%	0

## Women

Women represent approximately 54.55% of the total University workforce. The University saw a total of 19 separations from July 1, 2016 – June 30, 2018. Women were 46.34% of all separations. This is proportionately lower relative to their total University workforce representation. To help with retention of female employees, SMSU will review all exit information provided on a biannual basis, provide cultural competency and diversity and inclusion training to employees, establish employee resource groups for employees who identify in a protected status, conduct sexual harassment prevention training to supervisors and sexual harassment training to all employees, and disseminate SMSU's ADA/ADA Accommodation policy and Minnesota State system's policy on discrimination on an annual basis.

## Minorities

Minorities represent approximately 9.09% of the total University workforce. The University saw a total of 8 separations from July 1, 2016 – June 30, 2018. Minorities were 19.54% of all separations. This is proportionately higher relative to their total University workforce representation. To help increase the retention of minorities employees, SMSU will review all exit information provided on a biannual basis, provide cultural competency and diversity and inclusion training to employees, establish employee resource groups for employees who identify in a protected status, conduct sexual harassment prevention training to supervisors and sexual harassment training to all employees, and disseminate SMSU's ADA/ADA Accommodation policy and Minnesota State system's policy on discrimination on an annual basis.

## Individuals with Disabilities

Individuals with Disabilities represent approximately 3.76% of the total University workforce. The University saw a total of 2 separations from July 1, 2016 – June 30, 2018. Individuals with Disabilities were 4.88% of all separations. This is proportionately higher relative to their total University workforce representation. To help improve the retention of employees with disabilities, SMSU will review all exit information provided on a biannual basis, provide cultural competency and diversity and inclusion training to employees, establish employee resource groups for employees who identify in a protected status, conduct sexual harassment prevention training to supervisors and sexual harassment training to all employees, and disseminate SMSU's ADA/ADA Accommodation policy and Minnesota State system's policy on discrimination on an annual basis.

## Veterans

Veterans represent approximately 1.25% of the total University workforce. The University saw a total of 0 separations from July 1, 2016 – June 30, 2018. Veterans were 0% of all separations. This is proportionately lower relative to their total University workforce representation. To help with the retention of veteran employees, SMSU will review all exit information provided on a biannual basis, provide cultural competency and diversity and inclusion training to employees, establish employee resource groups for employees who identify in a protected status, conduct sexual harassment

prevention training to supervisors and sexual harassment training to all employees, and disseminate SMSU's ADA/ADA Accommodation policy and Minnesota State system's policy on discrimination on an annual basis.

## **Program Objectives, Identified Barriers, and Corrective Action to Eliminate Barriers**

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The University's Affirmative Action Program is designed to implement the provisions of this Affirmative Action Plan and meet requirements found in Minnesota Statutes, Chapter 43A.191, and Subdivision 2.

This section will identify ways this University has determined to eliminate barriers, provide corrective actions, and achieve affirmative action goals for underutilized protected group applicants/employees (broken down by specific job categories.) These objectives have been developed as strategic, actionable and measurable efforts the University has committed to pursuing and implementing from July 1, 2018 – June 30, 2020.

### **Program Objectives for Women**

The following job categories have been identified as underutilized for women.

List job category name	Percent women employees in category	Percent women hired in category	Percent women separated in category
Professionals	52.04%	6.12%	8.16%
Service Maintenance	37.04%	7%	0%

The following corrective action has been planned to eliminate the barriers for women in each category.

#### **Recruitment action for women in this category:**

SMSU made progress in this category during the last two years. We will continue our efforts to improve in this category and increase the number women in this category. We have added a diversity and inclusion statements to our website and all advertisements encouraging women and persons of color to apply.

#### **Recruitment barrier identified for women in this category:**

SMSU will explore new avenues to reach out to women applicants. We will also look at our advertisements to ensure the wording isn't such that it discourages women from applying.

## Future Evaluation:

We will review our numbers on a biannual basis to determine if we have made any gains. The numbers will be provided to the president and cabinet members for discussion and review. The AAO will continue to complete the review of the applicant pool prior to interview to ensure a diverse pool of candidates. If we do not see any improvements, we will look at our strategies and readjust. SMSU will be a pilot site for a system-wide Campus Climate Study in 2018-2019. The results of the study will assist SMSU in recruitment and retention of underrepresented candidates/employees.

## Past Evaluation:

SMSU did see improvements and are hopeful, through training and increased awareness, to continue to see improvement.

## Person's Responsible:

- President, CHRO, AAO, CDO, Provost, Cabinet Members, and Directors, Supervisors and Managers.

## Target Dates:

On-going and continuous effort.

## Program Objectives for Minorities

The following job categories have been identified as underutilized for minorities.

List job category name	Percent minority employees in category	Percent minorities hired in category	Percent minorities separated in category
Officials/Administrators	14.92%	0%	0%
Faculty	24.90%	1.7%	2.20%
Office/Clerical	2.94%	0%	2.94%
Service Maintenance	3.70%	0%	0%

The following corrective action has been planned to eliminate the barriers for minorities in each category.

### **Recruitment action for minorities in this category:**

SMSU is strongly committed to a diverse and inclusive workforce. SMSU will continue to encourage more minorities to apply for vacancies at our institution by utilizing targeted advertisements in media that supports and are geared towards minority applicants. The AAO will also review each position description/advertisement to ensure the minimum requirements are appropriate for the position and documents are inclusive in nature. We have added diversity and inclusion statements to our website and all advertisements encouraging women, minorities, individuals with disabilities and veterans to apply.

### **Recruitment barrier identified for minorities in this category:**

SMSU is in a relatively remote area of Minnesota that is primarily agricultural and low population. The area is becoming more diverse and we hope that will reflect with an increase of minority applicants. SMSU experienced a budget shortfall in FY18 which reduced the number of positions through attrition. As we continue to experience a budget deficit, we may see fewer positions advertised for FY19.

### **Future Evaluation:**

We will review our numbers on a quarterly basis to determine if we have made any gains. The numbers will be provided to the President and Cabinet members for discussion and review. The AAO will continue to complete the review of the applicant pool prior to interview to ensure a diverse pool of candidates. If we do not see any improvements, we will look at our strategies and readjust. SMSU will be a pilot site for a system-wide Campus Climate Study in 2018-2019. The results of the study will assist SMSU in recruitment and retention of underrepresented candidates/employees.

### **Past Evaluation:**

SMSU did see improvement in one category and are hopeful, through training and increased awareness, to continue to see improvement throughout all categories.

### **Person's Responsible:**

- President, CHRO, AAO, CDO, Provost, Cabinet Members, and Directors, Supervisors and Managers.

### **Target Dates:**

On-going and continuous effort.

## **Program Objectives for Individuals with Disabilities**

The following job categories have been identified as underutilized for individuals with disabilities.

List job category name	Percent disabled in category	Percent disabled hired in category	Percent disabled separated in category
Professionals	5.1%	1.02%	0%
Faculty	2.94%	0%	0%
Office/Clerical	0%	0%	0%
Service Maintenance	4%	4.0%	0%

The following corrective action has been planned to eliminate the barriers for individuals with disabilities in each category.

#### **Recruitment action for individuals with disabilities in this category:**

SMSU is strongly committed to a diverse and inclusive workforce. SMSU will continue to encourage more individuals with disabilities to apply for vacancies at our institution by utilizing targeted advertisements in venues that support and are geared towards applicants with disabilities. SMSU will reviews position descriptions prior to advertisement to ensure language does not prevent disabled applicants from applying. We have added diversity and inclusion statements to our website and all advertisements encouraging women, minorities, individuals with disabilities and veterans to apply.

#### **Recruitment barrier identified for individuals with disabilities in this category:**

SMSU will reach out to organizations in the area who work with individuals with disabilities to increase awareness of employment opportunities on our campus. The AAO will send notify all employees on a yearly basis, asking employees to review and update any changes to their disability status. The notice will state how the information will be used and why, noting it is strictly voluntary and employees are not required to disclose. SMSU will be a pilot site for a system-wide Campus Climate Study in 2018-2019. The results of the study will assist SMSU in recruitment and retention of underrepresented candidates/employees.

#### **Future Evaluation:**

We will review our numbers on a quarterly basis to determine if we have made any gains. The numbers will be provided to the President and Cabinet members for discussion and review. The AAO will continue to complete the review of the applicant pool prior to interview to ensure a diverse pool of candidates. If we do not see any improvements, we will look at our strategies and readjust.

## Past Evaluation:

SMSU did not see any improvement. We are hopeful, through training and increased awareness, to see improvement in the future.

## Person's Responsible:

- President, CHRO, AAO, CDO, Provost, Cabinet Members, and Supervisors and Managers.

## Target Dates:

On-going and continuous effort.

## Program Objectives for Veterans

The following job categories have been identified as underutilized for veterans.

List job category name	Percent veterans in category	Percent veterans hired in category	Percent veterans separated in category
Officials/Administrators	0%	0%	0%
Professionals	2.04%	1%	0%
Faculty	1.47%	0%	0%
Office/Clerical	0%	0%	0%
Service Maintenance	0%	0%	0%

The following corrective action has been planned to eliminate the barriers for veterans in each category.

## Recruitment action for veterans in this category:

SMSU is strongly committed to a diverse and inclusive workforce. SMSU will continue to encourage more veterans to apply for vacancies at our institution by utilizing targeted advertisements in venues that support and are geared towards veteran applicants. Last year we advertised through HireVets.com, however this did not increase the number of veteran applicants in our pools. We will continue to explore other options. We have added diversity and inclusion statements to our website



and all advertisements encouraging women, minorities, individuals with disabilities and veterans to apply.

### **Recruitment barrier identified for veterans in this category:**

We will explore new avenues to reach out to potential veterans applicants. The AAO will also work with search committees and discuss the difference in military applications and how military experience can cross over to SMSU positions.

### **Future Evaluation:**

We will review our numbers on a quarterly basis to determine if we have made any gains. The numbers will be provided to the President and Cabinet members for discussion and review. The AAO will continue to complete the review of the applicant pool prior to interview to ensure a diverse pool of candidates. If we do not see any improvements, we will look at our strategies and readjust. SMSU will be a pilot site for a system-wide Campus Climate Study in 2018-2019. The results of the study will assist SMSU in recruitment and retention of underrepresented candidates/employees.

### **Past Evaluation:**

SMSU did see improvements and are hopeful, through training and increased awareness, to continue to see improvement.

### **Person's Responsible:**

- President, CHRO, AAO, CDO, Provost, Cabinet Members, and Supervisors and Managers.

### **Target Dates:**

On-going and continuous effort.

## **Methods of Auditing, Evaluating, and Reporting Program Success**

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### **Pre-Employment Review Procedure/Monitoring the Hiring Process**

Southwest Minnesota State University will evaluate its selection process to determine if its requirements unnecessarily screen out a disproportionate number of women, minorities, or individuals with disabilities. The University will use the monitoring the hiring process form for every hire to track the number of women, minorities, individuals with disabilities and veterans in each stage of the selection process. Directors, managers, and supervisors will work closely with Human Resources and the Affirmative Action Officer in reviewing the requirements for the position, posting the position, and interviewing and selection to ensure that equal opportunity and affirmative action is carried out. Directors, managers, and supervisors will be asked to document their hiring decisions and equal opportunity professionals will review for bias.

Any time the University cannot justify a hire, the University misses an opportunity to diversity our environment and workforce. University leadership will be asked to authorize the missed opportunity. The University will report the number of affirmative and non-affirmative hires as well as missed opportunities to Minnesota Management and Budget on a quarterly basis.

When candidates are invited to participate in the selection process, employees scheduling the selection process will describe the process format to the candidate (*e.g.*, interview process, testing process). All candidates will be provided information regarding the procedure to request reasonable accommodations if necessary to allow candidates with disabilities equal opportunity to participate in the selection process. For example, candidates will be given information on the process, including whether interview questions are offered ahead of time or what technology may be used during a test. This allows for an individual with a disability to determine if they may need a reasonable accommodation in advance of the selection process.

All personnel involved in the selection process will be trained and accountable for the University's commitment to equal opportunity and the affirmative action program and its implementation.

### **Pre-Review Procedure for Layoff Decisions**

The Affirmative Action Officer, in conjunction with the University's senior leadership, shall be responsible for reviewing all pending layoffs to determine their effect on the University's affirmative action goals and timetables.

If it is determined that there is an adverse impact on protected groups, the University will document the reasons why the layoff is occurring, such as positions targeted for layoff, applicable personnel policies or collective bargaining agreement provisions, or other relevant reasons. The University will determine if other alternatives are available to minimize the impact on protected groups.

### **Other Methods of Program Evaluation**

The University submits the following compliance reports to Minnesota Management and Budget as part of the efforts to evaluate the University's affirmative action program:

- Quarterly Monitoring the Hiring Process Reports;
- Biannual Affirmative Action Plan;
- Annual Americans with Disabilities Act Report;
- Annual Internal Complaint Report; and
- Disposition of Internal Complaint (within 30 days of final disposition).

The University also evaluates the Affirmative Action Plan in the following ways on a biannual basis and will modify goal if necessary:

- Monitors progress toward stated goals by job category;
- Analyzes employment activity (hires, promotions, and terminations) by job category to determine if there is disparate impact;
- Analyzes compensation program to determine if there are patterns of discrimination;
- Reviews the accessibility of online systems and websites, and ensures that reasonable accommodations can be easily requested; and
- Discusses progress with University leadership on a periodic basis and makes recommendations for improvement.

## Appendix

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### Minnesota State's Equal Opportunity and Non-discrimination in Employment and Education Policy

#### Part 1. Policy Statement.

**Subpart A. Equal opportunity for students and employees.** Minnesota State Colleges and Universities 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, Minnesota State Colleges and Universities is committed to a policy of equal opportunity and nondiscrimination in employment and education.

**Subpart B. Nondiscrimination.** No person shall be discriminated against in the terms and conditions of employment, personnel practices, or access to and participation in, programs, services, and activities with regard to race, sex, color, creed, religion, age, national origin, disability, marital status, familial status, status with regard to public assistance, sexual orientation, gender identity, or gender expression. In addition, discrimination in employment based on membership or activity in a local commission as defined by law is prohibited.

Harassment on the basis of race, sex, color, creed, religion, age, national origin, disability, marital status, familial status, status with regard to public assistance, sexual orientation, gender identity, or gender expression is prohibited. Harassment may occur in a variety of relationships, including faculty and student, supervisor and employee, student and student, staff and student, employee and employee, and other relationships with persons having business at, or visiting the educational or working environment.

This policy is directed at verbal or physical conduct that constitutes discrimination/harassment under state and federal law and is not directed at the content of speech. In cases in which verbal statements and other forms of expression are involved, Minnesota State Colleges and Universities will give due consideration to an individual's constitutionally protected right to free speech and academic freedom. However, discrimination and harassment are not within the protections of academic freedom or free speech.

The system office, colleges, and universities shall maintain and encourage full freedom, within the law, of expression, inquiry, teaching and research. Academic freedom comes with a responsibility that all members of our education community benefit from it without intimidation, exploitation or coercion.

This policy shall apply to all individuals affiliated with Minnesota State Colleges and Universities, including but not limited to its students, employees, applicants, volunteers, agents, and Board of Trustees, 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 or reprisal. Individuals who violate this policy shall be subject to disciplinary or other corrective action.

This policy supersedes all existing system, college, and University equal opportunity and nondiscrimination policies.

## **Part 2. Definitions.**

**Subpart A. Consensual Relationship.** Consensual relationship means a sexual or romantic relationship between two persons who voluntarily enter into such a relationship. Employees who are members of the same household should also refer to the Board Policy 4.10, of Trustees Nepotism policy 4.10.

**Subpart B. Discrimination.** Discrimination means conduct that is directed at an individual because of his or her protected class and that subjects the individual to different treatment by agents or employees so as to interfere with or limit the ability of the individual to participate in, or benefit from, the services, activities, or privileges provided by the system or colleges and universities or otherwise adversely affects the individual's employment or education.

**Subpart C. Discriminatory harassment.** Discriminatory harassment means verbal or physical conduct that is directed at an individual because of his or her protected class, and that is sufficiently severe, pervasive, or persistent so as to have the purpose or effect of creating a hostile work or educational environment.

As required by law, Minnesota State Colleges and Universities further defines sexual harassment as a form of sexual discrimination which is prohibited by state and federal law. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education, evaluation of a student's academic performance, or term or condition of participation in student activities or in other events or activities sanctioned by the college or University; or
- Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions or other decisions about participation in student activities or other events or activities sanctioned by the college or University; or
- Such conduct has the purpose or effect of threatening an individual's employment; interfering with an individual's work or academic performance; or creating an intimidating, hostile, or offensive work or educational environment.

**Subpart D. Employee.** Employee means any individual employed by Minnesota State Colleges and Universities, including all faculty, staff, administrators, teaching assistants, graduate assistants, residence directors and student employees.

**Subpart E. Protected class.** For purposes of this policy:

- Protected class includes race, sex, color, creed, religion, age, national origin, disability, marital status, familial status, status with regard to public assistance, sexual orientation, gender identity, or gender expression. In addition, membership or activity in a local human rights commission is a protected class in employment.
- This policy prohibits use of protected class status as a factor in decisions affecting 96 education and employment where prohibited by federal or state law.

**Subpart F. Retaliation.** Retaliation includes, but is not limited to, intentionally engaging in any form of intimidation, reprisal or harassment against an individual because he or she:

- Made a complaint under this policy;
- Assisted or participated in any manner in an investigation, or process under this policy, regardless of whether a claim of discrimination or harassment is substantiated;
- Associated with a person or group of persons with a disability or are of a different race, color, creed, religion, sexual orientation, gender identity, gender expression, or national origin; or
- Made a complaint or assisted or participated in any manner in an investigation or process with the Equal Employment Opportunity Commission, the U.S. Department of Education Office for Civil Rights, the Minnesota Department of Human Rights or other enforcement colleges/universities, under any federal or stated nondiscrimination law, including the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Minnesota Human Rights Act, Minn. Stat. Ch. 363A, and their amendments.

Retaliation may occur whether or not there is a power or authority differential between the individuals involved.

**Subpart G. Sexual harassment and violence as sexual abuse.** Under certain circumstances, sexual harassment or violence may constitute sexual abuse according to Minnesota law. In such situations, the system office and colleges and universities shall comply with the reporting requirements in Minnesota Statutes Section 626.556 (reporting of maltreatment of minors) and Minnesota Statutes Section 626.557 (Vulnerable Adult Protection Act). Nothing in this policy will prohibit any college or University or the system office from taking immediate action to protect victims of alleged sexual abuse. Board Policy 1B.3 Sexual Violence addresses sexual violence.

**Subpart H. Student.** For purposes of this policy, the term “student” includes all persons who:

- Are enrolled in one or more courses, either credit or non-credit, through a college or University;
- Withdraw, transfer or graduate, after an alleged violation of the student conduct code;
- Are not officially enrolled for a particular term but who have a continuing relationship with the college or University;
- Have been notified of their acceptance for admission or have initiated the process of application for admission or financial aid; or

- Are living in a college or University residence hall although not enrolled in, or employed by, the institution.

**Part 3. Consensual Relationships.** An employee of Minnesota State Colleges and Universities shall not enter into a consensual relationship with a student or an employee over whom he or she exercises direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority or influence. In the event a relationship already exists, each college and University and system office shall develop a procedure to reassign evaluative authority as may be possible to avoid violations of this policy. This prohibition does not limit the right of an employee to make a recommendation on personnel matters concerning a family or household member where the right to make recommendations on such personnel matters is explicitly provided for in the applicable collective bargaining agreement or compensation plan.

**Part 4. Retaliation.** Retaliation as defined in this policy is prohibited in the system office, colleges and universities. Any individual subject to this policy who intentionally engages in retaliation shall be subject to disciplinary or other corrective action as appropriate.

**Part 5. Policies and procedures.** The chancellor shall establish procedures to implement this policy. The equal opportunity and nondiscrimination in employment and education policy and procedures of colleges and universities shall comply with Board Policy 1B.1 and Procedure 1B.1.1.

## **Minnesota State's Report/Complaint of Discrimination/Harassment Investigation and Resolution Procedure**

### **Part 1. Purpose and applicability.**

**Subpart A. Purpose.** This procedure is designed to further implement Minnesota State Colleges and Universities policies relating to nondiscrimination by providing a process through which individuals alleging violation of Board Policy 1B.1 Equal Opportunity and Nondiscrimination in Employment and Education 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, familial status, or status with regard to public assistance. In addition, discrimination in employment based on membership or activity in a local human rights commission as defined by law is prohibited.

**Subpart B. Applicability.** This procedure shall apply to all individuals affiliated with Minnesota State Colleges and Universities, 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 Board Policy 1B.1, 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 Minnesota State Colleges and Universities.

**Subpart C. Scope.** This procedure is not applicable to allegations of sexual violence; allegations of sexual violence are handled pursuant to Board Policy 1B.3 Sexual Violence and System Procedure 1B.3.1. In addition, harassment and discrimination complaints not arising from alleged violations of Board Policy 1B.1, are to be addressed under other appropriate policies and established practices.

**Part 2. Definitions.** The definitions in Board Policy 1B.1 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. Decision-maker.** Decision-maker means a high level administrator designated by the president or chancellor to review investigative reports, to make findings whether Board Policy 1B.1 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 procedure, administrators must complete decision-maker training provided by the system office.

**Subpart C. Retaliation.** Retaliation is as defined in Board Policy 1B.1 Equal Opportunity and Nondiscrimination in Employment and Education policy.

**Part 3. Consensual relationships.** Board Policy 1B.1 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.

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.

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.

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.

## **Part 4. 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 Board Policy 1B.1 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 system office, college, or University.

**Subpart B. Duty to report.** Administrators and supervisors shall refer allegations of conduct that they reasonably believe may constitute discrimination or harassment under Board Policy 1B.1 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 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 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, the system office, colleges, and universities reserve the right to investigate and take appropriate action.

**Part 5. 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 6. Investigation and Resolution.** The system office, college or University has an affirmative duty to take timely and appropriate 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 informal resolution by an individual who believes he or she has been subject to conduct in violation of Board Policy 1B.1. 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.

- **Jurisdiction.** The designated officer shall determine whether the report/complaint is one which should be processed through another system office, college or University procedure available to the complainant; if appropriate, the designated officer shall direct the complainant to that procedure as soon as possible.
- **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.
- **Information provided to complainant.** At the time the report/complaint is made, the designated officer shall:
  - Inform the complainant of the provisions of the Board Policy 1B.1 and this procedure;
  - Provide a copy of or Web address for Board Policy 1B.1 and this procedure to the complainant;
  - Determine whether other individuals are permitted to accompany the complainant during investigatory interviews and the extent of their involvement; and
  - Inform the complainant of the provisions of Board Policy 1B.1 prohibiting retaliation.
- **Complaint documentation.** The designated officer shall ensure 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 system office, college or University.
- **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:
  - Provide a copy of or Web address for Board Policy 1B.1 and this procedure to the respondent;
  - 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;
  - Explain to the respondent that in addition to being interviewed by the designated officer, the respondent may provide a written response to the allegations;

- Determine whether other individuals are permitted to accompany the respondent during investigative interviews and the extent of their involvement; and
- Inform the respondent of the provisions of Board Policy 1B.1 prohibiting retaliation.
- Investigatory process. The designated officer shall:
  - Conduct a fact-finding inquiry or investigation into the complaint, including appropriate interviews and meetings;
  - Inform the witnesses and other involved individuals of the prohibition against retaliation;
  - Create, gather and maintain investigative documentation as appropriate;
  - 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
  - Handle all data in accordance with applicable federal and state privacy laws.
- Interim actions.
  - 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.
  - 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.
- 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 Board Policy 1B.1. 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.

- **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:

- Conduct or coordinate education/training;
- Facilitate voluntary meetings between the parties;
- Recommend separation of the parties, after consultation with appropriate system office, college or University personnel;
- Other possible outcomes may include recommending changes in workplace assignments, enrollment in a different course or program, or other appropriate action;
- The system office, college 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;
- 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.

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

- Prepare an investigation report and forward it to the decision-maker for review and decision;
- Take additional investigative measures as requested by the decision-maker; and
- 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.

**Decision-maker.** After receiving the investigation report prepared by the designated officer, the decision-maker shall:

- Determine whether additional steps should be taken prior to making the decision. Additional steps may include:

- A request that the designated officer conduct further investigative measures;
  - 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
  - A request for additional information which may include a written response from the complainant or respondent relating to the allegations of the complaint.
- Take other measures deemed necessary to determine whether a violation of Board Policy 1B.1 has been established;
  - 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;
  - 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;
  - 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 Board policy 1B.1 has been violated; and
  - Conduct that is determined not to have violated Board policy 1B.1 shall be referred to another procedure for further action, if appropriate.

**Part 7. System office, college, 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 Board Policy 1B1.1, 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, college or University. In accordance with state law, the system office, college or University is responsible for filing the complaint disposition concerning complaints against employees with the President of Employee Relations within 30 days of final disposition.

## **Part 8. 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 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 decision-maker.

**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 9. Education and training.** The system office, colleges 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 Board Policy 1B.1 and this procedure. All colleges and universities and the system office shall promote awareness of Board Policy 1B.1 and this procedure, and shall publicly identify the designated officer.

**Part 10. Distribution of board policy 1B.1 and this procedure.** Information regarding Board Policy 1B.1 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 website, 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 websites and other appropriate public announcements.

**Part 11. 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.

## Statewide ADA Reasonable Accommodation Policy

### Statewide HR/LR Policy #1433: ADA Reasonable Accommodation Policy

#### OBJECTIVE

The goals of this policy are:

- To ensure compliance with all applicable state and federal laws;
- To establish a written and readily accessible procedure regarding reasonable accommodation, including providing notice of this policy on all job announcements;
- To provide guidance and resources about reasonable accommodations;
- To provide a respectful interactive process to explore reasonable accommodations; and
- To provide a timely and thorough review process for requests for reasonable accommodation.

#### Policy Statement

State colleges/universities must comply with all state and federal laws that prohibit discrimination against qualified individuals with disabilities in all employment practices. All state colleges/universities must provide reasonable accommodations to qualified applicants and employees with disabilities unless to do so would cause an undue hardship or pose a direct threat. Colleges/universities must provide reasonable accommodation when:

- A qualified applicant with a disability needs an accommodation to have an equal opportunity to compete for a job;
- A qualified employee with a disability needs an accommodation to perform the essential functions of the employee's job; and
- A qualified employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., trainings, office sponsored events).

#### Scope

This policy applies to all employees of the Executive Branch and classified employees in the Office of Legislative Auditor, Minnesota State Retirement System, Public Employee Retirement System, and Teachers' Retirement System.

#### Definitions

**Applicant-** A person who expresses interest in employment and satisfies the minimum requirements for application established by the job posting and job description.



**Americans with Disabilities Act (ADA) Coordinator-** Each University is required to appoint an ADA coordinator or designee, depending on University size, to direct and coordinate University compliance with Title I of the ADA.

**Direct Threat-** A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

The determination that an individual poses a direct threat shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job.

**Essential Functions-** Duties so fundamental that the individual cannot do the job without being able to perform them. A function can be essential if:

- The job exists specifically to perform the function(s); or
- There are a limited number of other employees who could perform the function(s); or
- The function(s) is/are specialized and the individual is hired based on the employee's expertise.

**Interactive Process-** A discussion between the employer and the individual with a disability to determine an effective reasonable accommodation for the individual with a disability. To be interactive, both sides must communicate and exchange information.

**Individual with a Disability-** An individual who:

- Has a physical, sensory, or mental impairment that substantially limits one or more major life activities; or
- Has a record or history of such impairment; or
- Is regarded as having such impairment.

**Qualified Individual with a Disability-** An individual who:

- Satisfies the requisite skill, experience, education, and other job-related requirements of the job that the individual holds or desires; and
- Can perform the essential functions of the position with or without reasonable accommodation.

**Major Life Activities-** May include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Major life activities also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

**Medical Documentation-** Information from the requestor's treating provider which is sufficient to enable the employer to determine whether an individual has a disability and whether and what type

of reasonable accommodation is needed when the disability or the need for accommodation is not obvious. Medical documentation can be requested using the standardized [Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider](#).

**Reasonable Accommodation-** An adjustment or alteration that enables a qualified individual with a disability to apply for a job, perform job duties, or enjoy the benefits and privileges of employment. Reasonable accommodations may include:

- Modifications or adjustments to a job application process to permit a qualified individual with a disability to be considered for a job; or
- Modifications or adjustments to enable a qualified individual with a disability to perform the essential functions of the job; or
- Modifications or adjustments that enable qualified employees with disabilities to enjoy equal benefits and privileges of employment.
- Modifications or adjustments may include, but are not limited to:
  - Providing materials in alternative formats like large print or Braille;
  - Providing assistive technology, including information technology and communications equipment, or specially designed furniture;
  - Modifying work schedules or supervisory methods;
  - Granting breaks or providing leave;
  - Altering how or when job duties are performed;
  - Removing and/or substituting a marginal function;
  - Moving to a different office space;
  - Providing telework;
  - Making changes in workplace policies;
  - Providing a reader or other staff assistant to enable employees to perform their job functions, where a reasonable accommodation cannot be provided by current staff;
  - Removing an architectural barrier, including reconfiguring work spaces;
  - Providing accessible parking;
  - Providing a sign language interpreter; or
  - Providing a reassignment to a vacant position.

**Reassignment-** Reassignment to a vacant position for which an employee is qualified is a “last resort” form of a reasonable accommodation. This type of accommodation must be provided to an employee, who, because of a disability, can no longer perform the essential functions of the position, with or without reasonable accommodation, unless the employer can show that it will be an undue hardship.

**Support Person-** Any person an individual with a disability identifies to help during the reasonable accommodation process in terms of filling out paperwork, attending meetings during the interactive process to take notes or ask clarifying questions, or to provide emotional support.

**Undue Hardship-** A specific reasonable accommodation would require significant difficulty or expense. Undue hardship is always determined on a case-by-case basis considering factors that include the nature and cost of the accommodation requested and the impact of the accommodation on the operations of the University. A state University is not required to provide accommodations that would impose an undue hardship on the operation of the University.

## Exclusions

N/A

## Statutory References

- [Rehabilitation Act of 1973, Title 29 USC 701](#)
- [Americans with Disabilities Act \(1990\)](#)
- [29 C.F.R. 1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act](#)

## GENERAL STANDARDS AND EXPECTATIONS

### Individuals who may request a reasonable accommodation include:

- Any qualified applicant with a disability who needs assistance with the job application procedure or the interview or selection process; or
- Any qualified University employee with a disability who needs a reasonable accommodation to perform the essential functions of the position; or
- A third party, such as a family member, friend, health professional or other representative, on behalf of a qualified applicant or employee with a disability, when the applicant or employee is unable to make the request for reasonable accommodation. When possible, the University must contact the applicant or employee to confirm that the accommodation is wanted. The applicant or employee has the discretion to accept or reject the proposed accommodation.

The University must abide by the [Minnesota Government Data Practices Act, Chapter 13](#), in obtaining or sharing information related to accommodation requests.

### How to request a reasonable accommodation

A University applicant or employee may make a reasonable accommodation request to any or all of the following:

- Immediate supervisor or manager in the employee's chain of command;

- University Affirmative Action Officer/Designee;
- University ADA Coordinator;
- University Human Resources Office;
- Any University official with whom the applicant has contact during the application, interview and/or selection process.

### Timing of the request

An applicant or employee may request a reasonable accommodation at any time, even if the individual has not previously disclosed the existence of a disability or the need for an accommodation. A request is any communication in which an individual asks or states that he or she needs the University to provide or change something because of a medical condition.

The reasonable accommodation process begins as soon as possible after the request for accommodation is made.

### Form of the request

The applicant or employee is responsible for requesting a reasonable accommodation or providing sufficient notice to the University that an accommodation is needed.

An initial request for accommodation may be made in any manner (e.g., writing, electronically, in person or orally).

The individual requesting an accommodation does not have to use any special words and does not have to mention the ADA or use the phrase "reasonable accommodation" or "disability."

Oral requests must be documented in writing to ensure efficient processing of requests.

University request forms can be found at: ["Employee/Applicant Request for Reasonable Accommodation Form"](#).

When a supervisor or manager observes or receives information indicating that an employee is experiencing difficulty performing the job due to a medical condition or disability, further inquiry may be required. Supervisors or managers should consult with the University ADA Coordinator for advice on how to proceed.

When an employee needs the same reasonable accommodation on a repeated basis (e.g., the assistance of a sign language interpreter), a written request for accommodation is required the first time only. However, the employee requesting an accommodation must give appropriate advance notice each subsequent time the accommodation is needed. If the accommodation is needed on a regular basis (e.g., a weekly staff meeting), the University must make appropriate arrangements without requiring a request in advance of each occasion.

## **The interactive process entails**

Communication is a priority and encouraged throughout the entire reasonable accommodation process. The interactive process is a collaborative process between the employee and/or applicant and the University to explore and identify specific reasonable accommodation(s). (For information on the Interactive Process see the U.S. Department of Labor, Job Accommodation Network at <http://askjan.org/topics/interactive.htm>). This process is required when:

- The need for a reasonable accommodation is not obvious;
- The specific limitation, problem or barrier is unclear;
- An effective reasonable accommodation is not obvious;
- The parties are considering different forms of reasonable accommodation;
- The medical condition changes or fluctuates; or,
- There are questions about the reasonableness of the requested accommodation.

The interactive process should begin as soon as possible after a request for reasonable accommodation is made or the need for accommodation becomes known.

The process should ensure a full exchange of relevant information and communication between the individual and the University. An individual may request that the University ADA Coordinator, a union representative, or support person be present.

The University ADA Coordinator shall be consulted when:

- Issues, conflicts or questions arise in the interactive process; and
- Prior to denying a request for accommodation.

## **University responsibilities for processing the request**

As the first step in processing a request for reasonable accommodation, the person who receives the request must promptly forward the request to the appropriate decision maker. At the same time, the recipient will notify the requestor who the decision maker is.

### **President**

The President of the University or University head has the ultimate responsibility to ensure compliance with the ADA and this policy and appoint an ADA Coordinator.

### **ADA Coordinator**

The University ADA Coordinator is the University's decision maker for reasonable accommodation requests for all types of requests outside of the supervisors' and managers' authority. The University ADA Coordinator will work with the supervisor and manager, and where necessary, with University Human Resources, to implement the approved reasonable accommodation.

## **Supervisors and Managers**

Colleges/universities have the authority to designate the level of management approval needed for reasonable accommodation requests for low-cost purchases. For example:

Requests for standard office equipment that is needed as a reasonable accommodation and adaptive items costing less than \$100. [Colleges/universities can adjust the dollar amount based on their needs]; and

Requests for a change in a condition of employment such as modified duties, or a change in schedule, or the location and size of an employee's workspace. [Colleges/universities can choose to delegate specific requests to supervisors or managers or require these types of requests to work through the University ADA Coordinator].

## **Analysis for processing requests**

Before approving or denying a request for accommodation, the University decision maker with assistance from the University ADA Coordinator will:

1. Determine if the requestor is a qualified individual with a disability;
2. Determine if the accommodation is needed to:
  - Enable a qualified applicant with a disability to be considered for the position the individual desires;
  - Enable a qualified employee with a disability to perform the essential functions of the position; or
  - Enable a qualified employee with a disability to enjoy equal benefits or privileges of employment as similarly situated employees without disabilities;
3. Determine whether the requested accommodation is reasonable;
4. Determine whether there is a reasonable accommodation that will be effective for the requestor and the University; and
5. Determine whether the reasonable accommodation will impose an undue hardship on the University's operations.

An employee's accommodation preference is always seriously considered, but the University is not obligated to provide the requestor's accommodation of choice, so long as it offers an effective accommodation, or determines that accommodation would cause an undue hardship.

## **Obtaining medical documentation in connection with a request for reasonable accommodation**

In some cases, the disability and need for accommodation will be reasonably evident or already known, for example, where an employee is blind. In these cases, the University will not seek further medical documentation. If a requestor's disability and/or need for reasonable accommodation are

not obvious or already known, the University ADA Coordinator may require medical information showing that the requestor has a covered disability that requires accommodation. The University ADA Coordinator may request medical information in certain other circumstances. For example when:

- The information submitted by the requestor is insufficient to document the disability or the need for the accommodation;
- A question exists as to whether an individual is able to perform the essential functions of the position, with or without reasonable accommodation; or
- A question exists as to whether the employee will pose a direct threat to himself/herself or others.

Where medical documentation is necessary, the University ADA Coordinator must make the request and use the [Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider](#). The University ADA Coordinator must also obtain the requestor's completed and signed [Authorization for Release of Medical Information](#) before sending the Letter to, or otherwise communicating with, the medical provider. The employee may choose not to sign the Authorization. However, if the employee chooses not to sign the Authorization, it is the employee's responsibility to ensure that the University receives the requested medical information.

Only medical documentation specifically related to the employee's request for accommodation and ability to perform the essential functions of the position will be requested. When medical documentation or information is appropriately requested, an employee must provide it in a timely manner, or the University may deny the reasonable accommodation request. Colleges/universities must not request medical records; medical records are not appropriate documentation and cannot be accepted. **Supervisors and managers *must not* request medical information or documentation from an applicant or employee seeking an accommodation.** Such a request will be made by the University ADA Coordinator, if appropriate.

## Confidentiality requirements

### Medical Information

Medical information obtained in connection with the reasonable accommodation process must be kept confidential. All medical information obtained in connection with such requests must be collected and maintained on separate forms and in separate physical or electronic files from non-medical personnel files and records. Electronic copies of medical information obtained in connection with the reasonable accommodation process must be stored so that access is limited to only the University ADA Coordinator. Physical copies of such medical information must be stored in a locked cabinet or office when not in use or unattended. Generally, medical documentation obtained in connection with the reasonable accommodation process should only be reviewed by the University ADA Coordinator.

The University ADA Coordinator may disclose medical information obtained in connection with the reasonable accommodation process to the following:

- Supervisors, managers or University HR staff who have a need to know may be told about the necessary work restrictions and about the accommodations necessary to perform the employee's duties. However, information about the employee's medical condition should only be disclosed if strictly necessary, such as for safety reasons;
- First aid and safety personnel may be informed, when appropriate, if the employee may require emergency treatment or assistance in an emergency evacuation;
- To consult with the State ADA Coordinator or Employment Law Counsel at MMB, or the Attorney General's Office about accommodation requests, denial of accommodation requests or purchasing of specific assistive technology or other resources; or
- Government officials assigned to investigate University compliance with the ADA.

Whenever medical information is appropriately disclosed as described above, the recipients of the information must comply with all confidentiality requirements.

### **Accommodation Information**

The fact that an individual is receiving an accommodation because of a disability is confidential and may only be shared with those individuals who have a need to know for purposes of implementing the accommodation, such as the requestor's supervisor and the University ADA Coordinator.

### **General Information**

General summary information regarding an employee's or applicant's status as an individual with a disability may be collected by University equal opportunity officials to maintain records and evaluate and report on the University's performance in hiring, retention, and processing reasonable accommodation requests.

### **Approval of requests for reasonable accommodation**

As soon as the decision maker determines that a reasonable accommodation will be provided, the University ADA Coordinator will process the request and provide the reasonable accommodation in as short of a timeframe as possible. The time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information. If an approved accommodation cannot be provided within a reasonable time, the decision maker will inform the requestor of the status of the request before the end of 30 days. Where feasible, if there is a delay in providing the request, temporary measures will be taken to provide assistance.

Once approved, the reasonable accommodation should be documented for record keeping purposes and the records maintained by the University ADA Coordinator.

### **Funding for reasonable accommodations**

The University must specify how the University will pay for reasonable accommodations.



## **Procedures for reassignment as a reasonable accommodation**

Reassignment to a vacant position is an accommodation that must be considered if there are no effective reasonable accommodations that would enable the employee to perform the essential functions of his/her current job, or if all other reasonable accommodations would impose an undue hardship.

The University ADA Coordinator will work with University Human Resources staff and the requestor to identify appropriate vacant positions within the University for which the employee may be qualified and can perform the essential functions of the vacant position, with or without reasonable accommodation. Vacant positions which are equivalent to the employee's current job in terms of pay, status, and other relevant factors will be considered first. If there are none, the University will consider vacant lower level positions for which the individual is qualified. The EEOC recommends that the University consider positions that are currently vacant or will be coming open within at least the next 60 days.

## **Denial of requests for reasonable accommodation**

The University ADA Coordinator must be contacted for assistance and guidance prior to denying any request for reasonable accommodation. The University may deny a request for reasonable accommodation where:

- The individual is not a qualified individual with a disability;
- The reasonable accommodation results in undue hardship or the individual poses a direct threat to the individual or others. Undue hardship and direct threat are determined on a case-by-case basis with guidance from the University ADA Coordinator; or
- Where no reasonable accommodation, including reassignment to a vacant position, will enable the employee to perform all the essential functions of the job.

The explanation for denial must be provided to the requestor in writing. The explanation should be written in plain language and clearly state the specific reasons for denial. Where the decision maker has denied a specific requested accommodation, but has offered a different accommodation in its place, the decision letter should explain both the reasons for denying the accommodation requested and the reasons that the accommodation being offered will be effective.

## **Consideration of undue hardship**

An interactive process must occur prior to the University making a determination of undue hardship. Determination of undue hardship is made on a case-by-case basis and only after consultation with the University's ADA Coordinator. In determining whether granting a reasonable accommodation will cause an undue hardship, the University considers factors such as the nature and cost of the accommodation in relationship to the size and resources of the University and the impact the accommodation will have on the operations of the University.

Colleges/universities may deny reasonable accommodations based upon an undue hardship. Prior to denying reasonable accommodation requests due to lack of financial resources, the University will consult with the State ADA Coordinator at MMB.

### **Determining direct threat**

The determination that an individual poses a “direct threat,” (i.e., a significant risk of substantial harm to the health or safety of the individual or others) which cannot be eliminated or reduced by a reasonable accommodation, must be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job with or without reasonable accommodation. A determination that an individual poses a direct threat cannot be based on fears, misconceptions, or stereotypes about the individual's disability. Instead, the University must make a reasonable medical judgment, relying on the most current medical knowledge and the best available objective evidence.

In determining whether an individual poses a direct threat, the factors to be considered include:

- Duration of the risk;
- Nature and severity of the potential harm;
- Likelihood that the potential harm will occur; and
- Imminence of the potential harm.

### **Appeals process in the event of denial**

In addition to providing the requestor with the reasons for denial of a request for reasonable accommodation, colleges/universities must designate a process for review when an applicant or employee chooses to appeal the denial of a reasonable accommodation request. This process:

- Must include review by an University official;
- May include review by the State ADA Coordinator; and/or
- Must inform the requestor of the statutory right to file a charge with the Equal Employment Opportunity Commission or the Minnesota Department of Human Rights.

### **Information tracking and records retention**

Colleges/universities must track reasonable accommodations requested and report once a year by September 1st to MMB the number and types of accommodations requested, approved, denied and other relevant information.

Colleges/universities must retain reasonable accommodation documentation according to the University's document retention schedule, but in all cases for at least one year from the date the record is made or the personnel action involved is taken, whichever occurs later. 29 C.F.R. § 1602.14.

## RESPONSIBILITIES

### Colleges/universities are responsible for the request:

- Adoption and implementation of this policy and development of reasonable accommodation procedures consistent with the guidance in this document.

### MMB is responsible for:

- Provide advice and assistance to state colleges/universities and maintain this policy.

### Please review the following forms:

- [Employee/Applicant Request for ADA Reasonable Accommodation](#)
- [Authorization of Release of Medical Information for ADA Reasonable Accommodations](#)
- [Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider](#)

## REFERENCES

- [U.S. Equal Employment Opportunity Commission](#), *Enforcement Guidance*
- Pre-employment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995).
- Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996).
- The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997).
- Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (October 17, 2002), (clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship).
- Disability-Related Inquiries and Medical Examinations of Employees (explains when it is permissible for employers to make disability-related inquiries or require medical examinations of employees).
- Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 4055:7371.

The [Genetic Information Nondiscrimination Act \(GINA\) of 2008](#) and [M.S. 181.974](#) prohibit employers from using genetic information when making decisions regarding employment.

[Minnesota Human Rights Act \(MHRA\)](#) prohibits employers from treating people differently in employment because of their race, color, creed, religion, national origin, sex, marital status, familial status, disability, public assistance, age, sexual orientation, or local human rights commission activity. The MHRA requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation

would cause undue hardship or where the individual poses a direct threat to the health or safety of the individual or others. The MHRA prohibits requesting or requiring information about an individual's disability prior to a conditional offer of employment.

The [Family and Medical Leave Act](#) is a federal law requiring covered employers to provide eligible employees twelve weeks of job-protected, unpaid leave for qualified medical and family reasons.

[Executive Order 14-14, Providing for Increased Participation of Individuals with Disabilities in State Employment](#), directs colleges/universities to make efforts to hire more individuals with disabilities and report on progress.

## CONTACTS

Equal Opportunity Office at Minnesota Management and Budget via [ADA.MMB@state.mn.us](mailto:ADA.MMB@state.mn.us)

## Request for Reasonable Accommodation Form

<p>State of Minnesota – (Agency) _____ Date: _____</p> <p><b>Employee/Applicant Request for Americans with Disabilities Act ("ADA") Reasonable Accommodation Form</b></p> <p>The State of Minnesota is committed to complying with the Americans with Disabilities Act ("ADA") and the Minnesota Human Rights Act ("MHRA"). To be eligible for an ADA accommodation, you must be 1) qualified to perform the essential functions of your position and 2) have a disability that limits a major life activity or function. The ADA Coordinator/Designee will review each request on an individualized case-by-case basis to determine whether or not an accommodation can be made.</p> <p>Employee/Applicant Name: _____</p> <p>Job Title: _____</p> <p>Work Location: _____ Phone Number: _____</p> <p><b>Data Privacy Statement:</b> This information may be used by your agency human resources representative, ADA Coordinator or designee, your agency legal counsel, or any other individual who is authorized by your agency to receive medical information for purposes of providing reasonable accommodations under the ADA and MHRA. This information is necessary to determine whether you have a disability as defined by the ADA or MHRA, and to determine whether any reasonable accommodation can be made. The provision of this information is strictly voluntary; however, if you refuse to provide it, your agency may refuse to provide a reasonable accommodation.</p> <p><b>Questions to clarify accommodation requested.</b></p> <p>What specific accommodation are you requesting? _____</p> <p>If you are not sure what accommodation is needed, do you have any suggestions about what options we can explore? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>If yes, please explain.</p> <div style="border: 1px solid black; height: 100px; width: 100%;"></div>	<p>Questions to document the reason for the accommodation request (please attach additional pages if necessary).</p> <p>What, if any, job function are you having difficulty performing?</p> <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <p>What, if any, employment benefits are you having difficulty accessing?</p> <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <p>What limitation, as result of your physical or mental impairment, is interfering with your ability to perform your job or access an employment benefit?</p> <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <p>If you are requesting a specific accommodation, how will that accommodation be effective in allowing you to perform the functions of your job?</p> <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <p><b>Information Pertaining to Medical Documentation:</b> In the context of assessing an accommodation request, medical documentation may be needed to determine if the employee has a disability covered by the ADA and to assist in identifying an effective accommodation. The ADA Coordinator or designee in each agency is tasked with collecting necessary medical documentation. In the event that medical documentation is needed, the employee will be provided with the appropriate forms to submit to their medical provider. The employee has the responsibility to ensure that the medical provider follows through on requests for medical information.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"><p>This form does not cover, and the information to be disclosed should not contain, genetic information. "Genetic information" includes: Information about an individual's genetic tests; information about genetic tests of an individual's family members; information about the manifestation of a disease or disorder in an individual's family members (family medical history); an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; and genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.</p></div>
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### [Employee/Applicant Request for ADA Reasonable Accommodation Form](#)

## Evacuation Procedure for Individuals with Disabilities or Otherwise in Need of Assistance

A copy of the University's weather and emergency evacuation plans can be found at:  
<http://www.smsu.edu/campuslife/publicsafety/index.html>.

Knowledge and preparation by both individuals needing assistance and those who don't is key to reducing the impact of emergencies. When developing a plan, safety needs should be determined on a case-by-case basis because it varies with each individual and building.

Everyone has a responsibility to develop their own personal emergency evacuation plan, this includes individuals with disabilities or individuals who will need assistance during evacuation. The Americans with Disabilities Act Coordinator or designee in each University will work to develop a plan and consult the appropriate building and safety personnel.

Directors, managers, and supervisors should review the emergency evacuation procedures with staff, including informing all staff that if additional assistance may be needed, and individuals with disabilities should contact the University contact(s) below to request the type of assistance they may need.

Mike Munford, Director of Public Safety, 507-537-7858, [mike.munford@smsu.edu](mailto:mike.munford@smsu.edu)

Dave Hemp, Director of Environmental Health and Safety, 507-537-6470,  
[dave.hemp@smsu.edu](mailto:dave.hemp@smsu.edu)

David Volden, Campus Security Officer, 507-537-8197; [david.volden@smsu.edu](mailto:david.volden@smsu.edu)

Jon Krogman, Campus Security Officer, 507-537-6113, [jon.krogman@smsu.edu](mailto:jon.krogman@smsu.edu)

### Evacuation Options:

Individuals with disabilities have four basic evacuation options:

- **Horizontal evacuation:** Using building exits to the outside ground level or going into unaffected wings of multi-building complexes;
- **Stairway evacuation:** Using steps to reach ground level exits from building;
- **Shelter in place:** Unless danger is imminent, remain in a room with an exterior window, a telephone, and a solid or fire resistant door. If the individual requiring special evacuation assistance remains in place, they should dial 911 immediately and report their location to emergency services, who will in turn relay that information to on-site responders. The shelter in place approach may be more appropriate for sprinkler protected buildings where an area of refuge is not nearby or available. It may be more appropriate for an individual who is alone when the alarm sounds;

- **Area of rescue assistance:** Identified areas that can be used as a means of egress for individuals with disabilities. These areas, located on floors above or below the building's exits, can be used by individuals with disabilities until rescue can be facilitated by emergency responders; and/or

## **Evacuation Procedures for Individuals with Mobility, Hearing, or Visual Disabilities:**

Individuals with disabilities should follow the following procedures:

- **Mobility disabilities (individuals who use wheelchairs or other personal mobility devices ("PMDs")):** Individuals using wheelchairs should be accompanied to an area of rescue assistance by an employee or shelter in place when the alarm sounds. The safety and security staff will respond to each of the areas of rescue assistance every time a building evacuation is initiated to identify the individuals in these areas and notify to emergency responders how many individuals need assistance to safely evacuate.
- **Mobility disabilities (individuals who do not use wheelchairs):** Individuals with mobility disabilities, who are able to walk independently, may be able to negotiate stairs in an emergency with minor assistance. If danger is imminent, the individual should wait until the heavy traffic has cleared before attempting the stairs. If there is no immediate danger (detectable smoke, fire, or unusual odor), the individual with a disability may choose to wait at the area of rescue assistance until emergency responders arrive to assist them.
- **Hearing disabilities:** The University buildings are equipped with fire alarm horns/strobes that sound the alarm and flash strobe lights. The strobe lights are for individuals with who are deaf and/or hard of hearing. Individuals with hearing disabilities may not notice or hear emergency alarms and will need to be alerted of emergency situations.
- **Visual disabilities:** The University buildings are equipped with fire alarm horn/strobes that sound the alarm and flash strobe lights. The horn will alert individuals who are blind or have visual disabilities of the need to evacuate. Most individuals with visual disabilities will be familiar with their immediate surroundings and frequently traveled routes. Since the emergency evacuation route is likely different from the common traveled route, individuals with visual disabilities may need assistance in evacuating. The assistant should offer assistance, and if accepted, guide the individual with a visual disability through the evacuation route.

## **Severe Weather Evacuation Options:**

Individuals in need of assistance during an evacuation have three evacuation options based on their location in their building:

- **Horizontal evacuation:** If located on the ground or basement floor, severe weather shelter areas are located throughout each floor;

- **Elevator evacuation:** If there are no safe areas above the ground floor, the elevator may be used to evacuate to the ground or basement levels; and/or
- **Shelter in Place:** Seeking shelter in a designated severe weather shelter and remaining there until the all clear is used.

## Utilization Analysis Table

On file



## **Separation Analysis Tables**

On file