

RP-2.1.8 Sexual Misconduct

A. Statement of Policy

1. The University of Nebraska does not discriminate based on race, color, ethnicity, national origin, sex, pregnancy, sexual orientation, gender identity, religion, disability, age, genetic information, veteran status, marital status, and/or political affiliation in the education program or activity that the University operates. The University is required by Title IX of the Education Amendments of 1972 (Title IX) and the accompanying regulations not to discriminate in such a manner. This requirement not to discriminate extends to admission and employment. Inquiries about the application of Title IX and the accompanying regulations may be referred to a University Title IX Coordinator or the Assistant Secretary for Civil Rights of the Department of Education or both.
2. Beginning with the University of Nebraska charter in 1869, Nebraska law has provided that no person shall be deprived of the privileges of this institution because of sex. Discrimination on the basis of sex is also prohibited by federal law. All members of the University community are expected to conduct themselves in a manner that maintains an environment free from sexual misconduct. Sexual misconduct, which includes domestic violence, dating violence, sexual harassment, sexual assault, sexual exploitation, and stalking, is unacceptable behavior under University of Nebraska policy and against the law. The University of Nebraska has programs to promote awareness of and to help prevent sexual misconduct, and to assist members of the university community who are affected by such behavior.
3. Sexual harassment, a type of sex discrimination, is specifically prohibited by this Policy as well as federal laws such as Title VII of the Civil Rights Act of 1964 (Title VII) and Title IX.
 - a. Under Title IX, sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - i. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
 - ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
 - iii. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).
 - b. Under Title VII, which applies to employees only, sexual harassment also means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment, sufficiently severe or pervasive to alter the conditions of the individual's employment and create an abusive working environment.

B. Scope of Policy

1. This Policy applies to all members of the University of Nebraska community regardless of sexual orientation or gender identity, and to all education programs and activities under the jurisdiction of the University of Nebraska.
2. For the purpose of complaints alleging discrimination under Title IX, education program

or activity includes locations events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

3. The President and Chancellors shall implement procedures to address the rights of all individuals involved in cases of alleged sexual misconduct.

C. Prohibited Conduct Definitions

For purposes of addressing complaints of sexual misconduct against or by University students and employees, the following uniform definitions shall be used by the University.

1. "Dating violence" means violence committed by a person:
 - a. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship.
 - iii. The frequency of interaction between the persons involved in the relationship.
2. "Domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse or the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Domestic violence includes domestic assault. Under Nebraska law, a person commits domestic assault if the person (i) intentionally and knowingly causes bodily injury to their intimate partner; (ii) threatens an intimate partner with imminent bodily injury; or (iii) threatens an intimate partner in a menacing manner.

Under Nebraska law an "intimate partner" means a spouse; a former spouse; persons who have a child in common whether or not they have been married or lived together at any time; and persons who are or were involved in a dating relationship.
3. "Retaliation" means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by the Policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.
4. "Sexual assault" means an offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Uniform Crime Reporting system. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - a. Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - b. Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of the victim's age or because of the victim's temporary or permanent mental incapacity.

- c. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - d. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.
- 5. "Sexual exploitation" includes, but is not limited to: prostituting another person; non-consensual visual or audio recording of sexual activity; non-consensual display or distribution of photos, images or information of an individual's sexual activity or intimate body parts; non-consensual voyeurism; coercing someone against their will to engage in sexual activity, or; knowingly transmitting sexually transmitted disease (STD) without disclosing STD status.
- 6. "Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:
 - a. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
 - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity;
 - c. Sexual assault (see definition herein);
 - d. Dating violence (see definition herein);
 - e. Domestic violence (see definition herein); or
 - f. Stalking (see definition herein)

To be considered sexual harassment for the purposes of Title IX, the conduct must meet the additional requirements of occurring in the University's education program or activity and against a person in the United States.

For employees, sexual harassment also means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment, sufficiently severe or pervasive to alter the conditions of the individual's employment and create an abusive working environment.

- 7. "Sexual misconduct" includes dating violence, domestic violence, rape, sexual assault, sexual harassment, sexual exploitation, and stalking.
- 8. "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - a. fear for their safety or the safety of others; or
 - b. suffer substantial emotional distress.

D. Reporting Sexual Misconduct

All individuals are expected to promptly report conduct that may violate the University's Sexual Misconduct Policy to the University. Although the University does not limit the time frame for reporting sexual misconduct to promote timely and effective review, the University strongly encourages individuals to report possible sexual misconduct within one hundred and eighty (180)

calendar days of the last occurrence of the concerning conduct. A report made after one hundred and eighty (180) days may make it more difficult to gather relevant and reliable information.

In addition, all individuals are expected to report conduct that may also violate criminal law to both the Title IX Coordinator and the local law enforcement. These processes are not mutually exclusive and both may happen simultaneously or at different times.

1. Any University student, employee, or other individual who seeks to report may contact the:
 - a. Title IX Coordinator:
 - i. Any person may report sex discrimination, including sexual misconduct (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual misconduct), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
 - b. University Police or Public Safety for assisting in filing a criminal complaint and preserving physical evidence; and/or
 - c. Local law enforcement to file a criminal complaint.
2. Additionally, reports may be made to the Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by visiting www2.ed.gov/about/offices/list/ocr/complaintintro.html or calling 1-800-421-3481.

E. Confidentiality

The University shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of sexual misconduct, any Complainant, any Respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA) or as required by law, or to carry out the purposes of Title IX, including conducting any investigation, hearing, or judicial proceeding arising thereunder. The University may be required to share information with other individuals in accordance with FERPA, Title IX, or other applicable law, including lawfully issued subpoenas in criminal, administrative, and civil matters.

F. Supportive Measures

The University will offer supportive measures to Complainants whether or not a Formal Complaint is filed. Supportive measures are available for both the Complainant and Respondent.

G. Grievance Process for Formal Complaints

1. A Complainant may file, or a Title IX Coordinator may sign, a Formal Complaint against a Respondent requesting that the University investigate an allegation of sexual misconduct. Filing a Formal Complaint is the first step of a grievance process that determines whether the Respondent is responsible for violating the Policy. Unless a Formal Complaint is dismissed or resolved during one of the steps of the grievance process, the grievance process will include a preliminary review of the Formal Complaint, an investigation, a hearing, and the opportunity to challenge certain decisions through an appeal. Additionally, an informal resolution process may be available at any time prior to reaching a University determination regarding responsibility. If applicable, the University may initiate informal resolution or either party may request informal resolution.
2. If the Respondent is no longer a student, employee, or participant in any University-related program or activity at the time of the report, or if the conduct does not fall within the scope of the Policy, the Formal Complaint may be dismissed. The University will, however, help a Complainant identify reporting options outside the University and provide supportive measures.

H. Retaliation

No member of the University community may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this Policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for Student Code of Conduct violations that do not involve sex discrimination or sexual misconduct, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual misconduct, for the purpose of interfering with any right or privilege secured by this Policy, constitutes retaliation.

Chapter 3. Terms and Conditions of Employment

RP-3.1 Equal Opportunity/Affirmative Action

RP-3.1.1 Nondiscrimination on the Basis of Individual Characteristics: Employees

Employees on each campus of the University of Nebraska shall be employed and equitably treated in regard to the terms and conditions of their employment without regard to individual characteristics other than qualifications for employment, quality of performance of duties, and conduct in regard to their employment in accord with University policies and rules and applicable law.

NOTE: The portion of this policy pertaining to students is at RP-5.1.1

Reference: BRUN, Minutes, 54, p. 145 (May 12, 1989).

RP-3.1.2 Policy for Americans with Disabilities

- a. The University of Nebraska has maintained a program of nondiscrimination on the basis of disability since the implementation in 1977 of regulations pertaining to the Rehabilitation Act of 1973.
- b. The Americans with Disabilities Act of 1990 (ADA) also addresses nondiscrimination on the basis of disability in much the same way as the earlier Rehabilitation Act. Two portions of the ADA directly affect the University of Nebraska: Title I, prohibiting discrimination in employment practices; and Title II, obligating the University to make all

its programs, activities, and services available to persons with disabilities.

RP-3.1.3 Equal Opportunity/Affirmative Action Guidelines

a. Other Employees

All employees are expected to contribute to the equal opportunity philosophy of the University by their acceptance of, and compliance with, the EO/AA Guidelines.

All administrative officers and supervisory personnel within the University, including hiring committees making recommendations on appointments, are responsible for performing their duties in a nondiscriminatory manner.

Administrative officers, as identified in these Guidelines, include the President, the Vice Presidents, the Chancellors, Vice Chancellors, Deans, directors, and department chairpersons. All campus officers in charge of academic, nonacademic, and student employment have the responsibility for carrying out the objectives set forth by these EO/AA Guidelines.

For those employees who are subjects of performance reviews, such evaluations must include an area for commentary relative to the person's performance in supporting and carrying out the goals and objectives of the University's EO/AA Guidelines. Compliance shall be considered in determining annual salary adjustments, promotion, and continuing employment.

2. Personnel Policies and Practices

a. General personnel Standards and Procedures

The University of Nebraska will mobilize its resources to focus on the problems of employment and promotion opportunities for women and minorities. Each organizational unit of the University shall have on file the standards and procedures which govern all of its employment practices including any tests in use and the criteria by which qualifications for appointment, retention, or promotion are judged. Deans, directors, department chairpersons, etc., shall make a review and determine whether such standards and criteria are relevant to the duties of the particular position in question. This requirement does not ignore or obviate the range of permissible discretion which characterizes employment judgments, particularly in the academic area. If the criteria and standards of selection appear to reject a higher proportion of minority and women applicants, the selection procedure must be rigorously reviewed.

b. Recruitment

The University will undertake a vigorous program of affirmative recruitment for minorities and women in all job categories in which they are found to be underutilized.

Campuses will actively continue to communicate their employment needs through advertisements to graduate schools, training programs, disciplinary conventions, and job registers. Recognizing that traditional methods of recruiting alone will not produce the desired gains in minority and female employment, the University will continue to expand its efforts, utilizing appropriate resources such as community agencies (Urban League, Comprehensive Manpower, YWCA, etc.), high schools, colleges, and universities with high minority enrollment, minority and women's registries within professional organizations, trade schools, minority and female community leaders, and advertising in minority-oriented broadcast and print media.

Recruitment of women and minorities in administration internships and in the graduate teaching and research assistantship programs will be an integral part of this effort.

A written justification must be provided to the appropriate campus EO/AA Officers by supervisory personnel in instances when apparently qualified minorities and women are passed over for training, upgrading, or promotion.

c. Upgrading and Promotion

To increase the utilization of the skills of all employees, scholarship benefits are offered so that academic, management, technical, clerical, and data processing courses that are available in the University may be taken each year. Each administrative unit should maintain a record of the qualifications of present employees for promotional consideration. Minority and female employees will be advised of vacancies which would facilitate upward job mobility.

Department chairpersons will be asked to review carefully the qualifications of all faculty with particular attention given to women and minorities to ensure that those qualified for promotion have not been delayed in rank longer than any non-minority males with comparable qualifications.

A written justification by supervisory personnel must be provided in cases where qualified women and minorities are passed over for training, upgrading, or promotion.

d. Job Classifications

Consistent with these guidelines, each campus will continually review employment qualifications and maintain only those which can be established as bona fide occupational qualifications. Such review will be made of all job or class designations and descriptions and look toward the elimination of any classification that segregates employees by race, color, religion, sex, marital status, national origin, disability, or military service during the Vietnam era.

Qualifications to be analyzed will depend upon job requirements and may include the following:

- 1) Education requirements.
- 2) Requirements for specific job experience.
- 3) Requirements for, and weight given to, personal references.
- 4) Exclusionary policies or preferences based on an individual's height, weight, and related physical characteristics.
- 5) Other valid job-related requirements authorized by law.

The EO/AA Officers will advise the appropriate University officials of any qualification which appears to have an adverse impact on minorities or women. A qualification normally will be regarded as having an adverse impact if its application results in a hiring or promotion rate for minorities or women which is 80 percent or less than that of other individuals.

e. Equal Pay

The EO/AA officers will review pay differences within occupational classes. If these differences appear to be based on sex or minority status rather than qualifications, responsibilities, and performance, inequities will be noted and communicated to the Director of Personnel and/or the appropriate Vice Chancellor. These inequities should be taken into account in recommendations for annual salary adjustments, promotions, and continued employment.

RP-3.2.8 Conflict of Interest and Conflict of Commitment

1. Introduction

University relations with industry, government agencies, individuals, and other enterprises outside the University constitute a complex network of interactions. These interactions have directed attention to potential conflicts of values and interests between these entities and academia. Conflict of Interest is addressed in Section 3.8 of the Bylaws of the Board of Regents as follows:

3.8 Conflict of Interest. No employee of the University shall engage in any activity that in any way conflicts with duties and responsibilities at the University of Nebraska. The Board of Regents has adopted Regents Policy 3.2.8 and authorized the implementation of related policies and directives to properly avoid, disclose and manage potential conflicts of interest.

In addition to Section 3.8 of the Bylaws, Nebraska statutes relating to conflict of interest and nepotism apply to all public officials and employees of the University, including the provisions of §49-14,101.01 of the Revised Statutes of Nebraska.³

Furthermore, federal funding agencies require that the University establish safeguards to prevent employees or consultants from using their positions for purposes which are motivated by (or even give appearance of) a drive for private financial gain either for themselves or family members.⁴

Responsibility for assurance of compliance with this policy rests with the President and Chancellor of each campus. The Chancellors shall submit an annual report to the President detailing the compliance policies, procedures and management activities at their campus.

2. University-Wide Conflict of Interest Principles

Campus conflict of interest policies will vary according to the unique roles and needs of each campus. However, each campus policy must ensure that broad University-wide principles are followed, including:

- 1) Prospects of financial gain must not unduly influence faculty and the University with regard to commercially imminent, product oriented research programs versus fulfilling the University's objectives of educating students, advancing basic knowledge and serving Nebraskans through the development and application of knowledge that enables them to develop better lives, stronger communities and genuine economic opportunity.
- 2) The University must avoid situations where the possibilities for personal gain for the Covered Person may be judged to be so significant that it is unreasonable to expect the Covered Person to exercise the objectivity necessary for public trust in the University and the rigor of its research.
- 3) Research agreements should encourage the free exchange of ideas and the sharing of research results regardless of the sponsoring entity. Some constraints may be required to protect proprietary information or intellectual property.
- 4) To the extent practicable and consistent with applicable law, the University must be appropriately compensated for private, commercial use of the public property under its stewardship.

3. Conflicts of Interest Involving Sponsored Research

Research is basic to the University's teaching and service missions. Good teaching and learning depend upon research. Likewise, through its research, teaching, and service activities, the University's resources can best be brought to bear on public issues requiring objective, systematic study. Research forms an inherent part of departmental and collegiate missions, and brings recognition to the University and its faculty. All forms of research, which are within departmental and collegiate missions, and which maintain the high quality characteristic of the University, are appropriate to the University's open environment. Similarly, University teaching and service activities have potential for commercial use and development.

Sponsored Research means research, training, and instructional projects performed by Covered Persons using any University space, materials, equipment or property that involves funds, materials or other compensation from sources outside the University through a grant or contract that obligates the University to a specified statement of work, sets forth binding financial terms in the form of a budget or up-front payment, or contains terms related to ownership of and rights to use intellectual property developed thereunder. Sponsored Research is a vital endeavor of the University; it allows faculty the means to pursue excellence in their research and scholarly activity, it expands opportunities for graduate and undergraduate student participation in research, it enhances the quality of University research facilities through public and private support, and it helps facilitate the commercialization of research and technology to benefit the University and Nebraska. The University encourages its faculty and staff to engage in both sponsored and non-sponsored research recognizing that compliance with this policy can help assure that appropriate standards of accountability are met and extramural considerations do not hinder the dissemination or commercialization of research.

Each campus shall establish its own Sponsored Research application approval process, including applicable internal or external peer review systems and implementing best practices for approving federally, publicly and privately sponsored research projects. The Chancellor shall be responsible for overseeing the research approval process and must designate an administrative officer who will be in charge of developing more specific written procedures for implementing the policy. The procedures for Sponsored Research approval at each campus must at a minimum include procedures for disclosing, identifying, reviewing, managing and reporting conflicts and potential conflicts that arise with regard to Sponsored Research on their campus pursuant to Section 5 of this policy.

4. Outside Employment and Conflicts of Commitment

The University not only permits but expressly encourages faculty to pursue outside professional activities including interactions with industry, with or without compensation, which will enrich a faculty member's academic contributions to the University. Consulting can expose faculty to research problems and perspectives which may enrich faculty teaching, research, extension, and service backgrounds. However, faculty and administration must be sensitive that such interactions could cause *Conflicts of Interest* and must ensure that *Covered Persons* do not make unnecessary or inappropriate commitments of their time or expertise which can adversely affect the University and its mission. A conflict of commitment must be disclosed and managed when it constitutes a *Conflict of Interest* for a *Covered Person*.

The assumption that *Covered Persons* will devote their time and effort to the University in proportion to their appointments--that full-time appointment connotes full-time commitment of time, effort, and expertise to the University--is inherent in University employment. Outside consulting activities, often acceptable in themselves, can interfere with a University employee's paramount obligations to the University by placing significant, competing demands upon the time and energy of a *Covered Person* with the potential for the neglect of instructional, research and other employment obligations. In some circumstances, a *Covered Person's* proposed outside activities may directly conflict with the objective of assignments within the University.

The University, through an outside employment policy enacted by the Board of Regents, seeks to minimize the potential for conflict of commitment by several mechanisms. The time that may be devoted to outside activity is normally limited to two working days per month; greater time commitments require specific approval of the Board of Regents. (For practical reasons, faculty are given considerable freedom in the scheduling of any outside activities.) In addition, the University must examine the application of an employee's expertise to proposed educational, industrial, or other consulting activities to assure that any *Conflict of Interest* and/or conflict of commitment is properly disclosed and managed. Hence, the University requires prior disclosure of proposed consulting, extramural teaching, or other activities to the department chair and the prior approval of the college dean and campus administration. Such disclosure may be made by completing the appropriate campus form for disclosure of outside employment and may require the provision of additional documentation to the chair, dean, or other administrator.

In certain other circumstances, the specific approval of the Board of Regents may be required. The relevant policy of the Board of Regents is set forth in Section 3.4.5 of the *Bylaws of the Board of Regents*.

Outside Activity and Employment. As University-industry relationships increase with a growing desire for consultantships and other professional activities outside the University, University employees must continue to observe the University policy on outside employment embodied in Section 3.4.5 of the Bylaws of the Board of Regents. In addition, University employees must observe the Board of Regents policy on

⁷ An example of such a circumstance would be research performed pursuant to a contract with an agency of the federal government requiring security clearance.

Conflict of Interest stated in Section 3.8 of the *Bylaws of the Board of Regents*. Accordingly, each campus shall develop appropriate forms for employees to disclose 1) potential *Conflicts of Interest*, and 2) outside employment in order for review, documentation, approval and management of *Conflicts of Interest* and outside employment.

Department chairpersons, department heads, deans, and directors have primary responsibility to review the specific nature of each proposed outside professional activity within their respective areas of administrative responsibility and to deny approval to any such activity which would interfere with the normal University duties of the employee involved and to require proper disclosure and management of any *Conflict of Interest*.

It is impossible to anticipate all questions which may arise in connection with the application of Section 3.4.5 of the *Bylaws* to the varied outside professional activities of employees. However, several general guidelines are set out below to assist in the administration of this policy:

- 1) Section 3.4.5 of the *Bylaws* does not apply to Office and Service staff.
- 2) Section 3.4.5(a) of the *Bylaws* requires Regental approval of outside professional activities where the employees will accept retainer fees or other remuneration on a permanent or yearly basis as a professional consultant. The key consideration in determining whether there will be acceptance of a retainer fee or remuneration on a permanent yearly basis is the nature of the professional business relationship between the employee and his or her client or patient. If this business relationship is one where the employee is obligated at the beginning of the professional relationship with a client or patient to provide professional services over a period of one year or longer, then approval by the Board of Regents is required.
- 3) In addition to obtaining prior approval of the department chair and campus administrator, Section 3.4.5(b) of the *Bylaws* requires Regental approval of outside professional activity requiring more than an average of two days per month during the period of the employee's full-time employment. The Board of Regents has interpreted this language to mean two days per month during the assigned work week. For this reason, Regental approval will only be required when an employee's outside professional activities will prevent the performance of his or her assigned duties at the University more than an average of two days per month during the period of full-time employment.
- 4) Section 3.4.5 of the *Bylaws* requires Regental approval of outside professional activity involving the charging of fees for work performed in University buildings with University equipment and materials. The President and Chancellors are authorized to develop specific policies with regard to the charging of fees for work performed in University buildings with University equipment and materials.
- 5) Section 3.4.5 of the *Bylaws* does not require individual approval of each separate client or patient relationship for professionals such as accountants, engineers, architects, lawyers, psychologists, therapists, etc. It is sufficient that the nature of the outside professional activity be generally described so that appropriate evaluation may be conducted regarding potential interference with University duties, *Conflict of Interest*, and conflict of commitment. So long as none of the circumstances requiring Regental approval under subparagraphs (a), (b), (c), and (d) of Section 3.4.5 of the *Bylaws* exist, no further information need be provided by the employees, and the professional activity may be approved by the chancellor upon the recommendation of the appropriate dean or director.
- 6) Activities for a professional organization with which an employee is associated do not constitute the type of professional activity coming within the scope of Section 3.4.5 of the *Bylaws* unless a professional service is provided to the organization for which the

employees is paid a professional fee which is commensurate with the actual value of the professional service provided.

The foregoing should not be construed to relieve any employee of complying with applicable policies or regulations of the department, college, division, campus, or University with regard to time one is allowed away from regular University duties.

University employees proposing outside employment or a consulting relationship of any nature pursuant to Section 3.4.5 of the *Bylaws* are required to complete the appropriate campus form for disclosure of outside employment.

Furthermore, consistent with the foregoing policy statement regarding conflicts of commitment and the effect such conflicts can have on a faculty member's research programs and the duties faculty members owe the University, University employees proposing outside employment or a consulting relationship with a third party shall disclose to the University any: i) confidentiality or non-disclosure agreements, ii) non-compete agreements or any agreement containing a non-compete clause, iii) assignments of intellectual property rights to the contracting party, and iv) involvement with commercial or educational enterprises where the name of the University may be used for commercial gain to the Chancellor or the Chancellor's designee. Although agreements of this type can be problematic, the University shall endeavor to promptly review such agreements and resolve any potential conflict of commitment to allow the University employee to perform the proposed outside employment or consulting while maintaining the integrity of their research projects and commitments to the University.

5. Conflicts of Interest Involving Technology Transfer

University projects have resulted in the creation of new Nebraska businesses which have transferred research results into products and services and which have contributed to the State's economy. Certain research discoveries lend themselves to commercialization by starting new ventures through the University or through faculty rather than the traditional licensing to existing companies. Moreover, this means of commercializing discoveries may be the best, or in some instances the only, means to transfer such new technology. The University recognizes this as an acceptable method of commercializing discoveries when it is in the best interests of the University, the State, and the inventor and is the most effective means to transfer such technology.

In establishing new companies to commercialize University technology, the University may accept equity positions or combinations of equity and future royalties in return for licensing the technology. This is an acceptable University activity and is an integral part of the technology transfer program. However, in such situations, reasonable limits on the University's involvement with respect to administrative time and the amount of equity taken must be observed. University technology transfer activities shall be governed by Section 3.10 of the *Bylaws* and Section 4.4.2 of the *Policies*. Such oversight will enable the University to be aware of and take steps to prevent or manage potential *Conflicts of Interest* which may arise, involving, among other things, favoritism in future dealings with the same company, discrimination against its competitors, or the use of public funds for private gain. Accordingly, University direction of the company must be limited in time, and the amount of equity taken must be less than controlling. The Board of Regents has separately authorized and delegated authority to the University Technology Development Corporation (UTDC), and nothing in this policy is intended to limit the authority of UTDC as it relates to properly managing or preventing conflicts of interest or otherwise.

Conflict situations also apply to any profit- or nonprofit-affiliated private entities established by the University or one of its employees. Therefore, in the University's relations with all such entities, the *Conflict of Interest* policy must be followed.

Where University technology is transferred in return for an equity position, or royalties, or projects are to be performed in exchange for an equity position, the affected University employees must fully disclose such proposals, and a suitable arrangement that reflects the Regents Policy must be concluded prior to approval of the proposal.

For-profit entities have been formed specifically to fund research and development, such as research and development limited partnerships. Such entities solicit investors from members of the public. There is the possibility that prospective investors may be induced to invest by what appears to be University involvement in the funding entity or by unrealistic expectations of the outcome of the projects. In either event, the name of the University could be unfairly traded upon. Therefore, care must be taken that the investor solicitation is consistent with the potential outcome of the research and the policy on the use of the University's name.

Where appropriate, the University may accept equity in a company as complete or partial payment for transferring University technology to the company for commercialization. Only the Board of Regents may approve acceptance of equity in a company upon the recommendation of the President.

The University may designate individual(s) to hold membership on the board of directors of a company in which the University holds equity.

University faculty, administrators, or other members of the University community holding any such board of directors membership shall oppose or absent themselves, as appropriate, from any funding decisions or other decisions relating to the University which:

- 1) violates or is contrary to any law or University policy or procedure in regard to grants or contracts;
- 2) would constitute a Conflict of Interest with such person's University office of employment; or
- 3) involves improper use of University (public) funds.

When external entities raise funds for University projects through any form of investment offerings, University personnel must scrupulously avoid the endorsement of any such offering or any statement of potential research results. The University's prior written consent must be obtained to use its name in connection with advertising or promotion of any investment offering.

The past history of funding of University research or other projects by any company or firm shall not have any bearing on purchasing decisions made by the University of Nebraska.

6. Institutional Conflicts of Interest

An *Institutional Conflict of Interest* may occur when the University or a *Covered Person* in a senior administrative position has a financial interest in a commercial entity that itself has an interest in a University research project, including potential conflicts with equity/ownership interests or royalty arrangements. Each campus shall develop and establish processes and procedures for review of institutional conflicts involving technology transfer or other commercial activities. This process must at a minimum include:

- 1) Procedures for identifying and overseeing institutional *Conflicts of Interest*;
- 2) Principles and strategies for managing institutional *Conflicts of Interest*; and
- 3) Principles and strategies for institutional management of equity.

Each Chancellor shall submit their campus' processes and procedures for review of institutional *Conflicts of Interest* to the President for review and approval.

RP-3.3.4 Grievance Policy: General Non-Academic⁸

1. Introduction

The Board of Regents is committed to preserving and improving cooperative and effective work relationships among all University employees. The Board encourages any employee who feels he or she is not receiving fair treatment at the University to use the grievance procedures set forth in this policy. Employees who believe they may have a grievance are encouraged to contact the Human Resources Department at their campus or administrative unit for assistance with interpretation or implementation of this policy. This policy supersedes any college or departmental grievance policies for office-service and managerial-professional employees.

In order that grievances are handled on a consistent basis throughout the University, these procedures are adopted for implementation by the administrative units that compose the University.

2. Eligibility

All regular managerial-professional and office-service staff who have successfully completed their six (6) month post-hire probationary period, and such academic-administrative staff and other academic staff for whom access to established academic grievance procedures is not available (any of whom are referred to herein as a "Staff Member"), are eligible to access the process described in this policy.

3. Grievance Procedure

For purposes of this policy, a grievance must be based upon a difference arising between the Staff Member and the University as to the interpretation or application of written University policy, rules or procedures relating to terms and conditions of the Staff Member's employment, except that the determination of position classification, salary or wage levels, performance evaluation, reduction-in-force decisions, and terminations of an "employment-at-will" (as that term is defined under Nebraska law) are not subjects covered or deemed grievable under this policy; provided however, that any termination of the "employment-at-will" of a Staff Member must first be reviewed and approved by the Director of Human Resources. (Throughout this policy, any reference to the Director of Human Resources means the Director of the administrative unit where the Staff Member works. Any responsibility or authority assigned to a Director of Human Resources in this policy may be delegated to a member of the Human Resources staff or other

⁸ Grievances relating to alleged discrimination based on race, age, color, religion, sex, disability, national origin, marital status, veteran status, sexual orientation, or retaliation due to an individual's initiation of or participation in an investigation regarding such discrimination allegations are covered under a separate policy entitled [administrative units should insert the name of the policy that covers grievances based upon prohibited discrimination].

For issues in the area of disability and/or accommodation, grievances are to be filed with the University's ADA/504 Compliance Officer, 402-472-8404.

Complaints against members of the academic-administrative staff when acting in an academic capacity are to be filed with [administrative units should insert the name and contact information of the appropriate campus body].

appropriate designee.) Terminations which are deemed to be “terminations-for-cause” are grievable under this policy.

Grievances are limited to matters of interpretation and application of University employment policies, rules and procedures; the establishment or substantive content of such a policy, rule or procedure is not grievable. College or Departmental policies and rules may be grieved if the Staff Member can show that the College or Departmental policy or rule is contrary to a University policy, rule or procedure. In such cases, University policies, rules and procedures shall take precedence.

The Director of Human Resources for the relevant campus or Central Administration in cases involving Central Administration has the responsibility of interpreting this policy and will determine whether or not a matter is grievable. If a matter is found to be non-grievable, such Director will work with the appropriate parties to try to resolve the concern.

The grievance process described in this policy is an internal, informal process, intended to facilitate open communication and exchange of relevant information and to allow for a meaningful, honest review of the grievance. In order to promote the informal and open exchange of information, attorneys (whether or not they are acting in the capacity of the Staff Member’s lawyer) shall not be permitted to participate in meetings or physically accompany either the University representatives or the grieving Staff Member throughout this process. Other venues are better suited to accommodate the formalities interjected by legal counsel. A non-lawyer advisor may accompany a grieving Staff Member throughout the process to provide advice and support. The non-lawyer advisor may not actively participate in the process; e.g. presenting evidence and directing questions to or otherwise communicating with supervisors, panel members or University representatives are not permitted activities. No activity or documentation arising as a result of this policy is deemed to be subject to Public Records laws or Open Meetings laws, unless University legal counsel advises otherwise. The Staff Member alleging a violation of policy is encouraged to informally discuss the matter with his/her immediate supervisor in an attempt to reach a resolution prior to initiating a formal grievance. No audio or video recordings shall be made in relation to the processes described in this policy.

Step 1: Appeal to the Immediate Supervisor

If the discussion surrounding the alleged incident or occurrence does not resolve the matter to the satisfaction of the Staff Member, the Staff Member may file a formal grievance with his/her immediate supervisor and the Director of Human Resources within twenty (20) workdays following the discussion.

If the grievance is based in any part upon the immediate supervisor’s acts, the Staff Member may present the written grievance solely to the Director of Human Resources who will determine whether the immediate supervisor or another individual associated with the Staff Member’s work area is more appropriate to respond to the grievance.

The written grievance shall specify:

- the exact nature of the alleged grievance;
- details regarding the policy, rule, or procedure allegedly violated;
- the specific remedy requested;
- a specific statement that the Staff Member wishes to initiate a grievance pursuant to the procedures contained in this policy.

While supporting information or clarification may be requested or presented in subsequent steps of the grievance process, the Staff Member is responsible for identifying all issues and allegations

relevant to the grievance in this writing. No additional matters may be raised once the written grievance is filed with the Director of Human Resources. Additional allegations or requested remedies may be addressed only through a separate grievance process. At the discretion of the Director of Human Resources, multiple grievances filed by one or more Staff Members may be combined into a single grievance, if such an action promotes a more meaningful review of the matter.

Within ten (10) workdays of receiving the written grievance, the immediate supervisor (or other individual designated by the Director of Human Resources) will draft and deliver to the grieving Staff Member a written response to the written grievance. The person writing the response may confer with a Human Resources representative, his/her supervisors or other parties relevant to the grievance, as needed.

Step 2: Appeal to the Next Level Supervisor

Should the Staff Member remain dissatisfied, he/she may, within five (5) workdays of receiving the Step 1 written response, submit a written request to the Director of Human Resources to appeal to the "next-level supervisor". The request to appeal shall include a clear explanation of why the Staff Member disagrees with the Step 1 response. *(Due to the complexity of the University's organizational structure, the Director of Human Resources shall have the authority and discretion to determine the person best suited within the Staff Member's work unit to serve as the "next-level supervisor".)*

The Director of Human Resources shall deliver to the next-level supervisor the Step 1 written grievance and response, along with the Step 2 written request to appeal. The next-level supervisor shall review those documents and may gather such other information from such sources as he/she deems necessary and relevant to the appeal. After considering all of the relevant information, the next-level supervisor shall render a written decision. This decision must be submitted to the Director of Human Resources with fifteen (15) workdays following receipt of the Staff Member's request to appeal. The Director of Human Resources shall promptly deliver the decision to the Staff Member.

Step 3: Appeal to the Chancellor/President through a Grievance Panel

Should the Staff Member remain dissatisfied, he/she may, within five (5) workdays of receiving the Step 2 decision from the next-level supervisor, submit a written request to the Director of Human Resources to appeal through a Grievance Panel to the President (for Staff Members employed at Central Administration) or to his/her Chancellor (for Staff Members employed at a campus). The request to appeal shall include a clear explanation of why the Staff Member disagrees with the Step 2 decision.

A Grievance Panel will be appointed by the President or the Chancellor, as applicable, and shall be composed of three (3) full-time employees, at least one of which shall be of the same employment category (Academic-Administrative, Office-Service or Managerial-Professional) as the grieving Staff Member. No one with a personal or professional interest in the outcome of the grievance is qualified to serve on the Panel. The Panel members shall select a chair from among themselves. *(In accordance with their individual modes of governance, administrative units may or may not establish standing committees or pools of persons eligible to stand for appointment to the Panel.)* The grieving Staff Member and his/her supervisor(s) shall be promptly notified of the composition of the Panel.

Within five (5) workdays of receiving notice of the appointments to the Panel, the grieving Staff Member or his/her supervisor(s) may notify the Director of Human Resources in writing of any reason why any member of the Panel is not qualified to serve. The Director of Human Resources shall consult with the Chancellor or the President, as applicable,

regarding the Panel composition. In the Chancellor's or President's discretion, another appointee may be substituted, if it is determined the grievance process would be better served by another person.

The Panel will meet with the Staff Member, the immediate supervisor and any other person deemed by the Panel to have relevant information about the subject of the grievance. The Panel may gather such information from such sources as are available and meaningful to the appeal. The activities and deliberations of the Panel are not open to the public. The panel's work will be confidential, except to the extent the Panel's work must be revealed to those with a legitimate need to know (e.g. Staff Member's supervisors, persons with information relevant to the grievance, Human Resources staff).

The Panel will be guided by University policy in reaching its decision. Irrelevant or exceedingly redundant information may be excluded from its consideration. The Panel shall not supplement, subtract or otherwise alter the content of the allegations contained in the grievance; nor is it authorized to impose or recant sanctions. The Panel acts only in an advisory capacity to the President or relevant Chancellor.

The chairperson of the Panel will, within twenty (20) workdays after the Director of Human Resources receives the Staff Member's written request to appeal under this Step 3, submit the written recommendations of the Panel to the President or relevant Chancellor, who oversees the administrative unit.

Within twenty (20) workdays after receiving the Panel's recommendations, the President, the Chancellor or a designee on his/her behalf will notify the grieving Staff Member, in writing of the final disposition of the grievance. Such decision will be final and binding on all parties. There will be no further appeal within the University of Nebraska.

4. Timelines

The amount of time for filing and decision making under this policy is intended to provide for a prompt, yet thorough, review and resolution of grievances. Parties must adhere to this timeline in order to ensure the benefits of participating in this process. However, should the Director of Human Resources determine that special circumstances or the nature of the grievance are such that additional time will allow for a more meaningful, well-supported resolution of the matter, then the Director may grant an extension of a specific amount of time in a writing, delivered to all parties with a need to know.

If the grieving Staff Member does not submit a written request to move the grievance forward within the specified time period and is not granted an extension prior to the passing of that deadline, it will be assumed the Staff Member is satisfied and the grievance will be discontinued.

If the immediate supervisor, the next-level supervisor or the Panel fails to deliver a written response or decision within the specified time period and is not granted an extension of time prior to the passing of that deadline, the grievance will automatically advance to the next level of review.

The Director of Human Resources shall record and maintain the timeline associated with each grievance.

5. Withdrawing a Grievance

A Staff Member may terminate his/her grievance under this policy at any time by delivering to the Director of Human Resources a written notification requesting such withdrawal.

6. Retaliation; Pending Employment Actions

Retaliation of any type shall not befall any person for participating in the grievance procedure set forth herein. University employees engaged in such retaliation will be subject to disciplinary action, including the potential for dismissal. A grievance based upon retaliation may be treated as separate offense and is grievable under this policy. While such retaliation is prohibited, the mere filing of a grievance will not forestall any employment action, unless the Director of Human Resources determines otherwise.

7. Pay Status When Participating in the Grievance Procedure

For an employee in-pay status, whose participation is required at a meeting, interview, or other activity as part of a grievance under this policy, time devoted to such participation will be considered as regular hours worked.

RP-3.3.15 Consensual Relationships Policy

I. Introduction

While the University of Nebraska ("University") encourages its faculty and staff to develop professional and supportive relationships with students by serving as teachers, advisors, mentors, and role models both within and outside the classroom, the University recognizes that romantic relationships with students may impact the academic environment even if those relationships are considered to be consensual. The inherent power differential in faculty or staff relationships with students can give rise to actual or perceived conflicts of interest as well as claims of abuse of authority, exploitation, bias or favoritism. While conflicts of interest are most evident when the faculty or staff member directly supervises or evaluates the student, unanticipated conflicts of interest also can occur because a faculty or staff member's power or influence may extend beyond the classroom or a particular department or program. A romantic relationship that is considered by the faculty or staff member to be consensual may be perceived instead by the student to be coerced because of the power or influence held by the faculty or staff member, or a relationship that is truly consensual at the outset may become contentious as the parties later grow apart, leading to potential claims of sexual harassment or sexual assault. An intimate or dating relationship between a faculty or staff member and a student can negatively impact the well-being of the student if the student feels pressured or coerced into the relationship or feels an inability to leave the relationship. The relationship, in turn, can harm the professional or academic reputation of the faculty or staff member if that relationship generates claims or perceptions of favoritism, exploitation, sexual harassment or assault.

Similar concerns can arise when University employees become involved in a romantic relationship if one party to the relationship has supervisory or evaluative authority over the other. The individual in the supervisory or evaluative role can affect the academic or employment career of the subordinate and may be perceived as showing favoritism, misusing authority, or even engaging in sexual harassment.

This policy is intended to address and reduce the risks of conflicts, misperceptions and claims that may arise out of consensual romantic relationships between faculty or staff members and students, as well as those that may arise out of consensual romantic relationships between a supervisor or evaluator and a subordinate.

The University recognizes that conflicts, misperceptions, and claims can arise between faculty or staff and students even in the absence of a romantic relationship, such as when a faculty or staff member takes advantage of the power differential to economically exploit a student. This can occur, for example, when a faculty or staff member convinces a student to perform services for free or at a reduced rate that personally benefits the faculty or staff member. This also can occur when a faculty or staff member convinces a student to use the goods or services of a private enterprise owned by the faculty or staff member, such as when a student is convinced to rent an apartment owned by the faculty or staff member. While the University

does not condone the economic exploitation of students, that conduct is addressed apart from this policy through the University's conflicts of interest and commitment policies and practices.

II. **Scope**

This policy applies to all faculty, staff and other academic staff members employed anywhere within the University System. This policy does not alter nor amend the University's prohibition against the use of nepotism in employment decisions. This policy also does not limit anyone's ability to report alleged

III. **Definitions**

Faculty – Any individual whose duties include any one or more of the following responsibilities: teaching, conducting research or overseeing a laboratory, advising, mentoring, course management, or supervisory duties that are performed as part of a University academic program or course of study. Such individuals may hold appointments as tenured faculty, tenure-track faculty, non-tenure track faculty, post-doctoral faculty, or visiting faculty, and therefore, includes

faculty members holding continuous appointments, appointments for a specific term, health profession faculty appointments, faculty practice or faculty research appointments, or special appointments. For the purposes of this policy, other academic staff as defined below are excluded from this definition of faculty.

Staff – Any individual employed by the University in a non-faculty position, including academic- administrative, managerial-professional, and office and service staff members, but excluding other academic staff members and student employees.

Other Academic Staff – Any individual, including both undergraduate and graduate students, employed by the University holding the rank or position of a research associate, research assistant, graduate assistant, teaching assistant, teaching fellow or house officer/medical resident.

Students – Any individual admitted by the University and enrolled in at least one credit-bearing class at the University. Students include both undergraduate and graduate/professional students.

Supervisory or Evaluative Authority – The power to control or influence another individual's academic advancement or employment through such means as making or affecting decisions related to admission, grades, assignments, participation in programs or projects, dissertations or research, recommendations, financial aid, hiring, working conditions, compensation, promotion, discipline, or termination/expulsion.

Romantic Relationship – Any relationship of a sexual, intimate, romantic, dating, or amorous nature, regardless of its length.

Academic Unit – Any department, center, institute, program (including joint degree programs), or other comparable unit in which the student is currently enrolled or employed.

IV. **Policy**

To ensure that the academic and work environments are free of any actual or perceived conflicts or inappropriate conduct, the following types of romantic relationships are prohibited:

A. **Prohibited Relationships**

1. Relationships between Faculty and Undergraduate Students Faculty members are prohibited from engaging in any romantic relationship with an undergraduate student, regardless of whether the faculty member has any

supervisory or evaluative authority over that student.

2. Relationships between Faculty or Staff and Graduate/Professional Students. Faculty and staff members are prohibited from engaging in any romantic relationship with a graduate or professional student within their same academic unit, as well as with any graduate or professional student over whom they currently have or might reasonably be expected to have any direct or indirect supervisory or evaluative authority.
3. Relationships between Other Academic Staff and Students. Other academic staff members are prohibited from having any institutional responsibilities over any students, both undergraduate and graduate/professional, with whom they currently have, or previously had, a romantic relationship.
4. Relationships Involving Supervisory or Evaluative Authority. Faculty, staff, and other academic staff members are prohibited from exercising direct or indirect supervisory or evaluative authority over any employee or student with whom they currently have, or previously had, a romantic relationship.

These prohibitions on certain consensual relationships are not intended to preclude the hiring or retention of dual career academic couples. The University is committed to recruiting and retaining the highest quality faculty and staff and recognizes that prospective and current faculty and staff may have spouses or partners with independent careers, often within an academic discipline. To recruit and retain the best faculty and staff, the University strives to assist both members of the dual career couple explore appropriate positions within the University. If both members of the dual career couple should become employed within the same academic unit, an appropriate conflict management plan simply will need to be developed to avoid any potential conflicts of interest from occurring.

B. Exceptions

Faculty and other academic staff members may submit a written request to the appropriate Vice Chancellor, and staff members may submit a written request to their campus Director of Human Resources, for an exception to this policy. Such requests will be reviewed on a case-by-case basis and will be granted only if all potential risks associated with that relationship can be avoided through the development of a conflict management plan.

C. Violations

Violations of this policy in any manner, including engaging in a prohibited relationship, failing to properly report a relationship, or failing to adhere to a conflict management plan, may result in disciplinary action being taken against the offender. Such discipline will be issued in accordance with the University's disciplinary policies, will take into consideration the unique and relevant facts of each case, and may assume a variety of forms, including without limitation mandatory training or counseling, written warning, suspension, demotion, loss of privileges, or even expulsion or termination.