



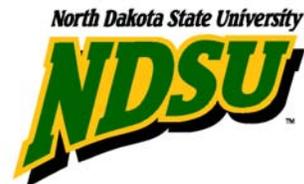
Resolving Discrimination, Harassment, and Title IX Complaints: Workshop for Chairs, Heads, Deans, Directors

Presented By: Sara Gullickson McGrane

1



Presentation Agenda



1. Why Am I Here? (Legal Background)
2. Discrimination, Harassment, Retaliation, and Title IX Overview
3. Hot Topics
4. NDSU Policy - Complaint Resolution Process
5. Mandatory Reporting Obligations

2

Why Am I Here? (Legal Background)



3

What is Title IX?



4

What is Title IX?

- Title IX prohibits retaliation against an individual for opposing or reporting discrimination, complaining about discrimination, or participating in a discrimination investigation.
- Title IX requires schools to adopt policies and procedures that are important for the prevention and correction of sex discrimination.
- **Title IX additionally places strict requirements regarding the investigation of sexual harassment and sexual misconduct, as explained in greater detail below.**

5

Federal Funding Tied to “Assurances”

Title VI

(implements Title VII in the entities receiving financial funds)

Every application for Federal financial assistance . . . shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by **an assurance** that the program will be conducted or the facility operated **in compliance with all [non-discrimination] requirements** imposed by or pursuant to this subpart.

Title IX has the same “assurance” requirement.

6

What Does Title IX Cover?

- Title IX prohibits sex discrimination in the following areas:
 - Admissions;
 - Recruitment and Retention;
 - Scholarships and Fellowships;
 - Counseling and Appraisal Materials;
 - Administration of Courses;
 - Marital/Parental Status and Pregnancy;
 - Harassment; and
 - Employment.
- Title IX also prohibits retaliation.

7

Legal Incentives to Report Misconduct

Title VII - (Sex Discrimination Guidelines/ Employee)

With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that **it took immediate and appropriate corrective action.**

Reporting and investigation help an employer demonstrate “immediate and appropriate action.”

8

Legal Obligation to Conduct Investigations

Title IX (34 C.F.R. Part 106.8(a))

Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, **including any investigation of any complaint** communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part.

REPORTING is the first step in an investigation.

9

Legal Obligations to Conduct Training

Clery Act

(and Amendments: Violence Against Women Act & Campus SaVe Act)

Requires universities to adopt certain institutional policies to address and prevent campus sexual violence, such as to **train personnel**.

Title IX

Dear Colleague Letter (April 4, 2011) “schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly.”

10

NDSU's Commitment to Prevent Misconduct

NDSU Policy Manual, Section 156, Discrimination, Harassment, and Retaliation Complaint Procedures 1.2:

“NDSU is committed to providing a safe and non-discriminatory learning, living, and working environment for all members of its university community.” Reporting and correcting misconduct that detracts from mission helps maintain a high-quality learning environment.

Discrimination, Harassment, Retaliation and Title IX Overview



NDSU's Definitions

North Dakota State University Policy Manual

SECTION 156 DISCRIMINATION, HARASSMENT, AND RETALIATION COMPLAINT PROCEDURES

SOURCE: NDSU President

1. INTRODUCTION

- 1.1 North Dakota State University (NDSU) prohibits discrimination in its employment decisions and educational programs and activities on the basis of age, color, gender expression/identity, genetic information, marital status, national origin, physical or mental disability, pregnancy, public assistance status, race, religion, sex, sexual orientation, spousal relationship to current employee per SBHE Section 603.2, status as a U.S. veteran, or participation in lawful activity off NDSU's premises during nonworking hours which is not in direct conflict with the essential business-related interests of NDSU. (See NDSU Section 100, Equal Opportunity and Non-Discrimination Policy).
- 1.2 NDSU is committed to providing a safe and non-discriminatory learning, living, and working environment for all members of its university community. Specifically, NDSU is committed to taking action to:

13

Key Definitions – Protected Classes

- Age
- Color
- Gender Expression/Identity
- Genetic Information
- Marital Status
- National Origin
- Physical Or Mental Disability
- Pregnancy
- Public Assistance Status
- Race
- Religion
- Sex
- Sexual Orientation
- Spousal Relationship to Current Employee per SBHE Section 603.2
- Status as a U.S. Veteran
- Participation in lawful activity off premises during nonworking hours that is not in direct conflict with the essential business-related interests of NDSU

14

Key Definitions – Discrimination

Different or unequal treatment of an individual (or group), based on one or more of the protected classes of the individual (or group), except as where permitted or required by law, that negatively affects their education, employment, or other participation in educational programs and activities.

15

Examples of Discrimination

- Negative personnel action (e.g., hiring, firing, discipline, evaluations) or academic action (e.g., grades, awards, recommendations, evaluations).
- Treating someone different because of a serious medical condition/disability.
- Denying grant funding due to a protected class.
- Grading harder because of a test accommodation.
- Failing to provide a reasonable accommodation for disability or religious beliefs.

16

Key Definitions – Harassment

A **form of discrimination**; unwelcome oral, written, graphic, or physical conduct, based on one or more of the protected classes of an individual (or group), that is:

1. sufficiently severe, persistent, or pervasive so as to **unreasonably interfere** with their education, employment, or other participation in educational programs and activities; OR
2. that creates a working, learning, or educational program and activity environment that **a reasonable person would find hostile, intimidating, or abusive.**



17

Examples of Harassment

Harassment may include, but is not limited to, threats, physical contact or violence, offensive jokes, insults or put-downs, slurs or name calling, vandalism/graffiti, or offensive objects or pictures.



Petty slights, annoyances, and isolated incidents (unless very serious) typically **do not** rise to the level of harassment.

18

Key Definitions – Retaliation

Any individual (or group) reporting discrimination or otherwise participating in these procedures is entitled to **protection from retaliation** as a result of their activity under these procedures. Retaliation may include, but is not limited to, intimidation, harassment, reprisal, or other negative changes in education or employment.

19

Protected Conduct

- Any activity under Policy 156, e.g.:
 - Making a Complaint under Policy 156.
 - Participating in an investigation.
 - Participating on a review committee.



20

Identifying Retaliation - Employment

Retaliation affects an individual's **terms and conditions** of employment, including:

- Significant benefit changes;
- Reduced compensation;
- Reassignment;
- Changes in work assignment (decreased responsibility or opportunity);
- Failure to promote;
- Failure to hire;
- Demotion; and
- Termination.

21

Identifying Retaliation - Education

Retaliation affects a student's **educational experiences and opportunities**, including:

- Assigning poor or lower-than-earned grades;
- Assigning unreasonable or unfair assignments;
- Discrediting academic or other achievements;
- Unreasonable blame based on student's work/research;
- Removal from clubs, sports, officer positions; and
- Withholding recommendations or grades.

22



Religious Discrimination

Typically, under federal law, discrimination includes refusing to **reasonably accommodate** an individual's **sincerely held religious beliefs or practices** unless the accommodation would impose an **undue hardship**.



Disability Discrimination

- Disability discrimination occurs when a qualified individual with a disability is treated unfavorably because such individual has a disability
 - Employment / Educational discrimination due to a disability (e.g., hiring, admission, etc.)
 - Harassment due to a disability
 - Failure to reasonably accommodate an employee/student's disability
 - Retaliation for reporting/opposing/complaining about disability discrimination



25

Disability Discrimination

- **Definition of “Disability”**
 - A physical or mental impairment that substantially limits one or more **major life activities** (an “actual disability”);
 - A record of a physical or mental impairment that substantially limited a **major life activity** (“record of”); or
 - An actual or perceived impairment that is not both transitory and minor (“regarded as”).



26

Disability Discrimination

- Definition of “**Disability**”
 - Definition must be construed to provide broad coverage of individuals
 - Whether a student/employee has a disability must be made on a case-by-case basis
 - **Must not** consider the ameliorating effects of any mitigating measures that a student/employee is using
 - e.g., medication, prosthetics, hearing aids, mobility devices, etc.



27

Major Life Activities – Examples

- Caring for oneself;
- Performing manual tasks;
- Seeing;
- Hearing;
- Eating;
- Sleeping;
- Walking;
- Standing;
- Lifting;
- Bending;
- Speaking;
- Breathing;
- Learning;
- Reading;
- Concentrating;
- Thinking;
- Communicating;
- Working;
- Sitting;
- Reaching;
- Interacting with others; and
- Major bodily functions (immune system functions, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions).

28

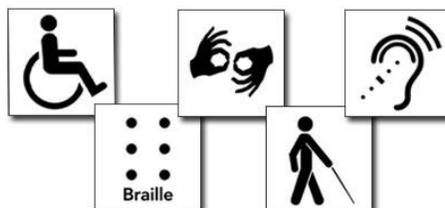
Disability Discrimination

- “**Qualified individuals/students with disabilities**”
 - **Employees:** A person who meets the legitimate skill, experience, education, or other requirements of a position that he or she holds or seeks and who can perform the "essential functions" of the position with or without reasonable accommodation.
 - **Students:** A student with a disability who meets the academic and technical standards requisite for admission or participation in the institution's educational program or activity

29

Disability Accommodation

- Failure to **accommodate** is discrimination.
- University must provide “**reasonable accommodations**” to “qualified individuals with disabilities”
 - Applies to both employees and students
 - *i.e.*, modifications in policies, practices, or procedures
 - Highly fact-intensive; case-by-case basis



30

Disability Accommodation

- Accommodations that impose an “**undue hardship**” on the operation of the University are not required
 - Unduly costly;
 - Extensive;
 - Substantial;
 - Disruptive; or
 - Fundamentally alters the nature or operation of the University

31

Requests for Accommodation

- What constitutes a request for accommodation?
 - Student/employee asks for a change in the way their work is performed and/or in school/working conditions
 - University must have some notice/knowledge that such request is due to a qualifying disability
 - The words reasonable accommodation are not required, nor must the request be written
 - Requests by others (e.g., family members, health professional, etc.) may suffice
- Students who request accommodations should be referred to Disability Services
- Staff members seeking accommodations should work with their supervisor as a starting point

32

Requests for Accommodation – Interactive Process

- Whenever a student or staff member requests an accommodation, the University should engage in the **interactive process** to determine whether a reasonable accommodation exists
 - Determine essential functions of job/academic program;
 - Understand the student/employee's functional limitations;
 - Listen to the student/employee, considering their suggestions for accommodation;
 - Get outside expertise, if necessary;
 - Identify potential accommodations and assess effectiveness;
 - Develop an accommodation plan, involving student/employee;
 - Continue to check in, modifying as appropriate; and
 - Document all steps.

33

Examples of Accommodations (Students)

- Extended testing time
- Alternate test location
- Preferential seating
- Permission to record lectures
- Consideration for absences
- Taped texts
- Note takers
- Interpreters
- Readers
- Videotext displays
- Braille calculators, printers, or typewriters
- Voice synthesizers
- Calculators or keyboards with large buttons
- Reaching device for library use
- Assistive listening devices/systems
- Telecommunications devices for deaf persons.

34

Examples of Accommodations (Employees)

- Making facilities readily accessible and usable.
- Job restructuring (altering when or how an essential job function is performed).
- Modified work schedules.
- Obtaining or modifying equipment or devices.
- Modifying examinations, training materials or policies.
- Providing qualified readers and interpreters.
- Allowing an employee to provide equipment or devices that an employer is not required to provide.
- Providing a leave of absence.
- Additional time off.

35

Examples of Actions Not Required as Reasonable Accommodation

- Remove an essential job/program function;
- Lower or eliminate standards for essential job/program functions;
- Withhold discipline warranted by poor performance or conduct



36

Sexual Harassment

- **Quid Pro Quo** – Unwelcome sexual advances or requests for sexual favors or other verbal or physical conduct of a sexual nature that conditions the receipt of a benefit upon sex, or punishes a person for not accepting sexual advances.
- **Hostile Environment** – Creation of an intimidating, hostile, or offensive working/academic environment or otherwise substantially interfering with an individual's employment/education by such conduct.

37

Sexual Harassment Configurations

- Not limited to harassment by the opposite sex, i.e., males can sexually harass other males.
- Focus on the **conduct** – not the identities of the victim and the accused.

38

Examples of Hostile Environment

- Sexual flirtations, unwelcome invitations to social events;
- Offensive physical contact or physical closeness (e.g., back/neck massages);
- Sexual discussions, jokes, and innuendos;
- Discussion of sexual desires or exploits (real/imagined);
- Display of sexually suggestive pictures or objects;
- Unwanted personal gifts or attention; or
- Sabotaging an individual's character, reputation, work effects, or property because of sex;

39

Examples of Hostile Environment

- Cornering or blocking an individual's exit;
- Stalking or following an individual (in-person or electronically); or
- Attempted or actual sexual assault.



40

Sexual Harassment	Flirting
Unwelcomed attention.	Welcomed attention.
Makes the recipient feel uncomfortable, powerless, or degraded.	Makes the recipient feel comfortable, flattered, liked and in control of situation.
One-sided advance.	Goes both ways.
Attention due to sex	Attention due to interest in person as a whole
Fails to acknowledge other's lack of interest or boundaries	Respects boundaries.

41

Sexual Misconduct

- Sexual violence is a form of sexual harassment
- Dear Colleague Letter (Apr. 4, 2011):
 - Withdrawn in 2017

“Sexual violence, as that term is used in this letter, refers to **physical sexual acts** perpetrated **against a person's will** or where a person is **incapable of giving consent** due to the victim's use of drugs or alcohol. . . . A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion.” **See also NDSU Policy 162 (Sexual Misconduct).**

42

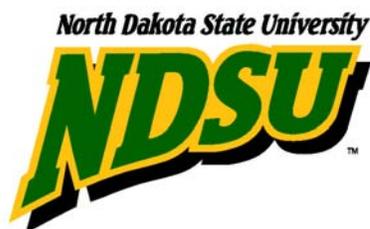
Sexual Misconduct (cont.)

- Title IX protects everyone from sexual harassment, which includes sexual violence, in an institution's education programs and activities, including:
 - All academic, educational, extracurricular, athletic, and other programs of the institution.
 - This applies regardless if the harassment occurs on-campus or off-campus during the program.
 - Even if the harassment occurred off-campus and not in the course of a program, the on-campus continue effects of the harassment (e.g., on-campus retaliation by the perpetrator of friends) must be considered. **The victim is key, NOT the location.**

43

Sexual Misconduct (cont.)

- Title IX protects third parties from sexual harassment or violation in an institution's education programs and activities (e.g., high school student participating in a recruitment program, a visiting student athlete, ect.).



44

Sexual Misconduct (cont.)

- NDSU Policy 162 additionally defines the following as sexual misconduct as:
 - Recording, distribution, or dissemination of sexual or intimate images or recordings of another person without that person's consent;
 - Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images);
 - Engaging in voyeurism (watching private sexual activity without the consent of the participants or viewing another person's intimate parts, including genitalia, groin, breasts or buttocks, in a place where that person would have a reasonable expectation of privacy);
 - Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity;
 - Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals or private areas;
 - Prostituting another person; or
 - Exposing another person to a sexually transmitted disease (STD), infection (STI), or virus (HIV) without the other's knowledge

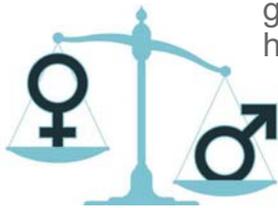
45

How does Harassment Make Students Feel?

- **How harassment makes students feel varies greatly by gender.**
 - Self conscious or embarrassed (Female 57% and Male 34%)
 - Angry (Female 55% and Male 32%)
 - Less confident (Female 35% and Male 16%)
 - Afraid or scared (Female 32% and Male 9%)

Pay Equity

- For every \$1.00 men make . . .
 - Women (collectively) make \$0.81
 - African-America women make \$0.63
 - Hispanic women make \$0.54
- Pay Equity & Pay Negotiation: Evidence has shown that men negotiate better/more than women, and as a result women tend not to negotiate, thereby perpetuating wage discrimination
- Pay Equity & Salary History: As a result of the wage gap, basing an employee's salary on prior salary history operates to perpetuate wage discrimination



47

Pay Equity

- Pay Equity: Paying employees fairly, taking into account job related factors such as education, work experience, etc.
- “Equal Pay for Equal Work”: Compensating employees with the same the same
- Area where we expect to see the number one increase in legal claims
 - OFCCP/EEOC are continuing to prioritize pay
 - Increase in private litigation

48

Pay Equity – Applicable Laws

- **Title VII**
 - Title VII prohibits discrimination in all terms and conditions of employment, including compensation, based on sex, race, color, religion, or national origin
 - Disparate treatment: employer intentionally paid employee less based on protected class
 - Disparate impact: employer’s policy or practice that appears to be neutral, has a discriminatory effect on a protected class
- **Equal Pay Act**
 - Requires employers to provide men and women equal pay for equal work in the same establishment

49

Pay Equity – Applicable Laws

- **North Dakota State Law**

“An employer may not discriminate between employees in the same establishment on the basis of gender, by paying wages to any employee in any occupation in this state at a rate less than the rate at which the employer pays any employee of the opposite gender for comparable work on jobs that have comparable requirements relating to skill, effort, and responsibility.”

N.D. Century Code 34-06.1-03

50

Gender Identity/Expression Discrimination

Singling out individuals who are transgender or gender nonconforming for differential treatment.



51

Language Overview

- Sex
- Sexual Orientation
- Gender Identity
- Gender Expression
- Transgender
- Cisgender
- Gender Nonconforming
- Gender Dysphoria



52

Gender Identity/Expression Discrimination

Discriminatory/harassing actions may include:

- Continued refusal to use an individual's preferred pronoun.
- Continued refusal to use an individual's preferred name.
- Inappropriate remarks about changing appearance.
- Asking excessively personal questions that would be inappropriate if asked of non-transgender individuals.
- Enforcing a dress code not aligned with preferred gender.

53



Restrooms/Gender-Specific Services/Facilities

54

Principles for Preventing Discrimination

Recognize self-identity, regardless of surgery/documentation

Is an individual's gender identity and expression being accepted as described by the individual?

Provide reasonable accommodation (if required)

Are policies or procedures resulting in a transgender person having to unfairly endure difficult or different conditions?

Biases are not a valid reason for discrimination

Is the entity trying to accommodate a another individual's bias against transgender individuals?

55



Lactation/Mothering Rooms

NDSU Century Code 23-12-16:

"If the woman acts in a discreet and modest manner, a woman may breastfeed her child in any location, public or private, where the woman and child are otherwise authorized to be."

- In other words, the University must not prohibit faculty, staff, students, visitors, etc. from breastfeeding (discreetly and modestly) in public or private.
- While North Dakota law does not require employers to provide nursing/mothering rooms, it does encourage employers to adopt "infant friendly" workplace breastfeeding policies.

56



Lactation/Mothering Rooms

NDSU Century Code 23-12-17:

“An employer may use the designation "infant friendly" on its promotional materials if the employer adopts a workplace breastfeeding policy that includes the following:

- a. Flexible work scheduling, including scheduling breaks and permitting work patterns that provide time for expression of breast milk;
- b. A convenient, sanitary, safe, and private location, other than a restroom, allowing privacy for breastfeeding or expressing breast milk;
- c. A convenient clean and safe water source with facilities for washing hands and rinsing breast-pumping equipment located in the private location specified in subdivision b; and
- d. A convenient hygienic refrigerator in the workplace for the temporary storage of the mother's breast milk.”

57



Lactation/Mothering Rooms (cont.)

Federal Law

- FLSA Section 7(r): An employer shall provide —
 - (1) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and a place, ***other than a bathroom***, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.
- U.S. Department of Education also encourages universities to establish lactation/mothering rooms

58

NDSU's Complaint Resolution Process

59

Overview of Policy 156

- Introduction/definitions (discrimination, harassment, protected classes).
- Procedure for filing a Complaint/Retaliation prohibited.
- Remedial measures (pre-final determination).
- Preliminary review of the Complaint.
- Informal resolution procedures.
- Formal resolution procedures.
- Intersection with other relevant policies.
- Notice of mandatory reporting responsibilities and training.
- Discretionary investigations/Filing with an external agency.

60

Goals of Policy 156

Specifically, NDSU is committed to taking action to:

- 1) Stop discrimination;
- 2) Remedy the effects of discrimination;
- 3) Prevent the recurrence of discrimination; and
- 4) Educate the university community about their rights and responsibilities regarding discrimination.

61

Who Can File a Complaint?

“Current or former NDSU students or employees, applicants for admission or employment, or any other participants in NDSU’s educational programs and activities, or any group thereof...”

62

How to File a Complaint

- A discrimination complaint is initiated by **completing a NDSU Discrimination/Harassment/Retaliation Complaint Form** (Complaint Form).
- The form must be **filed** with the Equity Office.
 - Online at <https://www.ndsu.edu/forms/>; or
 - Contact Equity Office for a copy.

63

Other Filing Options

- Complaints against **students or student groups**.
 - May be filed with the Student Affairs Office.
 - Resolution in coordination with the Student Affairs Office.
 - Any formal resolutions will follow procedures found in Rights and Responsibilities of Community: A Code of Student Conduct.
- Complaints alleging **Title IX violations**, including gender discrimination, sexual harassment, or sexual assault, may be filed with the Title IX Coordinator.
 - Procedures: NDSU Section 603, Sexual Misconduct and Title IX Compliance.

64

Anonymous Reporting

- May submit anonymous reports, **BUT**
- NDSU may be limited in its response.
 - In some circumstances, NDSU may need to take action to learn the identity of an individual who submitted an anonymous report.



65



Deadline for Filing

NDSU encourages those who believe they have been discriminated against to file a discrimination complaint **as soon as possible.**”

Unless the Equity Office agrees otherwise in writing, the Complaint Form must be submitted **within 180 calendar days** of the most recent incident of discrimination.

66

Confidentiality NOT Guaranteed

- NDSU will keep the complaint and its investigation confidential **to the extent that it is possible.**
- **NO GUARANTEE OF CONFIDENTIALITY.**
- NDSU may have an obligation to take specific actions under Policy 156 once aware of alleged discriminatory conduct.

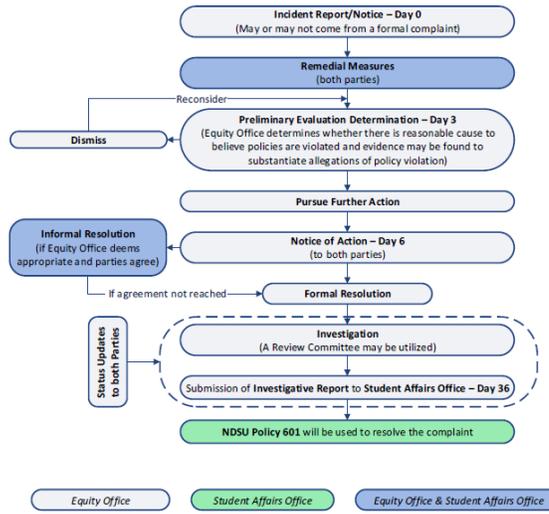
67

Remedial Measures

- After receiving a report (but before any investigation/final determination), NDSU may have an obligation to take **immediate measures to remedy harm** of discriminatory conduct.
- E.g, no contact directive, a safety plan, residence modifications, academic modifications/support, work schedule or location modifications, parking modifications, referral to counseling/health services, administrative leave, temporary suspension.

68

NDSU POLICY 156 EO/Title IX Investigation Process Chart for Student Cases (modeled after ATIXA)



Excluding any appeal, the formal resolution process will be completed within 60 calendar days of the date the discrimination complaint was filed unless there are extenuating circumstances. Any reason for an extension to the 60 calendar day deadline will be communicated in writing to the Parties.

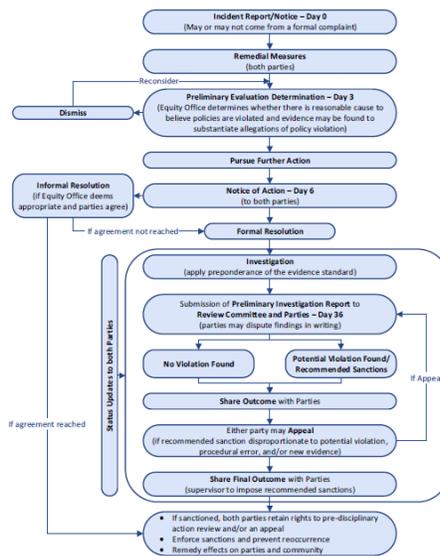
Must use a preponderance of the evidence standard in any Title IX proceedings, including any fact-finding and hearings.
<https://www2.ed.gov/about/offices/list/occr/docs/ga-201404-title-ix.pdf>

Both parties must be notified, in writing, of the outcome of both the complaint and any appeal.

<https://www.ndsu.edu/equity/>

September 6, 2017

NDSU POLICY 156 EO/Title IX Investigation Process Chart (modeled after ATIXA)



Excluding any appeal, the formal resolution process will be completed within 60 calendar days of the date the discrimination complaint was filed unless there are extenuating circumstances. Any reason for an extension to the 60 calendar day deadline will be communicated in writing to the Parties.

Must use a preponderance of the evidence standard in any Title IX proceedings, including any fact-finding and hearings.
<https://www2.ed.gov/about/offices/list/occr/docs/ga-201404-title-ix.pdf>

Both parties must be notified, in writing, of the outcome of both the complaint and any appeal.

<https://www.ndsu.edu/equity/>

September 6, 2017

Investigation Objectives

- Ascertain witnesses/involved individuals
- Collect facts and relevant evidence
- Determine who, what, when, where, why, and how
- Evaluate credibility
- Identify and eliminate extraneous information
- Make recommendation

71

The Investigator

- Investigators must be:
 - **Analytical** (detail oriented, able to gather and organize facts and make recommendations);
 - **Credible** (fair, trusted, skilled in investigative role);
 - **Knowledgeable about discrimination/harassment** (understand legal implications, able to identify discrimination in context of work/school environment);
 - **Impartial** (not connected to parties/outside the “chain of command”);
 - **Able to handle confidential/sensitive information;** and
 - **Self Reflective** (what are your own biases, what may affect your objectivity).

72

Standard of Proof

*The Level of Certainty and the Degree of
Evidence Necessary to Establish Proof*

Policy 156 states the standard of proof is a:

**PREPONDERANCE
OF THE EVIDENCE.**

73

Preponderance of the Evidence

In other words . . .

“[I]n order for an individual (or group) against whom a discrimination complaint was filed to be held responsible for discrimination, it must be determined that it is **more likely than not** that the individual (or group) violated NDSU’s Equal Opportunity and Non-Discrimination Policy.”

- You may have heard that U.S. Secretary of Education announced last week a new interim Q&A for schools on how to investigate and adjudicate allegations of sexual misconduct under federal law.
 - Withdrawing the 4-4-11 Dear Colleague Letter
 - Schools have discretion to apply either preponderance of evidence or clear and convincing evidence standard
 - Should be consistent with standard applied in other student misconduct cases.

74

Overview of Formal Process – Appeals

- 5 days after final determination; filed with Equity Office.
- Grounds for an appeal include:
 - The recommended disciplinary action is substantially disproportionate to the findings;
 - Procedural error led to an improper final determination; and/or
 - New evidence that was previously unavailable should be considered as it could have had a significant impact on the final determination.
- Appeals process completed in 10 days from submission of appeals form.

75

Disciplinary Action

- Students: subject to disciplinary action, up to and including **expulsion**.
- Employees: subject to disciplinary action, up to and including **termination**.
- The disciplinary action recommended by the review committee will depend on the **severity** of the discriminatory conduct and whether the individual (or group) was **previously found responsible** for discrimination.

76

Discretionary Investigation Policy

“The Equity Office reserves the right to **initiate an investigation** under these procedures **at its discretion** in the absence of a discrimination complaint or report of discrimination in order to fulfill NDSU’s commitment to taking action to stop discrimination, remedy its effects, and prevent its recurrence.”



77

Mandatory Reporting Obligations



78

Employee Obligations

All NDSU employees who observe discrimination, including harassment or retaliation of a student, must document the discrimination and contact the Equity Office (filing a complaint).



79

Employee Obligations

Student Reports of Discrimination/Harassment:

1. Document the report.
2. Contact the Equity Office in accordance with 10.2 (how to file a complaint).

Employee Reports of Discrimination/Harassment:

For NDSU supervisors, managers, department heads, deans, directors, or administrators)

1. Document the report.
2. Contact the Equity Office in accordance with 10.2 (how to file a complaint).

80

Employee Obligations

To comply with [Policy 156], NDSU employees **must promptly** complete and submit an NDSU Discrimination Report Form (Report Form) to the Equity Office.

Regardless of how you heard about it or where it happened, if you find out about a Title IX violation involving a student, employee, or visitor...

REPORT IT!!!

81

Thank You for Participating.

Sara Gullickson McGrane

220 South 6th Street, Suite 2200

Felhaber Larson

Minneapolis, Minnesota 55402

(612) 373-8511

smcgrane@felhaber.com

82