

## Equity Office Investigations

This document is meant to be a guide regarding what information may and may not be provided about a current or former employee who has been investigated by the Title IX Coordinator/Equity Office. The Equity Office will keep the complaint and its investigation confidential to the extent that it is possible only sharing information with those on a need to know basis. Confidentiality cannot be guaranteed as NDSU may have an obligation to take specific actions once aware of alleged discriminatory conduct. The Equity Office provides regular updates regarding the status of an ongoing investigation to the involved parties. If an individual does not receive status updates, it is because they are not on a need to know basis. Questions regarding any Equity Office investigation, open or closed, should be directed to the Equity Office, who can best determine the department to whom the question can be addressed.

### Inquiries Regarding Status of Complaints and Investigations

You may be contacted by a current NDSU student or employee about the status of another NDSU employee. For example, if Party 1 filed a complaint against Party 2, Party 1 may inquire about the status of Party 2's employment during or after an investigation. It is recommended that you refer the inquirer to either Human Resources regarding staff members or the Office of the Provost regarding faculty members for this information. However, if you have personal knowledge of this information, you may provide it so long as it is truthful. For example, stating "The employee is no longer employed at NDSU" would be an appropriate response. Divulging specific details of the complaint would not be appropriate.

### Inquiries from Potential Employers

You may be contacted by potential employers and asked questions regarding current or former NDSU employees. Any such inquiries should be referred to Human Resources. Human Resources can provide the relevant information, including open record information, and applicable parts of the personnel file (such as dates of employment, title, salary, etc.). Included in the open record information would be letters of resignation and letters of termination. However, you may choose to answer questions about a former employee if you have personal knowledge of his/her work performance and behavior (you were the former employee's immediate supervisor). If you choose to do this, you must provide truthful information. If you have no personal knowledge of his/her work performance and/or did not supervise the employee, refer the caller to Human Resources.

In the event you have been listed as a professional reference, you may choose to answer questions about a current or former employee. When answering questions about the individual's job performance, please be advised you must provide truthful information. If you are serving as a personal reference, you must do so in your personal capacity, ensuring that the potential employer is aware that you are speaking on your own behalf and not on behalf of NDSU.

If you are unsure about what information may or may not be provided regarding the employment status or performance of an employee, please contact Human Resources for guidance. Additionally, there is no law compelling an employer to provide a reference. Certain records under Open Records will be released if requested, otherwise there is no obligation about what information must be provided.

### Law Regarding Truthful References

All employees should be aware of the *North Dakota Truthful References Law*. The 1997 North Dakota Legislature enacted this law which grants immunity from civil lawsuits to employers who provide truthful employment references.

North Dakota Century Code (NDCC) 34-02-18, *Immunity for Providing Employment Reference*, reads, “1. An employer, or an employer's agent, who truthfully discloses date of employment, pay level, job description and duties, and wage history about a current or former employee to a prospective employer of the employee is immune from civil liability for the disclosure and the consequences of the disclosure of that information. 2. An employer, or an employer's agent, who discloses information about a current or former employee's job performance to a prospective employer of the employee is presumed to be acting in good faith. Unless lack of good faith is shown, the employer or employer's agent is immune from civil liability for the disclosure and the consequences of providing that information. The presumption of good faith may be rebutted by a preponderance of the evidence that the information disclosed was: a. knowingly false; b. Disclosed with reckless disregard for the truth; c. Deliberately misleading; or d. Rendered with malicious purpose. 3. The immunity provided by subsection 2 does not apply if the information provided is in violation of a nondisclosure agreement or was otherwise confidential according to applicable law.”

Please be advised that knowingly providing information which you know to be false, such as providing a positive reference for someone when you omit key pertinent facts, would be in violation of the *Truthful References Law*. For example, do not provide a glowing reference for someone when you are aware of a current or former sexual misconduct investigation and/or outcome. However, providing dates of employment, title, salary information, and eligibility for rehire would be permitted.