

Meeting Agenda
November 9, 2020

- I. Call to Order.
- II. Attendance.
- III. Adoption of the Agenda.
- IV. Approval of Meeting Minutes from October 12, 2020.
- V. Announcements.
 - 1. Dean Bresciani, President
 - 2. Margaret Fitzgerald, Provost
 - 3. Florin Salajan, Faculty Senate President
 - 4. Molly Secor-Turner, Faculty Senate Past-President
 - 5. Maggie Latterell, Staff Senate President
 - 6. Matthew Friedmann, Student Body President
 - 7. Phillip Hunt, Registrar
- VI. Committee and Other Reports.
 - 1. Executive report on faculty input to Provost appointment
 - 2. Budget Committee report
- VII. Consent Agenda.
 - 1. UCC Report (11/9/20)
 - 2. Confirmation of previously approved UCC report (10/21/20)
 - 3. Policy 130
 - 4. Policy 135
 - 5. Policy 143
 - 6. Policy 149
- VIII. Unfinished Business.
 - 1. None
- IX. New Business.
 - 1. Summary of Title IX regulatory changes
 - 2. Policy 151
 - 3. Policy 156.1
 - 4. Policy 162
 - 5. Policy 183
 - 6. Policy 220
 - 7. Policy 230

- 8. Policy 231
- 9. Policy 327
- 10. Policy 350.3
- 11. Policy 350.4
- 12. Policy 601
- X. Open Discussion.
- XI. Adjournment.

NDSU Faculty Senate Minutes

October 12, 2020

- I. Call to Order *—meeting called to order at 3:03 by President Hawley.*
- II. Attendance *—no substitutions.*

Carlos Hawley	x	Long Jiang	
Molly Secor-Turner	x	Zhibin Lin	
Florin Salajan	x	Eric Asa	x
Ali Amiri	x	Shannon Harriger	x
Christopher Byrd	x	Mary Larson	x
Tom DeSutter	x	Sharon Nelson	x
Andrew Green	x	Stephen O'Rourke	
Jeremy Jackson	x	Sara Thompson	x
Ryan Limb	x	Amelia Asperin	x
Birgit Pruess	x	Katie Lyman	x
David Ripplinger	x	Kimberly Overton	x
Guiping Yan	x	Rebecca Woods	
Eric Berg	x	Laura Aldrich-Wolfe	x
Qi Zhang	x	Josef Dorfmeister	x
Bakr Aly Ahmed	x	John Hershberger	
Anastasiya Andrianova	x	Ken Lepper	x
Lisa Arnold	x	Mark McCourt	x
Sean Burt	x	Kent Rodgers	x
John Creese	x	Abraham Ungar	
Pamela Emanuelson	x	Pinjing Zhao	x
Kristen Fellows	x		
Holly Hassel	x		
Dan Pemstein	x		
Onnolee Nordstrom	x		
Fred Riggins	x		
Ruilin Tian	x		
Majura Selekwa	x		
Changhui Yan	x		

- III. Adoption of Agenda –
 - a. *Pruess motion to add Ad Hoc committee on Shared Governance to Agenda—Secor-Turner second. Motion passed 34 yes, 1 no.*
 - b. *Ripplinger motion to add removal of Carlos Hawley as Faculty Senate President to the agenda—Berg second. Motion passed.*
 - c. *Pruess motion to approve agenda with additions, Lyman second. Agenda approved unanimously.*
- IV. Approval of previous meeting minutes from 14/IX/2020
 - a. *Secor-Turner move to approve, Anastasia second. Passed unanimously.*
- V. Announcements
 - a. Dean Bresciani, President

- i. *No announcements.*
 - b. Margaret Fitzgerald, Provost
 - i. *No report.*
 - c. Carlos Hawley, Faculty Senate President
 - i. *Yielded to announcement given by the Registrar, Phil Hunt.*
 - ii. *Registration and Records will be asking faculty about plans for teaching in spring to make it clear to students how courses will be offered.*
 - d. Florin Salajan, Faculty Senate President-Elect
 - i. *Yielded to Molly Secor-Turner—announced resignation effective at the end of the semester.*
 - e. Maggie Latterell, Staff Senate President
 - i. *Gunkleman award nominations being sought.*
 - f. Matthew Friedmann, Student Body President
 - i. *Incentives for student testing for COVID-19 are being offered by Student Government.*
- VI. Committee Reports
 - a. Executive Committee
 - i. *Provost Search Committee Chair, Chuck Peterson described role of Provost Search Committee—emphasized role of search committee was not to hire a Provost but to present candidates to the President and ultimately the President would hire the Provost. Dr. Peterson provided an overview of the letter that was sent to faculty (attached). Answered questions from Dr. Hawley and other Senate members.*
 - ii. *Questions for the President regarding hire of Dr. Fitzgerald as Provost. A question was posed as to why Dr. Fitzgerald was not invited to apply for the position. As a follow-up an opinion was offered that at the very least an open forum should have been held with Dr. Fitzgerald before her appointment to the position.*
- VII. Consent Agenda

Lyman motion to approve Consent Agenda, De Sutter second. Consent Agenda passed Yes = 34, No = 1, Abstain =10.

 - a. Policy 130
 - b. Policy 135
 - c. Policy 143
 - d. Policy 149.
- VIII. New Business
 - a. Ad hoc committee dedicated to shared governance
 - i. *Dr. Pruess provided an overview of the intent of the committee—intent would be for the committee to work on a policy to define shared governance on campus. Dr. Pruess offered to chair and proposed membership of FSEC and President or other administrators.*

Pruess motion to approve, Salajan second. Motion approved, yes = 34 yes, no = 3 abstain = 11.

b. Motion to remove Carlos Hawley as Faculty Senate President

- i. *Ripplinger motion to approve removal of Carlos Hawley as Faculty Senate President, Berg second.*
- ii. *Discussion. Statements given by Dr. Hawley and questions posed by faculty senate members.*

Pemstein called the question. Motion approved.

Vote originally recorded as yes = 31, no = 7, abstain = 11 using results from the polling function in Zoom. Following the meeting, votes that were cast by non-Senators were removed from the vote. In total, 38 Senator votes were recorded out of 47 Senators eligible to vote on the current Faculty Senate roster. Votes are recorded below.

<i>Yes (27)</i>	<i>No (4)</i>	<i>Abstain (7)</i>
<i>Dorfmeister</i>	<i>Lepper</i>	<i>Overton</i>
<i>Selekwa</i>	<i>McCourt</i>	<i>Nordstrom</i>
<i>Limb</i>	<i>Rodgers</i>	<i>Asa</i>
<i>G. Yan</i>	<i>Salajan</i>	<i>Tian</i>
<i>Burt</i>		<i>Nelson</i>
<i>Zhao</i>		<i>Andrianova</i>
<i>Pruess</i>		<i>Asperin</i>
<i>Arnold</i>		
<i>Larson</i>		
<i>Green</i>		
<i>Creese</i>		
<i>C. Yan</i>		
<i>Thompson</i>		
<i>Emanuelson</i>		
<i>Pemstein</i>		
<i>Lyman</i>		
<i>Byrd</i>		
<i>Fellows</i>		
<i>Berg</i>		
<i>Jackson</i>		
<i>DeSutter</i>		
<i>Riggins</i>		
<i>Aldrich-Wolfe</i>		
<i>Ripplinger</i>		

Ahmed		
Hassel		
Secor-Turner		

***No votes were recorded for the following Faculty Senate members: Hawley, Zhang, Jian, Lin, O'Rourke, Woods, Hershberger, Ungar*

As a point of clarity, following the meeting the appointed Faculty Senate Parliamentarian, Ali Amiri, was asked to review the vote in consultation with the current Faculty Senate Bylaws and Robert's Rules of Order Newly Revised. On 10/13/20, Dr. Amiri sent the following email regarding his review:

"The motion passes. I did not count abstain into my "vote" count, Robert's Rules is clear on that. The only confusion was should it be 2/3 of the voting members present, or 2/3 of votes cast.

*RR clearly says a "two-third" vote **means at least two-third of the votes cast by persons entitled to vote.** And since our by-laws do not explicitly say "two-third of members present", we needed 26 out of 38 votes cast to pass the motion, and motion passes."*

- IX. Planning and prioritizing Senate action for the year
 - a. Provost appointment and dismissal
 - b. Anti-racism
 - c. Curriculum initiatives
 - d. International initiatives
 - e. ...

Planning and prioritization Senate action for the year was not addressed due to time.

- X. Adjourn—DeSutter move to approve; Limb second. Meeting adjourned at 4:35.

**University Curriculum Committee Report
For Faculty Senate Meeting on November 9, 2020**

Program Changes			
Biomedical Engineering minor – added the minimum engineering credits (9) requirement.			

New Courses			
Subject	No.	Title	Effective Term
CNED	866	Leadership and Advocacy in Counselor Education and Supervision	Spring 2021

Course Reactivation			
Subject	No.	Title	Effective Term
ANSC	759	Application of Quantitative Genetics in R Software	Spring 2021
PPTH	757	Advanced Techniques in Plant Pathology	Spring 2021
SOC	733	Organizations and the State	Spring 2021

Course Changes								
From:				To:				
Subject	No.	Title	Crs.	Dept	No.	Title	Crs.	Effective Term
CJ	354	Media, Crime and Justice in America	2	CJ	354	Media, Crime and Justice in America	3	Spring 2021
MGMT	360	Operations Management	3	TL	360	Operations Management	3	Spring 2021
MGMT	461	Supply Chain Management	3	TL	461	Supply Chain Management	3	Spring 2021
MGMT	462	Modeling the Supply Chain	3	TL	462	Modeling the Supply Chain	3	Spring 2021
TL	727	Organizational Change Management	3	MGMT	727	Organizational Change Management	3	Summer 2021
TL	789	Leadership, Ethics, and Academic Conduct in Transportation	3	TL	789	Leadership for Transportation & Supply Chain Professionals	3	Spring 2021
VETS	485	Veterinary Technology Externship 6-12	6-12	VETS	485	Veterinary Technology Externship	3	Spring 2021

Changes in Course Descriptions and/or Requisites				
Subject	No.	Title	Prerequisite/Co-requisite/Description Change	Effective Term
CHP/HNES	400	IP Health Care Practice	Prereq: PHRM 455 or NUR 341 and 342 or MLS 111 or RC 111 or RS 111.	Spring 2021
ME	213	Modeling of Engineering Systems	Prereq: MATH 128 or MATH 129, ME 222. Co-req: MATH 266.	Spring 2021
THEA	480	History and Literature of Theatre I	Desc: Historical study of theatre architecture, staging methods, individual artists and plays from classical Greece to contemporary times. Prereq: THEA 180.	Fall 2020
TL	789	Leadership for Transportation & Supply Chain Professionals	Desc: This course focuses on exploring theories, concepts, and practices of leadership and their application to transportation and supply chain issues. The most current leadership theories and practices will be examined and applied to the discipline the student is pursuing.	Spring 2021
VETS	367	Principles of Companion Animal Dentistry	Prereq: VETS 267 and VETS 267L.	Spring 2021
VETS	485	Veterinary Technology Externship	Desc: This course is the capstone experience for veterinary technology students. This course involves continued development of skills and application of knowledge through supervised work in a veterinary practice or other appropriate clinical setting. Refer to the Department of Animal Sciences for further information regarding the Veterinary Technology program. Prereq: VETS 367, VETS 367L, VETS 369, VETS 460, VETS 460L, VETS 461, VETS 461L.	Spring 2021

Program Deactivation	
B.A., Emergency Management	

Course Inactivation			
Subject	No.	Title	Effective Term
ASM	654	Principles and Application of Precision Agriculture	Fall 2021

General Education Deletion			
Subject	No.	Title	Effective Term
ENT	210	Insects, Humans and the Environment	Spring 2021

VII. Consent Agenda

Item Summary

2. Confirmation of Previously Approved UCC Report (10/21/20)

The UCC report (see next page) had not been included on the Consent Agenda for the Faculty Senate Meeting on October 12, 2020. Due to its time sensitive nature, given its inclusion of course that had to be approved by October 31, 2020 and, thus, before the next Faculty Senate Meeting on November 9, 2020, the UCC report was put to a vote via electronic ballot through an extra-parliamentary online voting procedure.

The electronic ballot was sent to the Faculty Senators on October 16, 2020. Senator Andrianova made a motion for the report's approval, seconded by Senator Limb. Senator Selekwa called the question.

Of the 48 Senate members eligible to vote, 44 cast a vote. The resulting vote count was 44-Yes, 0-No with no abstentions.

The motion passed, and the UCC report was approved on October 21, 2020.

**University Curriculum Committee Report
For Faculty Senate Meeting on October 12, 2020**

Program Changes			
B.S., Management Information Systems - CSCI 213 has been added to the Technology Elective I list. Students can take CSCI 213 as a Programming elective or a Tech elective.			
Minor, Emergency Management – Swapping old course numbers for new course numbers EMGT 261, 263, and 264 are now numbered 361, 363, and 364. Removed HDFS 135, which is no longer active.			
MS, HDFS In the Family Financial Planning Option, the capstone is being changed from a practicum to a case study. The course number for the case study is HDFS 769. A practicum, a master's paper, and a master's thesis are all still options available to students, but none are now required. The rationale for this change is that most of our students are already working in the financial industry and so they do not need the additional work experience of a practicum.			

New Courses			
Subject	No.	Title	Effective Term
BIOL	275	URE: Insect Behavior	Spring 2021
HIST	449	Ancient Rome: From Republic to Empire	Fall 2021
PH	754	Health Survey Research	Spring 2021
UNIV	411	Global Learning	Fall 2020

Course Changes								
From:				To:				
Subject	No.	Title	Crs.	Dept	No.	Title	Crs.	Effective Term
AS	110	Air Force ROTC Fitness	0	AS	110	Air Force ROTC Fitness I/II	0	Fall 2020
AS	111	Heritage and Values of the U.S. Air Force I	1	AS	111	Heritage and Values I Fall	1	Fall 2020
AS	112	Heritage and Values of the U.S. Air Force II	1	AS	112	Heritage and Values II	1	Spring 2021
AS	441	National Security/Leadership Responsibilities & Commissioning Preparation I	3	AS	441	National Security/Commissioning Preparation I	3	Fall 2020
AS	442	National Security/Leadership Responsibilities & Commissioning Preparation II	3	AS	442	National Security/Commissioning Preparation II	3	Spring 2021
BIOL	270	URE: Antibiotic Drug Discovery	3	BIOL	270	URE: Antibiotic Discovery	3	Fall 2021
BIOL	272	RE: Learning in Biology	3	BIOL	272	URE: Learning in Biology	3	Fall 2021
BIOL	273	URE Course: Genomic Analysis		BIOL	273	URE: Genomic Analysis	3	Fall 2021
ENGL	317	American Literature I	3	ENGL	261	American Literature I	3	Spring 2021

Changes in Course Descriptions and/or Requisites				
Subject	No.	Title	Prerequisite/Co-requisite/Description Change	Effective Term
AS	110	Air Force ROTC Fitness I/II	Desc: Introduction to various AFROTC team sports. Promotes benefits of being physically fit and maintaining Air Force fitness standards. May be repeated for credit.	Fall 2020
AS	111	Heritage and Values I Fall	Desc: AS 111 is a survey course designed to introduce students to the United States Air and Space Forces and provides an overview of the basic characteristics, missions, and organization of the Air and Space Forces.	Fall 2020
AS	210	Leadership Laboratory	Desc: AS 210 is a dynamic and integrated grouping of leadership developmental activities designed to meet the needs and expectations of prospective Department of the Air Force second lieutenants and complement the AFROTC academic program. It is a student planned, organized, and executed practicum conducted under the supervision of the Detachment Commander and Operations Flight Commander. For AS 100/200 level cadets. May be repeated for credit.	Fall 2020

Changes in Course Descriptions and/or Requisites (continued)				
Subject	No.	Title	Prerequisite/Co-requisite/Description Change	Effective Term
AS	211	Team and Leadership Fundamentals I	Desc: AS 211 provides a fundamental understanding of both leadership and team building. The lessons and course flow are designed to prepare students for field training and leadership positions in the detachment.	Fall 2020
AS	212	Team and Leadership Fundamentals II	Desc: AS 212 provides a fundamental understanding of both leadership and team building. The lessons and course flow are designed to prepare students for field training and leadership positions in the detachment.	Spring 2021
AS	321	Leading People and Effective Communication I	Desc: AS 321 utilizes student's field training experience to take a more in-depth look at leadership. Special emphasis is placed on enhancing communication skills, and why that is important as a leader. Students have an opportunity to try out these leadership and management techniques in a supervised environment as juniors and seniors.	Fall 2020
AS	322	Leading People and Effective Communication II	Desc: AS 322 utilizes student's field training experience to take a more in-depth look at leadership. Special emphasis is placed on enhancing communication skills, and why that is important as a leader. Students have an opportunity to try out these leadership and management techniques in a supervised environment as juniors and seniors.	Spring 2021
AS	410	Leadership Laboratory	Desc: AS 410 is a dynamic and integrated grouping of leadership developmental activities designed to meet the needs and expectations of prospective Department of the Air Force second lieutenants and complement the AFROTC academic program. It is a student planned, organized, and executed practicum conducted under the supervision of the Detachment Commander and Operations Flight Commander. For AS 300/400 level cadets. May be repeated for credit.	Fall 2020
AS	441	National Security/Commissioning Preparation I	Desc: AS 441 is designed for college seniors and gives them the foundation to understand their role as military officers and how they are directly tied to our National Security Strategy. It is an overview of the complex social and political issues facing the military profession and requires a measure of sophistication commensurate with the senior college level.	Fall 2020
AS	442	National Security/Commissioning Preparation II	Desc: AS 442 is designed for college seniors and gives them the foundation to understand their role as military officers and how they are directly tied to our National Security Strategy. It is an overview of the complex social and political issues facing the military profession and requires a measure of sophistication commensurate with the senior college level.	Spring 2021
ENT	470/670	Insect Ecology	Desc: This course explores the importance of insects for investigating basic and applied ecological questions. We will primarily use the peer-reviewed literature to look at some of the most important issues in insect ecology. In doing so, we will look at the ecological foundations of these issues, the methods scientists use to research them, and their connections to management. The course will be online and asynchronous with regular deadlines to help maintain progress throughout the semester.	Spring 2021

Changes in Course Descriptions and/or Requisites (continued)				
Subject	No.	Title	Prerequisite/Co-requisite/Description Change	Effective Term
PHRM	351L	Pharmacy Practice Laboratory I	Desc: This course is a hands-on skills laboratory in contemporary pharmacy practice. Learners will engage in activities and simulations which provide opportunities for application of skills relevant to community pharmacy practice.	Spring 2021
PHRM	425	Instructional Design for Health Professionals	Prereq: PHRM 353 with a grade of C or higher.	Spring 2021
PHRM	452L	Pharmacy Practice Laboratory II	Desc: This course will afford the learner the knowledge, skill set, and resources needed to practice in an institutional setting. Contextualized, competency-based, learning activities are used to promote analytical reasoning and mastery of learning outcomes. Topics include health-system pharmacy; sterile and nonsterile products; compounding; therapeutic plan formulation using electronic health records; point-of-care testing.	Fall 2021
PHRM	551L	Pharmacy Practice Laboratory III	Desc: This course is a hands-on skills laboratory course in contemporary pharmacy practice. Learners will engage in activities and simulations which provide hands-on practice of ambulatory care learning topics in various practice settings.	Fall 2021
PHRM	553	Pharmacy-Based Point-of-Care Testing Certificate Program	Prereq: PHRM 425L and PHRM 532 with a grade of C or higher	

Policy Change Cover Sheet

This form must be attached to each policy presented. All areas in **red**, including the header, must be completed; if not, it will be sent back to you for completion.



If the changes you are requesting include housekeeping, please submit those changes to nds.scc@nds.edu first so that a clean policy can be presented to the committees.

SECTION:

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).

- Is this a federal or state mandate? ☐ Yes ☒ No
- Describe change: Recently NDUS policies 6, 7.21 and 22 were changed at the system level. Below is a summary of the changes. This request is to ensure NDSU changes its policies to reflect the NDUS changes.
- HR 22 Family Leave proposed changes include a consistent approach by all campuses 1.) to use the same FMLA measurement period and 2). run paid leave concurrent with FMLA. HR 22 did not pass second read at the September 2019 board meeting due to staff concerns regarding an ability to preserve a leave balance after returning from FMLA. The board recommended that HRC explore staff concerns regarding preserving a leave balance. HRC, in conjunction with ND Staff Senate, obtained positive feedback from campuses in favor of a preserved leave option. HR 6 Annual Leave has been amended in section 11 which addresses a 40-hour preserved balance for employees exercising FMLA rights; HR 7 Sick Leave has been amended in section 9 addressing a 40-hour preserved balance for employees exercising FMLA rights and HR 21 Leave Without Pay has been amended in section 5 which allows employees exercising FMLA to preserve a leave balance while on leave without pay. Amendments to these four leave policies address campus concerns to HR 22 by implementing preserved leave balance language while providing consistency in campus implementation of FMLA. Proposed changes were vetted through the normal process and overall feedback was positive regarding the changes.

Deleted: ☐

2. This policy change was originated by (individual, office or committee/organization):

- Human Resources, John Woolsey, Director of Human Resources
- John.woolsey@nds.edu

This portion will be completed by Heather Higgins-Dochtermann.

Note: Items routed as information by SCC will have date that policy was routed listed below.

3. This policy has been reviewed/passed by the following (include dates of official action):

Senate Coordinating Committee:

Faculty Senate:

Staff Senate:

Student Government:

President's Cabinet:

The formatting of this policy will be updated on the website once the content has final approval. Please do not make formatting changes on this copy. If you have suggestions on formatting, please route them to nds.scc@nds.edu. All suggestions will be considered, however due to policy format guidelines, they may not be possible. Thank you for your understanding!

North Dakota State University

Policy Manual

SECTION 130

ANNUAL LEAVE

SOURCE: NDUS Human Resources Policy Manual, Section 6
NDSU President

1. Annual leave with pay is earned by eligible employees for the purpose of freeing them from their regular duties to spend time in rest and recreation or to attend to personal matters. Upon approval, annual leave may only be used in place of regularly scheduled work hours and shall not cause overtime. Such leave should be programmed to insure that leave is taken rather than carried forward from year to year.
2. University operations govern annual leave periods. Consideration is given first to the convenience of the administration, departmental needs, then the employee's departmental seniority and finally to the employee's preference. Annual leave is computed on the basis of the employee's hours/week, and months/year.
 - 2.1 The employee must obtain authorization from his/her department head before taking annual leave. The form of this authorization is to be determined by the respective department head.
 - 2.2 The employee is responsible to report their leave in absence management upon returning to work.
3. Annual leave with pay for full-time benefited, broadbanded staff employees is earned on the basis of continuous service from date of employment as follows:

First through third year - the equivalent of 12 days per year
Fourth through seventh year - the equivalent of 15 days per year
Eighth through twelfth year - the equivalent of 18 days per year
Thirteenth through eighteenth year - the equivalent of 21 days per year
Over eighteen years - the equivalent of 24 days per year

Annual leave for full-time, non-banded employees in the following job categories is earned on the same basis as for staff employees: graduate research fellows (2230), graduate teaching fellows (2235), post doc research fellows (2240), research scientists (2420), extension program assistants (2530), and international exchange scientists (2810).

Graduate teaching, research or service assistants and experiment station project assistants do not earn annual leave.

- 3.1 Years of service shall be computed from the employment anniversary dates.
 - 3.2 Annual leave for part-time staff employees and the non-banded employees identified above in 3 is earned on a prorated basis.
4. Presidents, executive deans, provosts, vice presidents, positions excluded from the broadbanding system, and other positions approved by the President or chancellor at the time of hire are entitled

to accrue a minimum of twelve working days and a maximum of 24 working days of annual leave each year to be taken at the convenience of the administration. Accrual rates for these employees are determined by the institution president. For any of these employees who are less than full-time, the annual leave will be prorated.

Each department may negotiate annual leave accrual on a case-by case basis during the recruitment, with prior Presidential approval. Current benefitted employees are not eligible.

5. Annual leave for 12 month faculty and other non-banded job categories not identified in #3 above is earned at the rate of 16 hours per month, 24 days per year. Annual leave will be prorated for those who are less than full-time. For non-banded employees on 9, 10, or 11, month appointments, see Section 320.
6. All eligible employees may accumulate annual leave hours. Full-time employees may accumulate up to 30 working days or 240 hours which shall be carried forward on January 1st of each year. Part-time employees may accumulate up to the equivalent number of days or hours on a prorated basis. Any accumulation in excess of 30 days or 240 hours (or the equivalent on a prorated basis for part-time employees) on December 31st of each year shall be cancelled.
7. All employees eligible to accumulate annual leave must take at least forty hours (or the equivalent on a prorated basis for part-time employees) of annual leave each year, except for the year during which they are hired.
8. When a holiday occurs during annual leave, the holiday is not considered a day of annual leave time.
9. At the discretion of the department head and the concurrence of the Director of Human Resources/Payroll or designee, an employee may be granted annual leave in advance of the accumulation thereof up to a maximum of 40 hours. In rare cases, such as leave due to a workers compensation claim or shared leave, the HR/Payroll office may process leave which exceeds the 40 hour advance. Annual leave taken in advance of accumulation may be deducted from the employee's last paycheck provided the employee has signed an agreement authorizing the deduction. This agreement must be submitted to and approved by the Office of Human Resources and Payroll prior to the employee obtaining a negative accrual balance.
10. Benefited employees terminating employment must be paid for earned unused annual leave subject to all approved payroll matched reductions/deductions. "Unused annual leave" shall include any leave carried over from the previous year and all accrued leave up to the date of termination. Proper termination notice must be given and any unearned annual leave taken shall be deducted from the employee's last paycheck.
 - 10.1 Annual leave earned by an employee on a 12 month appointment may not be carried forward by the employee to be used or paid for during the term of a subsequent appointment for less than 12 months and must be paid out.
11. In case of death, payment of all earned, unused annual leave shall be paid according to Section 34-01-12 of the North Dakota Century Code. (See Section 183.)
12. Accrued annual leave for employees previously employed with other North Dakota institutions or agencies may be transferred to institutions under the State Board of Higher Education according to agreements between the employee and the institution. If re-employment occurs within one calendar year, the re-employing institution shall credit the employee with prior years of service from any state agency in computing annual leave accrual rate.

13. When employment begins or ends during a pay period, the accrual of annual leave shall be prorated for the pay period when the employee is hired or terminated and does not work a full pay period.

14. Leave requests are processed on an on-going basis. The approving supervisor is responsible for verifying leave balances before approving. Corrections to leave will be handled by the Office of Human Resources and Payroll.

15. ~~Employees may exercise FMLA rights to preserve up to 40 hours of their available annual leave balance while the remainder paid leave runs concurrent with the FMLA leave entitlement period. After FMLA eligibility is exhausted then FMLA protections shall not apply to the preserved annual leave balance.~~

16.

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Deleted: Employees may exercise FMLA rights to preserve up to 40 hours of their available annual leave balance while the remainder paid leave runs concurrent with the FMLA leave entitlement period. After FMLA eligibility is exhausted then FMLA protections shall not apply to the preserved annual leave balance.

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HISTORY:

New	July 1990
Amended	April 1996
Amended	March 1998
Amended	October 1999
Amended	April 2002
Amended	October 2003
Amended	March 2006
Housekeeping	April 2010
Housekeeping	May 15, 2012
Housekeeping	April 11, 2013
Housekeeping	July 12, 2013
Amended	March 26, 2014
Amended	November 7, 2014
Amended	June 22, 2015
Housekeeping	March 31, 2017
Housekeeping	August 31, 2018

Policy Change Cover Sheet

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2. This policy change was originated by (individual, office or committee/organization):

- Human Resources, John Woolsey, Director of Human Resources
- John.woolsey@nds.edu

This portion will be completed by Heather Higgins-Dochtermann.

Note: Items routed as information by SCC will have date that policy was routed listed below.

3. This policy has been reviewed/passed by the following (include dates of official action):

Senate Coordinating Committee:

Faculty Senate:

Staff Senate:

Student Government:

President's Cabinet:

North Dakota State University

Policy Manual

SECTION 135

FAMILY MEDICAL LEAVE (NOTE THAT THIS CHANGE COULD NOT TAKE PLACE UNTIL AUGUST 1 DUE TO NOTIFICATION RULE)

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SOURCE: NDUS Human Resource Policy Manual, Section 22,
NDSU President

1. Family leave is an unpaid leave of absence available to all eligible employees for the birth, adoption, or foster placement of a child; for the serious health condition of the employee, the employee's parent, child or spouse; for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter or parent is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation; or for military caregiver leave for a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty that is a spouse, son, daughter, parent or next of kin (This entitles the employee to up to 26 weeks of leave in a single 12 month period). Consistent with applicable law and upon notice to the employee by the employing entity, family leave will be concurrent with paid sick or annual leave.

- 1.1 Eligible employees are those individuals employed by the state for at least twelve months, and who have worked at least one thousand two hundred fifty hours for the state over the previous twelve months. Eligibility is determined as of the date FMLA leave commences.

Under the terms of the Family Medical Leave Act of 1993 (29 U.S.C. 2611), qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves; however, it does not extend to family members of regular active-duty service members. "Qualifying exigencies" include such instances as: short-notice deployment; military events and related activities; certain childcare and related activities resulting from active duty or call to active duty; making or updating financial and legal arrangements to address a covered military member's absence; short-term, rest and recuperation leave during deployment; or attending to certain post-deployment activities.

A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or is a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date the veteran undergoes that medical treatment, recuperation or therapy. A serious injury or illness is one that was incurred by a service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating.

The "single 12-month period" for leave to care for a covered service member with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established by the employer for other types of FMLA leave. An eligible employee is limited to a **combined** total of 26 workweeks of leave

for any FMLA-qualifying reason during the “single 12-month period.” (Only 12 of the 26 week total may be for a FMLA-qualifying reason other than to care for a covered service member.)

- 1.2 Family leave used for the birth, adoption, or foster care placement of a child must begin within 12 months of the event.
- 1.3 Medical certification may be required by NDSU to verify the existence of a serious health condition including date of commencement and probable duration of illness. *If medical certification is requested it must be returned to NDSU within 15 days of the request unless it is not practical under the circumstances to do so despite diligent good faith efforts. If medical certification is not provided in a timely manner, NDSU may deny Family Medical Leave of Absence (FMLOA) until the certification has been provided.*
- 1.4 The maximum length of *total uncompensated* Family Medical Leave for eligible *full time* employees is twelve weeks within a 12-month period that begins with the first day of leave (26 weeks in a single 12 month period for the care of a covered service member). Leave for birth or adoption of a child may be taken intermittently if approved by the employing entity; leave because of the serious health condition of the employee, a parent, child or spouse may be taken intermittently if medically necessary. A married couple is not limited to a total of twelve weeks if both are employed by the state; each is entitled to twelve weeks. Reasonable and practical notice must be provided to the agency.
- 1.5 *If NDSU has questions regarding a health care provider's certification, a second opinion may be required at NDSU's expense.*
- 1.6 *While on FMLOA leave, a status report regarding intent to return to work upon conclusion of the leave must be given to the manager or supervisor.*
- 1.7 *While on FMLOA, holidays are uncompensated unless the employee works the day before and the day after the holiday.*
- 1.8 *If the FMLOA is due to an employee's serious health condition which makes them unable to perform their job, NDSU requires certification from the health care provider that she/he is able to return to work. The beginning of an employee's FMLOA and returning from an employee's FMLOA leave are considered a "change in family status" for flex plan purposes. A 30-day window from the date of the change is allowed to change election on an employee's flex plan.*
- 1.9 When leave is completed, the employee must be returned to the same position, or a position with equivalent compensation and benefits. If a reduction in force would have caused the position to be eliminated, this reinstatement **requirement**, does not apply.
- 1.10 Employees utilizing family leave will be provided health benefits at the same level and as if the employee had not taken leave.
- 1.11 All leave taken for an approved event or condition will be designated as FMLA. Unless the employee elects to preserve hours as indicated in Policy 130 (15) and/or Policy 143 (15), an employee is required to use applicable, accrued paid and donated leave and compensatory time before authorized unpaid FMLA leave. An employee who has exhausted all types of paid leave shall be provided unpaid leave to fulfill the authorized period of family leave.

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1.12 *Contact the Office of HR/Payroll to request family medical leave paperwork. Once completed, return paperwork to Office of HR/Payroll for processing. After eligibility is determined, notice will be sent to employee and supervisor.*

1.13

1.13

Deleted: Consistent with applicable law and upon notice to the employee by the employing entity or election by the employee, family medical leave shall be concurrent with paid leave.

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HISTORY:

New	January 1990
Amended	September 1993
Amended	March 1996
Amended	July 1997
Amended	March 2004
Amended	January 2006
Amended	March 2008
Amended	February 16, 2011
Housekeeping	April 23, 2012
Housekeeping	July 30, 2013

Policy Change Cover Sheet

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SECTION:

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This portion will be completed by Heather Higgins-Dochtermann.

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Senate Coordinating Committee:

Faculty Senate:

Staff Senate:

Student Government:

President's Cabinet:

North Dakota State University

Policy Manual

SECTION 143

SICK/DEPENDENT LEAVE

SOURCE: NDSU PRESIDENT
NDUS Human Resource Policy Manual

1. Sick leave, including maternity, is a benefit granted by the University to eligible employees and is not a benefit considered to be earned by the employee such as annual leave. It is an insurance benefit allowing employees to build a reserve of days they can use for their extended illnesses. *Abuse of this benefit may be grounds for disciplinary action or termination.* Employees are responsible for informing their supervisors prior to the start of their work schedule of their sickness.
 - 1.1 The employing department may require satisfactory medical verification as deemed necessary by the department head prior to the payment of sick leave.
 - 1.2 The employee is responsible for furnishing their supervisor or department head with a completed "Notification of Employee Leave" card upon returning to work.
 - 1.3 Sick leave may only be used in place of regularly scheduled work hours and shall not cause overtime.
2. Sick leave is granted on the basis of continuous service from date of employment for benefited staff employees, *and benefited 12-month academic staff and other non-banded staff.*
3. Sick leave for full-time eligible employees accrues based on rate per hour at a rate equivalent to 12 days per year. Sick leave for eligible part-time employees working 20 hours or more per week is granted on a prorated basis. Sick leave accumulation is unlimited.
4. Sick leave may be granted to employees who become ill while on vacation provided satisfactory medical proof of such illness is submitted.
5. When a holiday occurs during a paid sick leave, the holiday is not considered a day of sick leave.
6. Upon termination, employees with ten years of continuous state service will receive a payment equivalent to 10% of the dollar value of their accrued sick leave. The amount is computed on the basis of the employee's salary at the time of termination and shall be in the form of a lump-sum payment.
7. At the discretion of the department head and the concurrence of the Director of Human Resources/Payroll or designee, an employee may be granted sick leave in advance of the accumulation thereof up to a maximum of 40 hours. In rare cases, such as leave due to a workers compensation claim or shared leave, the HR/Payroll office may process leave which exceeds the 40 hour advance.. Sick leave taken in advance of accumulation may be deducted from the employee's last paycheck provided the employee has signed an agreement authorizing the deduction. This agreement must be submitted to and approved by the Office of Human

Resources and Payroll prior to the employee obtaining a negative accrual balance.

8. *Unless an approved leave of absence has been granted, an employee who is off the payroll for one year shall lose unused sick leave.*
9. Accrued sick leave is transferable from any state agency to the employing institution if employment with the institution occurs within one calendar year of separation of service with the state agency. In the event of a Reduction in Force, sick leave is transferable if reemployment occurs within two calendar years.
10. Sick leave may be used by the employee when:
 - 10.1 The employee is unable to work due to a mental or physical condition (including maternity).
 - 10.2 The employee has an appointment for the diagnosis or treatment of a medically related condition.
 - 10.3 The employee wishes to attend to the needs of an eligible family member who is ill or to assist them in obtaining other services related to their health. Eligible family members include the employee's spouse, parent (natural, adoptive, foster, and step-parent); child (natural, adoptive, foster, and step-child); or any other family member who is financially or legally dependent upon the employee or who resides with the employee for the purpose of the employee providing care to the family member.
 - 10.4 Sick leave used for the purposes described in 10.3 shall not exceed eighty (80) hours per calendar year.
 - 10.5 In the case of a serious health condition of an eligible family member, an employee may take up to a total of four-hundred-eighty (480) hours of sick leave in any twelve-month (12) period, including the eighty (80) hours in section 10.4 above.
 - 10.6 The employee is caring for a newborn child or for a child placed with the employee, by a licensed child-placing agency, for adoption or as a precondition to adoption, but not both. Sick leave in such cases is limited to six (6) weeks during the first six (6) months from birth or placement.
 - 10.7 The employee seeks for oneself or to assist a parent, child, spouse, sibling, or any other individual who regularly resides in the household or who within the prior six months regularly resided in the household, with the consequences of domestic violence, a sex offense, stalking, or terrorizing. Sick leave may be used to seek legal or law enforcement remedies; treatment by a health care provider for physical or mental injuries; obtain services from a domestic violence shelter, rape crisis center, or social services program; obtain mental health counseling; and participate in safety planning, relocation or other actions to increase the employee's or immediate family member's safety from future domestic violence, a sex offense, stalking or terrorizing. The immediate supervisor may limit the use of sick leave for this section to forty (40) hours per calendar year.
11. *The accrual of sick leave shall be prorated for the pay period in which employment begins or ends.*

12. Sick leave is not accrued during developmental leaves or leaves of absence without pay.

13. Accumulated sick leave may be used for any period(s) of actual disability caused or contributed to by pregnancy. Beyond the period of disability, an employee may request use of annual leave, family leave, and/or leave without pay to provide for an extended post-delivery period away from work.

14. Leave requests are processed on an on-going basis. The approving supervisor is responsible for verifying leave balances before approving. Corrections to leave will be handled by the Office of Human Resources and Payroll.

15. Employees may exercise FMLA rights and preserve up to 40 hours of their available sick leave balance while the remainder paid leave runs concurrent with the FMLA leave entitlement period. After FMLA eligibility is exhausted then FMLA protections shall not apply to the preserved sick leave balance.

16.

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HISTORY:

New	July 1990
Amended	April 1992
Amended	July 1997
Amended	April 2002
Amended	January 2004
Amended	November 2005
Amended	January 2007
Amended	March 2008
Amended	November 7, 2011
Housekeeping	July 12, 2013
Amended	October 5, 2015
Housekeeping	March 31, 2017

Policy Change Cover Sheet

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SECTION:

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Faculty Senate:

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Student Government:

President's Cabinet:

North Dakota State University Policy Manual

SECTION 149 LEAVE WITHOUT PAY

SOURCE: SBHE Policy Manual, Section 701.1

1. Leave without pay may be authorized for benefited employees, who have maintained a record of good performance, for purposes such as education, research, temporary employment with another university, governmental, or private agency when such employment will contribute to the employee's expertise in his or her field and make the employee more effective upon return to employment, literary pursuits, or any other purpose that will improve the employee professionally and will directly or indirectly benefit the institution or system. In addition, a leave without pay may be granted for necessary absences due to illness (when family medical leave is not available or has expired) or other important matters.
2. Requests for leave without pay for the President shall be approved by the Board. Requests for leave without pay for institution employees shall be approved by the institution president or designee.

All Employees

In cases where a leave without pay is requested due to sickness, the employee may be requested to provide medical certification to verify the existence of a health condition including date of commencement and probably duration of the illness.

Broadbanded Employees

Leave without pay for a period of less than 21 working days may be authorized by the department head. Leave without pay for 21 or more working days requires advance approval of the appropriate vice president and should be requested through the Office of Human Resources/Payroll.

Leave may not be granted for a period in excess of one calendar year, except for military service. Failure of an employee to report for duty or reinstatement on expiration of leave granted is cause for automatic termination.

Externally Funded Research Faculty

Research faculty (so designated by their titles) who are funded totally on externally generated funds may, when their project and funding are completed, request a leave without pay while they submit proposals for additional funding. Such a leave must be approved as other leaves without pay but allows the research faculty member to retain their research faculty title and use it when submitting funding proposals. Research faculty applying for a leave without pay under these circumstances should follow the NDSU Guidelines below but use the [Leave Without Pay form](#), located on the Provost's web page.

3. An employee who is on an approved leave of absence without pay may continue to be covered by employer benefits (health, basic life and employee assistant program) and/or voluntary benefits (optional life, dental, etc.) provided:

- a) the employee remits the appropriate premium(s) to the Human Resources/Payroll Office,
 - b) such coverage is not inconsistent or contrary to insurance contracts, and
 - c) such coverage would not be contrary to State law.
4. Leave of absence shall be granted with assurance of reinstatement to the same position or to other employment in the department recommending the leave unless circumstances make it clearly impractical.
5. Employees on leave without pay shall retain their year's service rights and accumulated benefits but shall earn no additional benefits.
6. **NDSU Guidelines** Proposals for leave of absence without pay shall be in writing and submitted on the University's [Leave Without Pay form](#) (located on the Provost's web page) for approval through appropriate channels. An individual requesting a leave without pay for a reason other than illness should inform the department chair or unit administrator at least six months prior to the anticipated leave and submit the request for administrative approval at least three months prior to the leave.

No proposal for leave without pay shall be approved unless the employee agrees, in writing, to provide notification to the University by a specific date of the employee's resignation or of the employee's intent to return to NDSU. The date is to be negotiated prior to approval of the proposal. Failure by the employee after a specific request by the responsible supervisor to either provide the notification of the intent to return or to submit a resignation by the required date shall be deemed to be a resignation.

7. Employees exercising FMLA rights are allowed to take leave without pay while preserving leave balances as allowed in Section 143 Sick leave and Section 130 Annual Leave in the Policy Manual.
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Deleted: Employees exercising FMLA rights are allowed to take leave without pay while preserving leave balances as allowed in Section 143 Sick leave and Section 130 Annual Leave in the Policy Manual.

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HISTORY:
New March 13, 1987
Amended April 1995
Amended October 1996
Amended October 1998
Amended April 2002
Amended April 2006
Housekeeping August 7, 2014

Policy 151: CODE OF CONDUCT

Added language in Section 2 that states Policy 156.1 is the policy governing Title IX.

Policy 156.1: TITLE IX COMPLAINT PROCEDURES

New policy as of August 2020. Previously all complaints, including Title IX, were guided by procedures outlined in Policy 156. Now these procedures specifically address Title IX issues while the procedures outlined in Policy 156 are for all non-Title IX issues (per [NDUS Policy 520](#)).

Policy 162: SEXUAL AND GENDER-BASED HARASSMENT AND SEXUAL MISCONDUCT

Added language in Section 7.3 stating NDSU will initiate its complaint procedures under either Policy 156 or Policy 156.1 (new policy Title IX).

Policy 183: NONRENEWAL AND DISMISSAL OF NON-BANDED, NONACADEMIC STAFF

Added Section 7 to state that conduct constituting sexual harassment as defined by Title IX will not apply under this policy. (All Title IX issues will be handled under Policy 156.1 [per NDUS Policy 608.2](#))

Policy 220: STAFF JOB DISCIPLINE/DISMISSAL

Added Section 4 to state that conduct constituting sexual harassment as defined by Title IX will not apply under this policy. (All Title IX issues will be handled under Policy 156.1 [per NDUS HR25 Job Discipline/Dismissal](#))

Policy 230: GRIEVANCE PROCEDURE FOR CONDITIONS OF EMPLOYMENT

Added language to Section 1 that allegations of sexual harassment under Title IX cannot be grieved under this policy. (All Title IX issues will be handled under Policy 156.1 [per NDUS HR28 Job Discipline/Dismissal](#))

Policy 231: APPEAL PROCEDURE FOR DISCIPLINARY AND REDUCTION IN FORCE ACTIONS

Added Section 4 to state that conduct constituting sexual harassment as defined by Title IX will not apply under this policy. (All Title IX issues will be handled under Policy 156.1 [per NDUS HR27 Job Discipline/Dismissal](#))

Policy 350.3: BOARD REGULATIONS ON NONRENEWAL, TERMINATION OR DISMISSAL OF FACULTY

Added Section 8d to state conduct constituting sexual harassment as defined by Title IX will not apply under this policy. (All Title IX issues will be handled under Policy 156.1 [per NDUS Policy 605.3](#))

Policy 350.4: BOARD REGULATIONS ON HEARINGS AND APPEALS

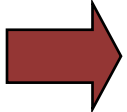
Added Section 13 to state appeals from a determination of responsibility regarding a formal complaint of sexual harassment as defined by Title IX will not apply under this policy. (All Title IX issues will be handled under Policy 156.1 [per NDUS Policy 605.4](#))

Policy 601: CODE OF STUDENT CONDUCT

Added language to Section 9.3 to state student grievance proceedings based on allegations of Title IX violations will not apply under this policy. (All Title IX issues will be handled under Policy 156.1 [per NDUS Policy 514](#))

Policy Change Cover Sheet

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SECTION:

Policy 151: Code of Conduct

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).

- Is this a federal or state mandate? ☒ Yes ☐ No

Describe change: Title IX regulatory changes were announced by the U.S. Department of Education on May 6, 2020. These policy changes must be implemented by August 14, 2020.

2. This policy change was originated by (individual, office or committee/organization):

- Office/Department/Name and the date submitted:
- Email address of the person who should be contacted with revisions:

This portion will be completed by Heather Higgins-Dochtermann.

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Faculty Senate:

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Student Government:

President's Cabinet:

The formatting of this policy will be updated on the website once the content has final approval. Please do not make formatting changes on this copy. If you have suggestions on formatting, please route them to ndsuscc@ndsusd.edu. All suggestions will be considered, however due to policy format guidelines, they may not be possible. Thank you for your understanding!

North Dakota State University

Policy Manual

SECTION 151 CODE OF CONDUCT

SOURCE: State Policy Manual, Section 308.1
State Policy Manual, Section 611.4
NDSU President

1. Introduction and Application.

This Code of Conduct establishes minimum standards for all NDSU employees. NDSU is committed to uphold the highest ethical and professional standards. All NDSU employees must, at all times, comply with all applicable laws, regulations, policies and procedures. Activities that achieve results unlawfully or in violation of applicable policies or procedures or by unethical behavior - including, but not limited to, payments for illegal acts, indirect contributions, rebates, or bribery - are not tolerated and must be reported. All conduct must meet or exceed minimum standards established by law.

2. General Conduct.

NDSU supports an environment that is free of discrimination, harassment, and bullying. All NDSU employees are expected to conduct themselves in a businesslike manner. Unlawful consumption of alcoholic beverages or use of illegal drugs, being at work while under the influence of alcohol or drugs, disruptive behavior, gambling, unauthorized use of public property or resources and other unauthorized activities that disrupt the efficient and economical administration of NDSU, are prohibited. Violation of applicable laws or policies governing possession and use of alcoholic beverages or drugs, including the Drug Free Workplace Act, SBHE Policy 615 or NDSU Policy 155 Alcohol and Other Drugs – Unlawful and Unauthorized Use by Students and Employees are prohibited. Likewise, sexual or other harassment (including actions contributing to a hostile work environment) in violation of federal or state law, as outlined in NDSU Policy 162: Sexual Harassment, Gender-based Harassment, Sexual Misconduct and Title IX, SBHE Policy 603.1, or NDSU Policy 100 Equal Opportunity and Non-Discrimination Policy is prohibited. [NDSU Policy 156.1 governs sexual harassment which violates Title IX of the Education Amendments of 1972.](#)

All NDSU personnel are subject to the rules and policies of the North Dakota State Board of Higher Education, NDSU, and their respective department or unit. NDSU expects all University personnel to be aware of, and comply with, NDSU's policies and procedures that apply to them, and requires those reporting to them to do the same. Employees are expected to uphold the values of honesty, respect, integrity, and trust.

NDSU requires all employees to act professionally in their interactions with others including:

- A. Following training and job specific requirements as stated in the employee's job description or appointment letter, or as assigned by respective department or unit,
- B. Respecting the value, creativity, and diversity of all persons, which includes diversity of opinions and professional approaches to doing things, (See Policy 100: Equal Opportunity and Non-discrimination Policy, Policy 325: Academic Freedom, or other relevant policies for guidance.)
- C. Contributing to an environment of respectful and productive working relationships with those with whom the person interacts, and
- D. Making good faith efforts to resolve differences constructively.

- 2.1 For purposes of this policy, bullying is defined as:
 - 2.1.1 Conduct directed at another that is severe, pervasive, or persistent;
 - 2.1.2 Is of a nature that would cause a reasonable person in the target's position substantial emotional distress and undermine their ability to work, study, or participate in their regular life activities; and
 - 2.1.3 Actually does cause the target substantial emotional distress and undermines the target's ability to work, study, or participate in the target's regular life activities.
- 2.2 Bullying by electronic means is prohibited under NDSU Policy 158 and N.D.C.C. 12.1-17-07.
- 2.3 It is not bullying when a supervisor, or peer acting in an evaluative capacity, notes unsatisfactory performance or misconduct; institutes proceedings for workplace sanctions, nonrenewal, or dismissal for cause; provides feedback regarding work behavior or performance; or engages in discretionary actions related to the evaluative capacity, so long as the actions are made in accordance with the appropriate criteria and are not a clear abuse of discretion. A target of bullying does not have to be a member of a protected class listed in NDSU Policy 100.
- 2.4 NDSU values and promotes freedom of expression and inquiry as provided under applicable law. Nothing in this policy is intended to limit or restrict a person's First Amendment rights or rights to academic freedom; however, such rights do not include the right to engage in workplace bullying.
- 2.5 Resources to assist with an informal resolution are available through the Office of the Ombuds. If informal resolution is not feasible or any party wishes to follow the formal process, suspected violations should be reported to the impacted party's immediate supervisor and to the NDSU Equity Office, 701.231.7708 or ndsu.eoaa@ndsu.edu. In the case the immediate supervisor is involved in the suspected violation, the violation should be reported to the next level of supervisor.

3. Conflicts of Interest.

All NDSU employees are expected to perform their duties conscientiously, honestly, and in compliance with Policy 151.1 regarding conflicts of interest and Policy 152 regarding external activities. All employees must comply with applicable federal and state laws. Employees may not unlawfully use their position, or the knowledge gained as a result of their position for private or personal advantage. All employees are responsible for their own actions. Any individual who has concerns or questions regarding a perceived or potential conflict or regarding application or interpretation of federal or state law or SBHE policy or NDSU policy is encouraged to communicate with a superior or appropriate administrative official at NDSU.

4. Outside Activities and Employment.

Employees are encouraged to support the community by participating in religious, charitable, educational, and civic activities. However, employees must comply with applicable federal and state laws, as well as Policy 151.1 regarding conflicts of interest and Policy 152 regarding external activities. At all times, employees must avoid outside activities that create an excessive demand upon their time and attention, thus depriving NDSU of their best efforts in fulfilling their job duties or that create a conflict of interest, or an obligation, interest, or distraction that interferes with the independent exercise of judgment in NDSU's best interest.

5. Gifts, Entertainment and Favors; Kickbacks and Secret Commissions.

Excluding *de minimus* contributions, such as purchase of a meal at reasonable value as part of a

conference or other event with no conditions attached to such purchase and as permitted under applicable federal and state laws, employees may not accept favor of any person or organization with whom or with which NDSU has, or is likely to have, business dealings. Similarly, employees may not accept any other preferential treatment under circumstances that because of their position with NDSU, the preferential treatment may influence or be perceived as influencing their official conduct. Employees may not receive payment or compensation of any kind from any source for NDSU duties and responsibilities, except as authorized under applicable law or NDUS and NDSU pay policies. Specifically, the acceptance of "kickbacks" or commissions in any form from vendors, suppliers or others is prohibited.

6. NDSU Funds and Other Assets

Employees who have access to NDSU funds and other assets in any form must follow the prescribed procedures for recording, handling, and protecting money and other assets as detailed in applicable NDSU procedure manuals or other explanatory materials. Any person who has information concerning possible fraud or dishonesty shall immediately report such information to a superior or appropriate administrative official at NDSU. .

Employees responsible for spending or approving expenditure of NDSU funds or incurring any reimbursable expenses must comply with all applicable laws and policies and use good judgment on behalf of NDSU to ensure that good value is received for every expenditure. NDSU funds and all other assets are for NDSU purposes only and not for personal use or benefit. NDSU or other public equipment, supplies and other property or assets may not be used for private or personal use, except as authorized under SBHE Policy 611.5 or other applicable law or NDSU policy.

7. NDSU Records and Communications.

Accurate and reliable records of many kinds are necessary to meet NDUS NDSU legal and financial obligations and to manage the affairs of the NDUSNDSU. NDUS NDSU books and records must reflect in an accurate and timely manner all business transactions. Employees responsible for accounting and recordkeeping must fully disclose and record all assets and liabilities and exercise diligence in enforcing these requirements. Employees must not make or engage in any false record or communication of any kind, whether internal or external, including, but not limited to, false expense, attendance, enrollment, financial, or similar reports and statements, or false advertising, deceptive marketing practices, or other misleading representations.

8. Dealing with Outside People and Organizations.

NDSU employees must take care to separate their personal roles from their NDSU positions when communicating on matters not involving NDSU business. They may not use NDSU identification, stationery, supplies, and equipment for personal or political matters. When communicating publicly on matters that involve NDSU business, employees may not represent that they speak for the NDSU, unless that is one of their duties or they are otherwise authorized to do so. When dealing with anyone outside the NDSU, including public officials, employees must take care not to compromise the integrity or damage the reputation of NDSU.

An employee of NDSU authorized to sell or lease any property or make any contract in the employee's official capacity is subject to the provisions of N.D.C.C. Section 12.1-13-03 and may not be interested in any such sale, lease or contract.

Pursuant to N.D.C.C. Section 48-01.2-08, employees may not have any interest in a public construction or repair contract.

An employee may not have an interest in any contract involving the expenditure of public or institutional funds entered into by NDSU unless:

- a. N.D.C.C. Sections 12.1-13-03 and 48-01.2-08 do not apply; and
- b. The contract is approved by the NDSU President or designee or, if the employee in question is the chief financial officer or president of an institution or an officer of the Board, by the Board, following full disclosure of the employee's interest.

Employees have an obligation to act in the best interests of NDSU. Employees must comply with Policy 151.1 regarding conflicts of interest and Policy 152 regarding external activities.

9. Prompt Communications.

In all matters involving communication with NDSU students, customers, suppliers, government authorities, the public and others, employees must endeavor to make complete, accurate, and timely communications and respond promptly and courteously to all proper requests for information and complaints.

10. Privacy, Confidentiality and Open Records.

Employees must at all times comply with applicable laws, regulations and SBHE and NDSU policies concerning privacy, confidential records, access to open records and records retention.¹¹. Employees shall report suspected violations of this Code to their superior, or appropriate administrative official at NDSU. In cases that involve the employee's superior, suspected violations shall be reported to the superior's supervisor or designee. Alleged violations of this Code involving NDSU employees shall be investigated by the appropriate NDSU officer. Investigations may be conducted by, or in conjunction with, the Office of Human Resources and Payroll and/or the Office of the Vice Provost for Faculty Affairs and Equity. Investigations shall occur using procedures and best practices developed by the Office of Human Resources and Payroll and/or the Office of the Vice Provost for Faculty Affairs and Equity. All employees shall cooperate in investigations of alleged violations. A violation of this Code is cause for dismissal or other appropriate disciplinary action, in addition to any criminal or other civil sanctions that apply.

11. 1 Suspected violations of this policy related to fraud should be reported utilizing the NDSU [fraud hotline](#)

11.2 Any employee who makes a report in good faith shall be protected against retaliation of any kind; any employee who retaliates or attempts retaliation in response to a good faith report shall be subject to dismissal or other discipline.

11.3 Failure to report known or suspected violations is in itself a violation and may lead to dismissal or other disciplinary action.

Institution Codes.

The NDUS office and each NDUS institution shall adopt and implement a Code of Conduct consistent with this Code and Committee of Sponsoring Organization of the Treadway Commission (COSO) Standards. NDUS office and institution codes shall include:

- a. A Statement of the organization's values;
- b. The people or groups of people affected;
- c. A brief description or list of key behaviors that are accepted and not accepted;
- d. How to identify and resolve conflicts of interest;

- e. How to report violations and to whom;
- f. Consequences of violating the Code;
- g. Consequences of failure to report known or suspected violations; and
- h. How reports will be investigated.

NDSU requires that each new employee reviews the Code of Conduct and sign a statement certifying the employee has read and agrees to comply with the Code. Further, all benefited employees are required to annually certify in writing that they have read and are in compliance with the Code of Conduct.

Resources and Related Policies:

[NDSU Policy 100: Equal Opportunity and Nondiscrimination Policy](#)

[NDSU Policy 110: Employment of Relatives](#)

[NDSU Policy 100.1: Nondiscrimination of the Basis of Disabilities and Reasonable Accommodation](#)

[NDSU Policy 112: Pre-employment and Current Employee Criminal Record Disclosure](#)

[NDSU Policy 151.1: External Activities and Conflicts of Interest](#)

[NDSU Policy 152: External Professional Activities](#)

[NDSU Policy 155: Alcohol and Other Drugs: Unlawful and Unauthorized Use by Students and Employees](#)

[NDSU Policy 160: Political Activities and Voting Rights of University Employees](#)

[NDSU Policy 161: Fitness for Duty](#)

[NDSU Policy 162: Sexual Harassment Policy](#)

[NDSU Policy 162.1: Consensual Relationships](#)

[NDSU Policy 169: Employee Responsibility and Activities: Theft and Fraud](#)

[NDSU Policy 169.1: Employee Misuse of Property Reports - - Protections](#)

[NDSU Policy 190: Employee Responsibility and Activities: Intellectual Responsibility](#)

[NDSU Policy 323: Selection of Textbooks and other Curricular Materials](#)

[NDSU Policy 326: Academic Misconduct](#)

[NDSU Policy 345: Research Involving Human Subjects](#)

[NDSU Policy 340.1: Coursepacks](#)

[NDSU Policy 400: Purchasing - General Policies](#)

[NDSU Policy 406: Surplus Property](#)

[NDSU Policy 505: Property, Plant and Equipment](#)

[NDSU Policy 700: Services and Facilities Usage](#)

[NDSU Policy 700.1: Use of University Name](#)

[NDSU Policy 700.2: Taking Equipment Off-Campus](#)

[NDSU Policy 700.3: Personal Use of State Property](#)

[NDSU Policy 710.1: Web Advisory Board](#)

[NDSU Policy 712: Contract Review](#)

[NDSU Policy 718: Public/Open/Restricted Records](#)

[NDSU Policy 823: Financial Conflict of Interest – Public Health Service Sponsored Research](#)

[NDUS Policy 603.3: Nepotism](#)

[NDUS Policy 611.2: Employee Responsibility and Activities: Intellectual Responsibility](#)

[NDUS Policy 611.4: Employee Responsibility and Activities: Conflict of Interest](#)

[NDUS Policy 611.9: Selection of Textbooks and Other Curricular Materials](#)

[NDUS Policy 803.1: Purchasing Procedures](#)

[Conflict of Interest Form](#)

[NDSU Consulting Authorization Request Form](#)

[NDSU Fraud Hotline](#)

[AAUP Statement of Professional Ethics](#)

[NDSU Research Foundation](#)

[N.D.C.C. Ch. 12.1-13 \(See section 12.1-13-03: Public servant's interest in public contracts.\)](#)

[N.D.C.C. Ch.48-01.2: \(See section 48-01.2-08: Officers must not be interested in contract.\)](#)

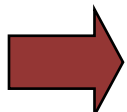
[N.D.C.C. Ch. 44-04: \(See section 44-04-09: Nepotism.\)](#)

HISTORY:

New	July 1990
Amended	November 1996
Amended	June 2000
Amended	October 2001
Amended	December 2002
Housekeeping	August 2009
Amended	March 25, 2011
Housekeeping	June 24, 2011
Housekeeping	August 18, 2011
Housekeeping	February 1, 2012
Housekeeping	November 19, 2012
Amended	May 6, 2014
Amended	December 2, 2016
Amended	March 5, 2020
Amended	June 9, 2020

Policy Change Cover Sheet

This form must be attached to each policy presented. All areas in **red**, including the header, must be completed; if not, it will be sent back to you for completion.



If the changes you are requesting include housekeeping, please submit those changes to ndsu.scc@ndsu.edu first so that a clean policy can be presented to the committees.

SECTION:

Policy 156.1: Title IX Complaint Procedures

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).

- Is this a federal or state mandate? ☒ Yes ☐ No

Describe change: Title IX regulatory changes were announced by the U.S. Department of Education on May 6, 2020. These policy changes must be implemented by August 14, 2020.

2. This policy change was originated by (individual, office or committee/organization):

- Office/Department/Name and the date submitted: Title IX Coordinator, Dr. Canan Bilen-Green, 08/11/20
- Email address of the person who should be contacted with revisions: canan.bilen.green@ndsu.edu

This portion will be completed by Heather Higgins-Dochtermann.

Note: Items routed as information by SCC will have date that policy was routed listed below.

3. This policy has been reviewed/passed by the following (include dates of official action):

Senate Coordinating Committee:

Faculty Senate:

Staff Senate:

Student Government:

President's Cabinet:

The formatting of this policy will be updated on the website once the content has final approval. Please do not make formatting changes on this copy. If you have suggestions on formatting, please route them to ndsu.scc@ndsu.edu. All suggestions will be considered, however due to policy format guidelines, they may not be possible. Thank you for your understanding!

North Dakota State University

Policy Manual

SECTION 156.1

TITLE IX COMPLAINT PROCEDURES



SOURCE: SBHE

1. It is the policy of NDSU to fully comply with all aspects of Title IX of the Education Amendments of 1972 and the regulations promulgated under its authority. These procedures are based off North Dakota University System Policy 520. In the event of direct conflict between these procedures and NDUS Policy 520, NDUS Policy 520 shall prevail. Similarly, any conflict between NDUS Policy 520 and any existing NDSU or NDUS policy or procedure shall be resolved in favor of NDUS Policy 520.
2. **Definitions.** For the purposes of NDSU's Title IX Complaint Procedures, the listed terms shall have the following definitions pertaining to the 2020 Title IX regulations and NDUS Policy 520:
 - a. *Actual Knowledge.* Notice of sexual harassment or allegations of sexual harassment to NDSU's Title IX Coordinators, Chairs, Heads, Deans, Directors, or any NDSU official with authority to institute corrective measures on the behalf of NDSU.
 - b. *Complainant.* An individual who is alleged to be the receiver of conduct which could, after investigation, constitute sexual harassment.
 - c. *Dating Violence.* Violence committed by the Respondent:
 - i. Who is or has been in a romantic or intimate relationship with the Complainant; and;
 - ii. Where the existence of such a relationship shall be determined by considering the length of the relationship, the type of relationship, and the frequency of interactions between the Complainant and Respondent.
 - d. *Deliberate Indifference.* When NDSU's response to sexual harassment is clearly unreasonable considering the information known to NDSU at the time.
 - e. *Domestic Violence.* Violence committed by the Respondent, who is:
 - i. a current or former spouse or intimate partner of the Complainant;
 - ii. a person with whom the Complainant shares a child in common;
 - iii. cohabiting with or has cohabited with the Complainant as a spouse or intimate partner;
 - iv. similarly situated to a spouse of the Complainant; or
 - v. any person against whose acts the Complainant is protected by N.D.C.C. ch. 14-07.1.
 - f. *Educational program or activity.* Includes locations, events, or circumstances over which NDSU exercises substantial control over both the Respondent and the context in which the sexual harassment occurs, as well as in any building owned or controlled by a student organization that is officially recognized by NDSU.
 - g. *Fondling.* The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

- h. *Formal Complaint.* A document filed by a Complainant (which either contains the Complainant's signature or indicates that the Complainant is the one filing the complaint) or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that NDSU investigates.
- i. *Incest.* Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- j. *Rape.* Penetration, no matter how slight, of the vagina or anus of the complainant with any body part or object by the Respondent, or oral penetration of the Complainant by a sex organ of the Respondent, without the consent of the Complainant.
- k. *Respondent.* An individual who has been reported to be responsible for the conduct that could constitute sexual harassment.
- l. *Sexual Assault.* Either rape, fondling, incest, statutory rape, or any of the sexual offenses listed in N.D.C.C. ch. 12.1-20 or by the FBI's Uniform Crime Reporting system.
- m. *Sexual Harassment.* Conduct, on the basis of sex, constituting one (or more) of the following:
 - i. An employee of NDSU conditioning the provision of an aid, benefit, or service of NDSU 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 NDSU's educational program or activity; or
 - iii. Sexual assault, dating violence, domestic violence, or stalking, as defined in this section.
- n. *Stalking.* 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.
- o. *Statutory Rape.* Sexual intercourse with a person who is under the statutory age of consent
- p. *Supportive Measures.* Non-disciplinary, non-punitive individualized services offered as appropriate (as reasonably available) and without fee or charge to the Complainant or Respondent.

3. Pre-Grievance Process.

- a. **Timing.** This grievance process shall be carried out using reasonably prompt time frames, including time frames for filing and resolving appeals, and for informal resolution processes if offered. The informal resolution process will follow the process as outlined in Policy 156, Section 7, including the option that NDSU reserves the right to deny the Parties the option of using the informal resolution process if it is deemed to be inappropriate or inadequate. Notwithstanding, temporary delays or extensions of the time frames must be offered for good cause, with written notice to the parties setting forth the cause for the action.
 - i. *Good cause.* May include considerations such as the absence of a Party, a Party's advisor, or a witness; concurrent law enforcement activity; or the need for accommodations for language or disability.
- b. **Actual Knowledge of Sexual Harassment.** With or without the filing of a formal complaint, once NDSU has actual knowledge of sexual harassment within its educational program or activity in the United States, NDSU must respond promptly and without deliberate indifference pursuant to

these Procedures and any applicable NDSU policies.

- i. Once NDSU has actual knowledge of sexual harassment, the Title IX Coordinator must contact the Complainant and:
 - 1. Discuss the availability of supportive measures;
 - 2. Consider the Complainant's wishes regarding supportive measures;
 - 3. Inform the Complainant that supportive measures are available with or without the filing of a formal complaint; and
 - 4. Explain the process of filing a formal complaint.
- ii. No disciplinary sanctions or other actions which are not supportive measures may be imposed against any Party prior to the conclusion of the grievance process. Exceptions are Emergency Removal (section 1d) and Administrative Leave (section 1e).
- c. **Supportive Measures.** NDSU shall offer supportive measures designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the Parties, including measures designed to protect the health and safety of all Parties or the educational environment, or to deter further sexual harassment.
 - i. Supportive Measures may include but are not limited to:
 - 1. Counseling;
 - 2. Extensions of deadlines or other course-related adjustments;
 - 3. Modifications of work or class schedules;
 - 4. Campus escort services;
 - 5. Mutual restrictions on contact between the Parties;
 - 6. Changes in work or housing locations;
 - 7. Leaves of absence; and
 - 8. Increased security or monitoring of certain areas of campus.
 - ii. NDSU must maintain confidentiality with respect to supportive measures unless disclosure is required to implement the supportive measures.
 - iii. The Title IX Coordinator or other designee shall coordinate the effective implementation of supportive measures.
 - iv. Supportive measures may not restrict any Party's rights under the United States Constitution.
- d. **Emergency Removal.** NDSU may remove a Party from the educational program or activity on an emergency basis, provided that NDSU determines, based on an individualized safety and risk analysis, that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.
 - i. NDSU will provide the Respondent with notice and an opportunity to challenge the Emergency Removal decision immediately following the removal. In challenging the Emergency Removal decision, the Respondent shall have the burden to show why removal should not be implemented or be modified. While this challenge process may produce facts and evidence relevant to the grievance process, this challenge process need not follow all of the requirements of the grievance process. As such, this meeting

is not a hearing on the merits of the allegation(s) but rather is an administrative process intended to determine solely whether the emergency removal is justified.

- e. **Administrative Leave.** NDSU may place a non-student employee on administrative leave during the pendency of a grievance process.

4. Grievance Process.

a. Formal Complaint and Notice of Allegations.

- i. Once a formal complaint is received by NDSU, NDSU must provide the following written notice to the known Parties:
 - 1. Notice of the grievance process, including any informal resolution process as delineated in Policy 156, Section 7;
 - 2. Notice of the allegations of sexual harassment, including:
 - a. Sufficient details known at the time and with enough time to prepare a response, including, but not limited to, the names of the Parties, the conduct allegedly constituting sexual harassment, as defined by Title IX, and the date and location of the alleged conduct.
 - 3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
 - 4. A statement that the Parties may have an Advisor of their choice, who may be an attorney, and may inspect and review evidence. At the onset of the complaint resolution, an Advisor will be offered to each Party. The statement should also indicate that if the Party does not have an Advisor of choice, NDSU will appoint an Advisor to assist with cross-examination for the live hearing.
 - 5. Notice of any provisions in NDSU's Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- ii. If during the grievance process, additional allegations are added to the investigation which were not included in the initial notice, NDSU must provide notice of the additional allegations to the Parties.

There is no deadline on when a Complainant may file a complaint.

b. Advisors.

- i. Parties to a grievance proceeding must be afforded the opportunity to select the Advisor of their choice to assist them during the proceeding, including during the live hearing.
- ii. If a Party does not choose an Advisor, NDSU shall provide the Party with an Advisor free of charge. At minimum, NDSU shall provide an Advisor to conduct the Party's cross-examination at the hearing. However, nothing in this policy or the Title IX regulations should be read to prohibit NDSU from providing an Advisor for the full duration of the grievance process, provided that the Parties are treated equally as to timing if NDSU

appoints Advisors for all Parties.

- iii. NDSU is not required to provide attorneys to Parties to act as Advisors, but appointed Advisors should be provided with access to appropriate training to ensure an understanding of the grievance process, though the same training provided to Title IX Coordinators, decision-makers, and Investigators is not required.
- iv. NDSU is not required to attempt to create equality of Advisors between the Parties, particularly where one Party selects an outside Advisor, but will endeavor to seek parity of Advisors where NDSU provides Advisors to all Parties.

c. Investigation.

- i. NDSU is required to investigate every filed formal complaint unless the complaint is subject to dismissal, as outlined in Section D.
- ii. At all times, the burden of proof and the burden of gathering evidence sufficient to make a determination regarding responsibility rests on NDSU, and NDSU may not seek to shift that burden to the Parties.
 - 1. Notwithstanding, NDSU may not restrict the Parties' ability to discuss the allegations or to gather or present relevant evidence.
- iii. At all times, NDSU shall observe a presumption that the Respondent is not responsible for the alleged conduct until and unless there is a determination of responsibility at the conclusion of the grievance process Investigators will avoid prejudgment of the facts presented by the Parties.
- iv. NDSU may not access, consider, disclose, or otherwise use a Party's medical records made or maintained in connection with the provision of treatment to the Party, unless voluntary, written consent to do so is provided by the Party (or the Party's parent, if the Party is not eligible to provide consent).
- v. NDSU may not require, allow, rely upon, or otherwise use evidence that constitutes, or questions that seek disclosure of, information protected under a legally recognized privilege, unless that privilege is waived.
- vi. NDSU must provide to the Parties written notice of the date, time, location, participation, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the Party to prepare. Dates and times of other interviews not involving the Party will not be provided beforehand.
- vii. The Parties must be afforded an equal opportunity to have others present during any grievance proceeding. This includes up to two Advisors, one who conducts the cross examination, and one who provides support. , — NDSU may establish restrictions regarding the extent to which the Advisors may participate in the proceedings, so long as the restrictions apply equally to all Parties and comply with this policy.
- viii. All Parties must have an equal opportunity to inspect and review any evidence obtained as part of the investigation related to the allegations raised in a formal complaint, including any evidence upon which NDSU does not intend to rely in reaching a determination of responsibility and any inculpatory or exculpatory evidence, from

whatever source.

- ix. At least 10 calendar days prior to the preparation of the Preliminary Investigative Report, NDSU must provide each Party and the Party's Advisor the evidence obtained in the investigation in an electronic format or hard copy. The Parties may submit a written response to the evidence, which the Investigator shall consider prior to completion of the Preliminary Investigative Report.
- x. At the conclusion of the investigation, the Investigator must create a Preliminary Investigative Report that summarizes the relevant evidence in an adequate, impartial, and reliable manner. At least 10 calendar days prior to the hearing, the Investigator must send a copy of the Preliminary Investigative Report to each Party and the Party's Advisor, if any, for review and written response.

d. Dismissal of the Complaint under Title IX.

i. Mandatory Dismissal

- 1. NDSU must dismiss the Formal Complaint if, at any time during the investigation or hearing:
 - a. The alleged conduct would not constitute sexual harassment or sexual violence as defined in these procedures;
 - b. The alleged conduct did not occur in an Educational Program or Activity; or
 - c. The conduct alleged did not occur against a person in the United States.
- 2. If the formal complaint is subject to mandatory dismissal, NDSU may act under another policy, including but not limited to [Policy 100: Equal Opportunity and Non-Discrimination](#), without that action constituting retaliation under this Policy. The procedures would then follow [Policy 156: Discrimination, Harassment, and Retaliation Complaint Procedures, or any other applicable NDSU policy](#).

ii. Permissive Dismissal.

- 1. NDSU may dismiss the formal complaint if, at any time during the investigation or hearing:
 - a. A Complainant notifies the Title IX Coordinator, in writing, that the Complainant would like to withdraw the formal complaint, or any allegations contained in the formal complaint;
 - b. The Respondent is no longer enrolled or employed by NDSU; or
 - c. Circumstances prevent NDSU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations in the formal complaint.
- 2. If a formal complaint is permissively dismissed, NDSU may consult with its legal counsel prior to acting under another policy to avoid taking actions constituting retaliation.

- iii. **Notice of Dismissal.** Upon a dismissal pursuant to this section, NDSU must promptly send written notice of the dismissal under Title IX and reason for the dismissal to all Parties simultaneously.

- e. **Consolidation of Formal Complaints.** NDSU may consolidate formal complaints against more than one Respondent, by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of sexual harassment or sexual violence arise out of the same facts or circumstances.
- f. **Live Hearing.**
 - i. The grievance process must provide for a live hearing after the completion of the Preliminary Investigative Report. All evidence obtained by the Investigator as part of the investigative process must be made available to the Parties and the decision-maker at the live hearing.
 - ii. The live hearing will be presided over by the decision-maker, who will be free of all conflicts of interest, and who may not be the Investigator or the Title IX Coordinator.
 - 1. Decision-maker for student Respondents
 - a. In cases involving a student Respondent, the decision-maker will be the Assistant Dean of Students or the Dean of Students. In the event a conflict of interest precludes the participation of the Asst. Dean of Students or the Dean of Students, NDSU shall assign a properly trained individual to serve in the role of decision-maker.
 - 2. Decision-maker for non-student employees
 - a. In cases involving a non-student employee, the decision-maker will be a three-person panel of non-student employees. The three-person panel will be chosen out of the pool of trained individuals. These individuals will consist of full-time faculty and staff
 - 3. Notwithstanding the foregoing, if the need arises, NDSU reserves the right to contract or utilize the services of a properly trained third party to perform the role decision-maker. The need for such a third-party shall be in the sole discretion of NDSU.
 - iii. At the request of either Party, the hearing must be conducted with the Parties located in separate rooms with technology enabling the decision-maker and Parties to simultaneously see and hear the Party or witness answering questions. Hearings may be conducted with all Parties physically present in the same geographic location, or, any Parties, witnesses, and other participants may appear at the live hearing virtually, so long as the participants are able to simultaneously see and hear each other.
 - iv. At the live hearing, the decision-maker must permit each Party's Advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including those regarding credibility. This cross-examination must be conducted directly (the questions may not be asked by the decision-maker), orally, and in real time by the Party's Advisor and never by a Party personally.
 - 1. Prior to a Party or witness answering a question, the decision-maker must rule on the relevance of the question and explain any decision to exclude a question as not relevant.
 - 2. Decision-makers may request, but may not require, that questions by the Parties be submitted in advance, to permit the decision-maker to rule on the relevance of questions.
 - 3. NDSU may otherwise limit the extent to which the Party's Advisor may participate in the hearing.

- v. *Rape Shield*. Questions and evidence about the Complainant's sexual predisposition or sexual history are not relevant, unless such questions are offered to prove that someone other than the Respondent committed the alleged conduct, or regard specific incidents of the prior sexual behavior with respect to the Respondent, and are offered to prove consent. These questions may be submitted prior to the start of the live hearing.
- vi. *Cross-Examination*. If a Party or witness does not submit to cross-examination at the live hearing, the decision-maker must not rely on any statement of that Party or witness in reaching a determination regarding responsibility. Decision-makers may not draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence or refusal to answer cross-examination or other questions. There are no exceptions to this exclusion as there are in legal proceedings.
- vii. *Hearing Decorum*. Decision-makers may enforce rules to ensure hearing decorum, such as requiring respectful treatment, specifying any objection process, governing timing of hearing and length of breaks, etc.
- viii. NDSU must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the Parties for inspection and review.

g. Determination Regarding Responsibility.

- i. In all cases, the applicable standard of proof for determining responsibility for an alleged violation is "*preponderance of the evidence*" meaning, in order for Respondent(s) to be held responsible it must be determined that it is more likely than not that the Respondent(s) violated these procedures.
- ii. After the conclusion of the live hearing, the decision-maker must issue a written determination regarding responsibility, which must include:
 1. Identification of the allegations potentially constituting sexual harassment under these procedures;
 2. Description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather evidence, and hearings held;
 3. Findings of fact supporting the determination;
 4. Conclusions regarding the application of any other institution's policy;
 5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and whether remedies will be provided to the Complainant; and;
 6. The procedures, timelines, and permissible bases for the Complainant and Respondent to appeal.
- iii. The written determination must be provided to the Parties simultaneously. The determination regarding responsibility becomes final either on the date that notice of the result of any appeal is provided to the Parties, if an appeal is filed; or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
- iv. The Title IX Coordinator shall be responsible to implement any remedies provided by the written determination.

5. **Disciplinary Sanctions.** Disciplinary sanctions imposed after the conclusion of the grievance process shall be assessed pursuant to [Policy 151: Code of Conduct](#); [Policy 601: Code of Student Conduct](#), or any similar documents which set possible disciplinary sanctions for violations of Title IX and shall be proportional to the determination of responsibility.

Remedies. Remedies offered after the conclusion of the grievance process on a finding of responsibility must be designed to restore or preserve equal access to the educational program or activity. Remedies may be disciplinary or punitive and may create a burden for the Respondent.

6. **Appeals.**

- a. Regardless of the finding (responsible, not responsible, dismissal) all Parties have the right to file an appeal. The following may form the basis for an appeal:
 - i. Procedural irregularity that affected the outcome of the grievance process;
 - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could have affected the outcome of the matter; or
 - iii. The Title IX Coordinator, Investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or for or against the individual Complainant or Respondent, that affected the outcome of the grievance process.
 - iv. Other basis set forth in the campus-level processes, but which must be offered equally to all Parties (for example, an appeal based on the severity of the sanctions).
- b. Upon filing of an appeal, NDSU must:
 - i. Notify the non-appealing Party in writing when an appeal is filed and implement appeal procedures equally for all Parties.
 - ii. Ensure that the appeal's decision-maker is not: the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the Investigator, or the Title IX Coordinator.
 - iii. Give all Parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
 - iv. Issue a written decision describing the result of the appeal and the rationale for the result; and
 - v. Provide the written decision simultaneously to all Parties.
- c. If a disciplinary sanction of suspension or expulsion for students or termination for employees is imposed by the decision-maker, NDSU shall provide a method of reviewing an appeal from a determination regarding responsibility or dismissal for a period of at least one year following the original decision. For sanctions other than suspension, expulsion, or termination, an appeal must be submitted within 5 business days of receipt of the sanctions.

7. **Training.**

- a. All persons involved in the grievance process, including, but not necessarily limited to, Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must receive training on the following areas:
 - i. The definition of sexual harassment;
 - ii. The scope of the educational program or activity;

- iii. How to conduct an investigation and understanding of the grievance process, including hearings, appeals, and informal resolution processes, as applicable;
 - iv. How to serve impartially, including by avoiding prejudgment of the facts at issue; conflicts of interest, and bias.
- b. Additionally, decision-makers must receive training on the following areas:
- i. Any technology to be used at a live hearing; and
 - ii. Issues of relevance or questions and evidence, including when questions about the Complainant's sexual predisposition or prior sexual behavior are not relevant;
- c. Investigators must also be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- d. All materials used to train the foregoing individuals must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints.
- e. All training materials used to train the foregoing individuals must be made available to the public by posting on NDSU's website.

8. Recordkeeping.

- a. NDSU shall retain, for a period of seven years, records of:
 - i. Each sexual harassment investigation, including any determination regarding responsibility; any audio or audiovisual recording or transcript; any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant;
 - ii. Any appeal and the result therefrom;
 - iii. Any informal resolution and the result therefrom;
- b. All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, which the institution must make available on its website; and NDSU must create and maintain for seven years, records of any actions, including records of supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, NDSU must document the basis for its response was not deliberately indifferent, and document that it took supportive measures, or, if supportive measures were not provided, an explanation of why such a response was not clearly unreasonable considering the known circumstances.

9. **Confidentiality.** Notwithstanding Chapter 44-04 of the North Dakota Century Code, the identity of any individual who has made a report or complaint of sex discrimination or sexual harassment, any Complainant, any Respondent, and any witness, including the conduct of any investigation, hearing or judicial proceeding arising thereunder, shall be confidential.

10. Retaliation.

- a. NDSU or any other person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, 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 part.
- b. Intimidation, threats, coercion, or discrimination, including charges against an individual for Code of Conduct violations that do not involve sex discrimination or sexual harassment, 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 harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

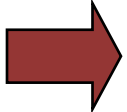
- c. The exercise of rights protected under the First Amendment does not constitute retaliation.
- d. Charging an individual with a Code of Conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, although a determination regarding responsibility, alone, is not sufficient to conclude that any Party made a materially false statement in bad faith.
- e. Complaints alleging retaliation may be filed pursuant to the grievance procedures for sex discrimination under Title IX.

HISTORY:

New July 30, 2020

Policy Change Cover Sheet

This form must be attached to each policy presented. All areas in **red**, including the header, must be completed; if not, it will be sent back to you for completion.



If the changes you are requesting include housekeeping, please submit those changes to ndsuscc@ndsusd.edu first so that a clean policy can be presented to the committees.

SECTION: Policy 162: Sexual and Gender-Based Harassment and Sexual Misconduct Policy

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).

- Is this a federal or state mandate? ☒ Yes ☐ No

Describe change: Title IX regulatory changes were announced by the U.S. Department of Education on May 6, 2020. These policy changes must be implemented by August 14, 2020.

2. This policy change was originated by (individual, office or committee/organization):

- Office/Department/Name and the date submitted: Title IX Coordinator, Dr. Canan Bilen-Green, 08/11/20
- Email address of the person who should be contacted with revisions: canan.bilen.green@ndsusd.edu

This portion will be completed by Heather Higgins-Dochtermann.

Note: Items routed as information by SCC will have date that policy was routed listed below.

3. This policy has been reviewed/passed by the following (include dates of official action):

Senate Coordinating Committee:

Faculty Senate:

Staff Senate:

Student Government:

President's Cabinet:

The formatting of this policy will be updated on the website once the content has final approval. Please do not make formatting changes on this copy. If you have suggestions on formatting, please route them to ndsuscc@ndsusd.edu. All suggestions will be considered, however due to policy format guidelines, they may not be possible. Thank you for your understanding!

North Dakota State University

Policy Manual

SECTION 162

SEXUAL AND GENDER-BASED HARASSMENT AND SEXUAL MISCONDUCT POLICY

SOURCE: NDSU President

1. INTRODUCTION

- 1.1 North Dakota State University (NDSU) is committed to providing a safe, healthy, and non-discriminatory learning, living, and working environment for all members of its university community that is free from sex discrimination of any kind. Specifically, NDSU is committed to:
- 1) Defining conduct that constitutes prohibited sexual harassment, gender-based harassment and sexual misconduct;
 - 2) Providing clear guidelines for students, employees and third parties on how to report incidents of sexual harassment, gender-based harassment and sexual misconduct and a commitment that any complaints will be handled respectfully;
 - 3) Promptly responding to and investigating allegations of sexual harassment, gender-based harassment and sexual misconduct, pursuing disciplinary action when appropriate, referring the incident to local law enforcement when appropriate, and taking action to investigate and address any allegations of complicity and retaliation;
 - 4) Providing ongoing assistance and support to students and employees who make allegations of sexual harassment, gender-based harassment and sexual misconduct;
 - 5) Providing awareness and prevention information on sexual harassment, gender-based harassment and sexual misconduct, including widely disseminating this policy, and implementing training and educational programs on sexual harassment, gender-based harassment and sexual misconduct to university constituencies; and
 - 6) Gathering and analyzing information and data that will be reviewed in order to improve gender equity and safety, reporting, responsiveness and the resolution of incidents.
- 1.2 Title IX of the Education Amendments of 1972 – No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

It is the policy of NDSU to fully comply with all aspects of Title IX of the Education Amendments of 1972 and the regulations promulgated under its authority. NDSU has adopted procedures to address Formal Complaints of Sexual Harassment occurring in its Educational Program or Activities within the United States. These procedures may be found at [\[INSERT LINK HERE\]](#) and are based off North Dakota University System Policy 520.

- 1.3 In accordance with Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Violence Against Women Reauthorization Act of 2013 (VAWA), the Campus Sexual Violence Elimination Act (SaVE), the Jeanne Clery

Disclosure of Campus Security Policy and Campus Crime Statistics Act and other federal and state laws, NDSU prohibits discrimination based on sex or gender and other types of sexual misconduct in its employment decisions and educational programs and activities. Title IX protects any person from sex based discrimination, regardless of their real or perceived sex, gender identity, and/or gender expression. Female, male and gender non-conforming students and employees are protected from any sex-based discrimination, harassment, or violence.

- 1.4 NDSU prohibits all forms of sexual harassment, gender-based harassment, and sexual misconduct, including but not limited to, intimate partner violence, sexual assault, sexual exploitation, stalking, complicity in the commission of any act prohibited by this policy, and retaliation against a person for the good faith reporting of any forms of misconduct or participation in any investigation or proceeding under this policy.
- 1.5 Examples of the types of sex discrimination that are covered under this policy include but are not limited to: the failure to provide equal opportunity in athletics; discrimination in any course or program, notably in science, technology, engineering, and math (STEM); and discrimination based on pregnancy or parental status.
- 1.6 Formal Complaints of Sexual Harassment occurring in NDSU Educational Programs or Activities within the United States ("Title IX Complaints") shall be resolved by Policy 156.1: Title IX Grievance Procedures (link).

All other complaints of Sexual Harassment shall be resolved by [NDSU Policy 156, or other applicable policy](#).

- 1.7 Informal resolution (mediation) will not be used to resolve complaints of sexual harassment or sexual violence between an employee and a student. Participation in the informal resolution process is strictly voluntary – NDSU will not require the Parties to participate in an informal resolution process.

Informal resolution is not available for Title IX Complaints, unless a Formal Complaint has been filed.

For Title IX Formal Complaints, and all other complaints of Sexual Harassment, NDSU may facilitate an informal resolution process, that does not involve a full investigation and adjudication, provided that NDSU:

- a. Provides the Parties a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the Parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- b. Obtains the Parties voluntary, written consent to the informal resolution process; and
- c. The informal resolution process will follow the process as outlined in Policy 156, Section 7, including the option that NDSU reserves the right to deny the Parties the option of using the informal resolution process if it is deemed to be inappropriate or inadequate.

- 1.8 This policy shall not be construed to restrict academic freedom, nor shall it be used to restrict constitutionally protected freedom of expression.
- 1.9 Violations of this policy may result in sanction against an employee (faculty and staff), up to and including termination. Violations of this policy may result in sanction against a student up to and including suspension and expulsion.

2. PROHIBITED CONDUCT

- 2.1 Sexual Harassment, Gender-Based Harassment and Sexual Misconduct. This policy prohibits sexual harassment, gender-based harassment and sexual misconduct by or against any student, employee or third party. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, written, graphic, physical or otherwise, that is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the University's education or employment programs and/or activities.

Gender-based harassment is verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation or gender identity, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities. Gender-based harassment does not necessarily involve conduct of a sexual nature,

Sexual misconduct is a broad term encompassing all forms of gender-based harassment or discrimination and unwelcome behavior of a sexual nature. The term includes sexual harassment, nonconsensual sexual contact, nonconsensual sexual intercourse, sexual assault, sexual exploitation, stalking, public indecency, intimate partner violence, sexual violence, and other misconduct based on sex.

The complete definitions of these terms, as well as other key terms used in this policy, are set forth in 12.1-12.21 below.

- 2.2 Retaliation – This policy prohibits any adverse action taken against a person for making a good faith report of sexual harassment, gender-based harassment, or sexual misconduct, assisting someone making such a report, or participating in any proceeding under this policy.
- 2.3 Complicity – This policy prohibits any act taken with the purpose of aiding, facilitating, promoting or encouraging sexual harassment, gender-based harassment, or sexual misconduct by another person.
- 2.4 Certain intimate relationships – NDSU also prohibits certain intimate relationships when they occur between an employee and any student for whom they have a professional responsibility as set forth in [Policy 162.1](#).
- 2.5 Interference with an investigation – Any person who knowingly and intentionally interferes with an investigation conducted under this policy is subject to disciplinary action up to and including dismissal or separation from the University. Interference with an investigation may include, but is not limited to:
 - 1) Attempting to coerce, compel, influence, or prevent an individual from providing testimony or relevant information;
 - 2) Divulging confidential information;
 - 3) Removing, destroying, or altering documentation relevant to the investigation; or

4) Providing false or misleading information to the investigator, or encouraging others to do so.

- 2.6 Violations of law – Behavior that violates this policy may also constitute a crime under the laws of the jurisdiction in which the incident occurred. For example, the North Dakota Century Code criminalizes and punishes some forms of sexual assault, domestic violence, stalking, and physical assault, which may subject a person to criminal prosecution and punishment in addition to any sanctions under this policy.
- 2.7 Obligation to provide truthful information – All University community members are expected to provide truthful information in any report or proceeding under this policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of prohibited conduct is prohibited and subject to disciplinary action and sanctions under the appropriate disciplinary policy. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.
- 2.8 Amnesty for drug and alcohol use – NDSU strongly encourages all University community members to report instances of sexual harassment, gender-based harassment or sexual misconduct as soon as possible. The University recognizes that an individual who has been drinking or using drugs at the time of the incident may be hesitant to report due to potential policy violations. To minimize hesitancy, an individual who reports sexual harassment, gender-based harassment or sexual misconduct, either as a complainant or as a witness, will not be subject to disciplinary action for any violation of NDSU's [Policy 155](#) against alcohol and other drugs in connection with the reported incident.

3. TO WHOM THIS POLICY APPLIES

- 3.1 This policy applies to all University students who are registered or enrolled for credit or non-credit courses ("Students"); employees consisting of all full-time and part-time faculty, regular staff employees, and nonbanded, nonacademic staff ("Employees"); and visitors, guests, applicants for admission to or employment with the University, contractors, vendors, university affiliates and others conducting business on campus ("Third Parties").
- 3.2 This policy applies to conduct by or against students, employees, and third parties of which the University is made aware, wherever the misconduct occurs:
- 3.2.1. On property owned or controlled by NDSU;
 - 3.2.2. Off NDSU property, if
 - 1) The misconduct was in the context of a University employment or education program or activity, including, but not limited to, NDSU-sponsored study abroad, research, on-line, or internship programs; or
 - Outside the context of a University employment or education program or activity, but has continuing adverse effects on or creates a hostile environment for students, employees or third parties while on campus or other property owned or controlled by NDSU or in any University employment or education program or activity.
- 3.3 Conduct under this policy is prohibited regardless of the sex, sexual orientation and/or gender identity/expression (real or perceived) of the Reporting Party or Responding Party.

4. TITLE IX COORDINATOR

- 4.1 The Title IX Coordinator oversees NDSU's compliance with Title IX; ensures appropriate education and training; coordinates the University's investigation, response, and resolution of all reports under this policy; and ensures appropriate actions to eliminate prohibited conduct, prevent its recurrence, and remedy its effects. The name and contact information for the Title IX Coordinator can be found on the University's [Title IX website](#).
- 4.2 Concerns about NDSU's application of Title IX, VAWA, Title VII, or the Clery Act may be addressed to the Title IX Coordinator; the United States Department of Education, Clery Act Compliance Division (at clery@ed.gov); the United States Department of Education, Office for Civil Rights (at <http://www2.ed.gov/about/offices/list/ocr/addresses.html>, OCR@ed.gov or (800) 421-3481); and/or the Equal Employment Opportunity Commission (at <https://www.eeoc.gov/contact/>, info@eeoc.gov or (800) 669-4000).

5. IMMEDIATE ASSISTANCE IN CASES OF SEXUAL MISCONDUCT AND SUPPORT RESOURCES

- 5.1 Reporting to law enforcement – Students or employees who experience or observe any form of sexual assault or intimate partner violence on or off campus and third parties who experience sexual assault or intimate partner violence on NDSU grounds are strongly encouraged to report the incident immediately by:
 - 1) calling 911,
 - 2) contacting the Fargo Police (701-235-4493),
 - 3) their local police precinct, or
 - 4) University Police (701-231-8998), who are available 24 hours a day, 7 days a week. University Police and safety officers can also assist the Reporting Party with filing a complaint both on and off campus, and in obtaining immediate medical attention, counseling and other services.
- 5.2 Obtaining immediate medical attention and emotional support – An individual who experiences any form of sexual assault or intimate partner violence is encouraged to seek immediate medical care to treat injuries, obtain preventive treatment for sexually transmitted diseases, and preserve evidence. In addition, individuals who have experienced or witnessed sexual violence are encouraged to seek emotional support as soon as possible, either on or off-campus. On-campus resources include:
 - 1) Nurses and/or nurse practitioners at the [Student Health Service](#) (701-231-7331; hours of operation: Monday-Friday 8:00 a.m.-5:00 p.m. during the academic year and Monday-Friday 7:30 a.m. – 4:00 p.m. during breaks.
 - 2) Counselors at the [NDSU Counseling Center](#) (701-231-7671; Monday-Friday 8:00 a.m. – 5:00 p.m. during the academic year and Monday-Friday 7:30 a.m. – 4:00 p.m. during breaks. Counselors are trained to provide crisis intervention and provide referrals for longer-term care as necessary. 24-hour on call service at 701-231-7671; and
 - 3) Sexual Assault Prevention and Advocacy Coordinator at the Student Health Service (701-231-5733; Monday-Friday 8:00 a.m.-5:00 pm during the academic year and Monday-Friday 7:30 a.m. – 4:00 p.m. during breaks.

5.3 On campus resources, counselors, and health care providers:

Contact	Phone	Address
Title IX Coordinator	701-231-7708	Old Main 103
Student Affairs and Enrollment Management Office	701-231-7701	Old Main 100
Equity Office	701-231-7708	Old Main 201
NDSU Counseling Center*	701-231-7671	Ceres Hall 212
Sexual Assault Prevention & Advocacy*	701-231-7331	Wallman Wellness Center 102
NDSU Student Health Service*	701-231-7331	Wallman Wellness Center 102
University Police	701-231-8998	1523 12th Avenue N., Fargo

*Confidential resources

5.4 Off-campus resources, counselors, and health care providers:

Contact	Phone	Address
F-M Rape & Abuse Crisis Center	701-293-7273	317 8th Street N, Fargo
Sanford Medical Center Fargo	701-234-2000	5225 23 rd Avenue S, Fargo
Essentia Health Emergency Center	701- 364-8000	32nd Avenue S, Fargo
Planned Parenthood	281-236-7145	803 Belsey Boulevard, Moorhead, MN
Southeast Human Services	701-298-4500	2624 9th Avenue S., Fargo
Fargo Police Department	701-235-4493	222 4th Street N, Fargo
Cass County Public Health	701-241-1360	1240 25 th Street S, Fargo

6. REPORTING SEXUAL HARASSMENT, GENDER-BASED HARASSMENT OR SEXUAL MISCONDUCT

- 6.1 All students, employees, and third parties are strongly encouraged to promptly report any incidents of sexual harassment, gender-based harassment, or sexual misconduct that they experience and/or observe to the Title IX Coordinator or the Equity Office.
- 6.2 Any person (student, employee, or third party) having a complaint under this policy (NDSU Policy 162) should submit a completed complaint form available online at <https://www.ndsu.edu/equity/forms/> or by contacting the Title IX Coordinator or the Equity Office in Suite 201, Old Main, NDSU Main Campus, 701-231-7708, ndsu.eoaa@ndsu.edu. The Complaint Form can be submitted via email at ndsu.eoaa@ndsu.edu or by bringing it to the Equity Office. The Equity Office is available to assist with completing the Complaint Form as needed.

- 6.3 Anyone who would like to file a sexual harassment, gender-based harassment, or sexual misconduct complaint against a student or student organization also has the option of filing the complaint with the Student Affairs and Enrollment Management Office, Old Main 100, NDSU Main Campus, 701-231- 7701. Complaints filed against a student or student organization will be resolved in coordination with the Student Affairs and Enrollment Management Office. If a complaint against a student or student organization will be resolved through formal resolution, a hearing, and any appeal, will be administered by the Student Affairs and Enrollment Management Office, in coordination with the Equity Office, under the procedures found in Policy 601: Rights and Responsibilities of Community: A Code of Student Conduct.
- 6.4 All students, employees, and third parties may also report incidents of sexual misconduct to law enforcement, including on-campus and local police. Reporting parties who choose to notify law enforcement will be provided the assistance of the Title IX Coordinator or the Equity Office in contacting these authorities if the individual wishes. Reporting Parties may also decline to notify law enforcement of incidents of sexual misconduct.
- 6.5 Reports of sexual misconduct made to University Police will automatically be reported to the Title IX Coordinator regardless of whether the individual who experienced the sexual misconduct chooses to pursue criminal charges.
- 6.6 Disclosures to licensed clinical and/or mental health professionals acting in their professional role in the provision of services are not subject to the mandatory reporting requirements stated in 7.1-7.3. These employees include physicians, psychologists, nurses, counselors, and those performing services under their supervision. These individuals are encouraged to provide students or employees with information and guidance regarding university reporting options and available resources but will not report or otherwise refer instances of sexual harassment/misconduct to university administrators without the student or employee's express permission. This does not preclude these individuals from their reporting responsibilities under the Clery Act.
- 6.7 Anonymous reporting - NDSU students and employees may report incidents of sexual harassment, gender-based harassment, or sexual misconduct anonymously. NDSU may be limited in its ability to respond to a report if it is submitted anonymously. Additionally, in very limited circumstances, NDSU may need to take action to learn the identity of an individual who submitted an anonymous report. For more information, see <https://www.ndsu.edu/biasreport/>.

7. NOTICE OF MANDATORY REPORTING RESPONSIBILITIES

- 7.1 It is the responsibility of the entire university community to foster a safe, healthy, and non- discriminatory learning, living, and working environment that is free from sex discrimination of any kind. NDSU employees have specific responsibilities when they observe discrimination or receive a report of discrimination. NDSU employees must not dissuade an individual (or group) from providing them with a report of discrimination but should inform the individual (or group) of their mandatory reporting responsibilities as described below.
- 7.1.1. Observance of sexual misconduct – All NDSU employees who observe any form of sexual misconduct must notify the Title IX Coordinator or the Equity Office.

7.1.2. Report of sexual misconduct – All NDSU employees who receive a report of sexual misconduct *involving a student* must contact the Title IX Coordinator or the Equity Office. NDSU supervisors, managers, department heads, deans, directors, or administrators who receive a report of discrimination *involving employees* must document the report and contact the Title IX Coordinator or the Equity Office. The provisions of 11.1.1 do not apply to confidential support resources providing services as described in 9.3.

7.2 To comply with 7.1.1. or 7.1.2, NDSU employees must within three business days notify the Title IX Coordinator or the Equity Office. Employees are encouraged to complete and submit an NDSU Sexual Misconduct Report Form (Report Form) to the Title IX Coordinator or the Equity Office. The Report Form is available online at <https://www.ndsu.edu/forms/> or by contacting the Equity Office in Suite 201, Old Main, NDSU Main Campus, 701-231-7708, ndsu.eoaa@ndsu.edu. The Report Form can be submitted via email at ndsu.eoaa@ndsu.edu or by bringing it to the Equity Office. The Equity Office can assist with completing the Report Form as needed. The Equity Office is the official university record holder for documentation under this policy.

7.3 Upon receipt of a report of a violation, NDSU will initiate its complaint procedures under either Policy 156 or Policy 156.1.

8. INTERIM MEASURES

8.1 Upon receipt of a complaint or as otherwise informed of sexual harassment, gender-based sexual harassment, or sexual misconduct NDSU will, where appropriate, take interim measures to stop, prevent, and remedy the harm to those affected by the prohibited conduct. Interim measures are intended to be protective and/or remedial for one or both parties, and may be temporary or permanent and may be modified by the University as circumstances change.

Interim measures may include, but are not limited to, a no contact directive, a safety plan, residence modifications, academic modifications and support, work schedule and/or location modifications, parking modifications, referral to counseling or other health services, administrative leave, temporary suspension, or any other measure deemed appropriate by NDSU.

8.2 Interim measures may be kept in place through the conclusion of any review, investigation, or appeal process.

8.3 Interim measures can be implemented regardless of whether or not the reporting party pursues formal university or criminal action.

9. PRIVACY AND CONFIDENTIALITY

9.1 Confidentiality will be maintained to the extent possible - NDSU will keep the complaint and its investigation confidential to the extent that it is possible without compromising NDSU's commitment and obligation to investigate allegations of sexual misconduct, to protect the university community, and to the extent allowed by law. As NDSU has an obligation to maintain an environment free of sex discrimination and sexual misconduct, most employees have mandatory reporting and response obligations and may not be able to honor a reporting party's request for confidentiality. The Title IX Coordinator will evaluate requests for confidentiality.

However, confidentiality cannot be guaranteed as NDSU may have an obligation to take specific actions once aware of alleged conduct.

- 9.2 NDSU is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report under this policy. Information related to a report of prohibited conduct will be shared with a limited circle of NDSU employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in NDSU’s response to reports of prohibited conduct receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law.
- 9.3 Confidential support resources - If seeking a confidential resource, NDSU students may contact the [NDSU Counseling Center](#) (212 Ceres Hall, NDSU Main Campus, 701-231-7671), the [Student Health Service](#) (Wallman Wellness Center, NDSU Main Campus, 701-231-7331), and the Sexual Assault Prevention and Advocacy Coordinator (Wallman Wellness Center, NDSU Main Campus, 701-231-7331). The Employee Assistance Program, as described in NDSU Section 134, is a confidential resource for NDSU employees. Additionally, graduate students and faculty may also contact the Office of the Ombudsperson (Library Room 20C, NDSU Main Campus, 701-231-5114).

10. TRAINING AND EDUCATION

- 10.1 This policy is published on the university’s website and information on this policy and related policies is included in mandatory training for new students and employees.
- 10.2 All new employees must attend training within the first 30 days of employment and receive supplemental training every three years. Current employees are required to participate in face-to-face training every three years.
- 10.3 Employees are encouraged to contact the Title IX Coordinator or the Equity Office with any questions they may have related to sexual harassment, gender-based sexual harassment, or sexual misconduct at NDSU, including inquiries regarding their mandatory reporting responsibilities.
- 10.4 University employees and administrators responsible for implementing this policy, including the Title IX Coordinator, deputy coordinators, supervisors, managers, department heads, deans, directors, investigators, review committee members, and hearing officers, must receive annual training about offenses, investigatory procedures, due process requirements, and university policies related to or described in this policy.

11. FREE EXPRESSION AND ACADEMIC FREEDOM

NDSU is committed to free expression and principles of academic freedom. Vigorous discussion and debate, as well as free inquiry and free expression, are essential to NDSU’s educational mission and are critical to diversity and intellectual life. NDSU is equally committed to providing a safe, healthy, and non-discriminatory learning, living, and working environment for all members of its university community. Discrimination, harassment, and retaliation against members of the University community are not protected expression or the proper exercise of academic freedom. When resolving violations of this policy, NDSU will respond appropriately while respecting the principles of free expression and academic freedom.

12. DEFINITIONS

The terms and definitions used here are important components of University policy. The definitions are intended to give meaning to these terms in the context of the University community. Criminal and other applicable state laws may use different definitions. Section 13 provides North Dakota criminal law terms and definitions. For definitions specifically related to Title IX Complaints, please see Policy 156.1: Title IX Grievance Procedures ([link](#)) and State Board Higher Education Policy 520 ([link](#)).

- 12.1 Complicity - Complicity is any act taken with the purpose of aiding, facilitating, promoting or encouraging the commission of an act of Prohibited Conduct by another person.
- 12.2 Consent – Mutually understandable words or actions, actively communicated both knowingly and voluntarily, that clearly conveys permission for a specific activity.

Consent must be all of the following:

- 1) Knowing: Consent must demonstrate that all individuals understand, are aware of, and agree to the “who” (same partners), “what” (same acts), “where” (same location), “when” (same time), and “how” (the same way and under the same conditions) of the sexual activity.
- 2) Active: Consent must take the form of “clearly understandable words or actions” that reveal one’s expectations and agreement to engage in specific sexual activity. This means that silence, passivity, submission, or the lack of verbal or physical resistance (including the lack of a “no”) should not – in and of themselves – be understood as consent. Consent cannot be inferred by an individual’s manner of dress, the giving or acceptance of gifts, the extension or acceptance of an invitation to go to a private room or location, or going on a date.
- 3) Voluntary: Consent must be freely given and cannot be the result of force (violence, physical restraint, or the presence of a weapon), threats (indications of intent to harm, whether direct or indirect), intimidation (extortion, menacing behavior, bullying), coercion (undue pressure) or fraud (misrepresentation or material omission about oneself or the present situation in order to gain permission for sexual or intimate activity).
- 4) Present and ongoing: Consent must exist at the time of the sexual activity. Consent to previous sexual activity does not imply consent to later sexual acts; similarly, consent to one

type of sexual activity does not imply consent to other sexual acts. Consent may also be withdrawn at any time – provided the person withdrawing consent makes that known in clearly understandable words or actions.

Consent is not present when an individual does not have the capacity to give consent, voluntarily or involuntarily, due to age, physical condition, or disability that impairs the individual’s ability to give consent. Reasons why one could lack capacity to give consent due to a physical condition include, but are not limited to, incapacitation due to consumption of drugs or alcohol (voluntarily or involuntarily) or being in a state of unconsciousness, sleep, or other state in which the person is unaware that sexual activity is occurring. Consent is not effective if it results from: (a) the use of physical violence, (b) threats, (c) intimidation, (d) coercion, (e) incapacitation, or (f) any other factor that would eliminate an individual’s ability to exercise their own free will to choose whether or not to engage in sexual activity. When determining whether consent was present, the University will consider whether a reasonable person in the same

position should have known whether the other party could or could not consent to the sexual activity.

- 12.2.1. Physical violence means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.
- 12.2.2. Threats are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.
- 12.2.3. Intimidation is an implied threat that menaces or causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).
- 12.2.4. Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular form of sexual contact or sexual intercourse, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.
- 12.2.5. Incapacitation is a state of being that prevents an individual from having capacity to give consent. Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity. A person who is incapacitated is unable, temporarily or permanently, to give consent because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition. Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.
- 12.3 Discrimination Based on Pregnancy or Parental Status - Excluding persons from, denying them the benefit of, or discriminating against them due to their pregnancy or status as a parent. To ensure a pregnant student's access to their education, faculty and staff must make modifications that are reasonable and responsive to the student's temporary pregnancy status. Faculty that have their own policies about class attendance and make-up work must make sure their policies are not discriminatory.
- 12.4 Gender-Based Harassment – Verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities. For example, persistent disparagement of a person based on a perceived lack of stereotypical masculinity or femininity or exclusion from an activity based on sexual orientation or gender identity also may violate this Policy.
- 12.5 Intimate Partner Violence – Any act of violence or threatened act of violence that

occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. Intimate Partner Violence is an offense that meets the definition of domestic violence or dating violence:

12.5.1. Domestic Violence – Abuse or violence committed by a current or former spouse or intimate partner of the Reporting Party, by a person with whom the Reporting Party shares a child in common or by a person with whom the Reporting Party is cohabiting (or has cohabited) with a spouse or intimate partner.

12.5.2. Dating Violence – Abuse or violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Reporting Party. The existence of such a relationship will be determined based on the Reporting Party's statement and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship. This definition does not include acts covered under domestic violence.

12.5.3. Intimate Partner Violence may include any form of Prohibited Conduct under this policy, including Sexual Assault, Stalking, and Physical Assault (as defined below).

12.5.4. Physical Assault is threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person. Physical Assault will be addressed under this policy if it involves Sexual or Gender-Based Harassment, Intimate Partner Violence, or is part of a course of conduct under the Stalking definition.

12.6 Public Indecency – Engaging in private or sexual acts in a publicly viewable location, such that it is offensive to accepted standards of decency including, but not limited to: 1) Exposing one's genitals or private areas; 2) Public urination; 3) Defecation; and/or 4) Public sex acts.

12.7 Reporting Party – A person or entity (in the case of the university) who submits a complaint alleging a violation of this policy.

12.8 Responding Party – Generally, the Responding Party is the person who is alleged to be responsible for the Prohibited Conduct alleged in a complaint.

12.9 Retaliation – Any adverse action taken against a person for making a good faith report of Prohibited Conduct, assisting someone making such a report, or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of "no responsibility" on the allegations of Prohibited Conduct. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct.

12.10 Sexual Assault – Any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Sexual assault includes nonconsensual sexual contact and nonconsensual sexual intercourse.

- 12.10.1. Nonconsensual Sexual Contact – Any intentional sexual touching, however slight, with any object or body part without consent. Sexual Contact includes:
- 1) Intentional contact with the breasts, buttock, groin, or genitals whether clothed or unclothed;
 - 2) Touching another with any of these body parts;
 - 3) Making another touch you or themselves with or on any of these body parts; or
 - 4) Any other intentional bodily contact in a sexual manner.
- 12.10.2. Nonconsensual Sexual Intercourse – Any sexual penetration or intercourse, however slight, with any object or body part, by a person upon another person that is without consent and/or is effectuated by force. Sexual intercourse includes
- 1) Vaginal or anal penetration by a penis, tongue, finger, or object; or
 - 2) Any contact, no matter how slight, between the mouth of one person and the genitalia of another person.
- 12.10.3. The following offenses are examples of sexual assault: rape, incest, fondling, and statutory rape.
- 1) 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 Reporting Party.
 - 2) Incest – Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - 3) Fondling – The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Reporting Party, including instances where the Reporting Party is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
 - 4) Statutory Rape – Non-forcible sexual intercourse with a person who is under the statutory age of consent.
- 12.10.4. Sexual violence, including rape, sexual assault, and domestic and dating violence, is a form of sexual harassment.

12.11 Sex Discrimination – An act that deprives a member of the university community of their rights of access to campuses and facilities and of participation in education, services, programs, operations, employment, benefits, or opportunities with the university on the basis of the person's sex (including pregnancy, sexual orientation, and gender identity/expression) or having a policy or practice that has a disproportionately adverse impact on protected class members.

12.12 Sexual Exploitation - Taking nonconsensual or abusive sexual advantage of another for the benefit of oneself or a third party, and that behavior does not otherwise fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Sexual Exploitation includes, but is not limited to:

- 1) Recording, distribution, or dissemination of sexual or intimate images or recordings of another person without that person's consent;
- 2) 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);
- 3) 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);

- 4) 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;
- 5) Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals or private areas;
- 6) Prostituting or trafficking another person; or
- 7) Exposing another person to a sexually transmitted disease (STD), infection (STI), or virus (HIV) without the other's knowledge.

12.13 Sexual Harassment – Unwelcome sexual advances, requests for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, written, graphic, physical or otherwise, when:

- 1) Submission to such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs and/or activities or is used as the basis for University decisions affecting the individual (quid pro quo harassment); or
- 2) Such conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the University's education or employment programs and/or activities (hostile environment).

12.13.1. Quid pro quo sexual harassment can occur whether a person resists and suffers the threatened harm, or the person submits and avoids the threatened harm. Both situations could constitute sexual harassment.

12.13.2. A hostile environment can be created by persistent or pervasive conduct or by a single severe episode. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment. A single incident of Sexual Assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

12.14 Sexual Misconduct – A broad term encompassing all forms of gender-based harassment or discrimination and unwelcome behavior of a sexual nature. The term includes sexual harassment, gender-based harassment, nonconsensual sexual contact, nonconsensual sexual intercourse, sexual assault, sexual exploitation, stalking, public indecency, intimate partner violence, sexual violence, and other misconduct based on sex.

12.15 Stalking – A course of unwelcome conduct directed at a specific person that would cause a reasonable person to fear for their own safety or the safety of others or would cause that person to suffer substantial emotional distress. Course of conduct means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property. Reasonable person means a reasonable person under similar circumstances and similarly situated to the Reporting Party. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

- 12.15.1. Stalking includes "Cyber-Stalking," a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

12.16 Examples of inappropriate behavior that may constitute Sexual Harassment or Sexual Misconduct include, but are not limited to:

- 1) Sexual teasing, jokes, remarks, or questions;
- 2) Sexual looks and gestures;
- 3) Sexual innuendoes, humor, or stories;
- 4) Communicating in a manner with sexual overtones;
- 5) Inappropriate comments about dress or physical appearance;
- 6) Inappropriate discussion of private sexual behavior;
- 7) Gifts, letters, calls, emails, online posts, or materials of a sexual nature;
- 8) Sexually explicit visual material (calendars, posters, cards, software, internet, or other multimedia materials);
- 9) Sexual favoritism;
- 10) Pressure for dates or sexual favors or forced sexual activity;
- 11) Unwelcome sexual advances;
- 12) Unwelcome physical contact (touching, patting, stroking, rubbing);
- 13) Nonconsensual video or audio-taping of sexual activity;
- 14) Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals or private areas;
- 15) Obscene gestures;
- 16) Sexual graffiti, pictures, or posters;
- 17) Sexually explicit profanity;
- 18) Domestic or dating violence;
- 19) E-mail, texting ("sexting") and Internet use that violates this policy;
- 20) Nonconsensual sexual intercourse, sexual assault, or rape; or
- 21) Other gender-based threats, discrimination, intimidation, hazing, bullying, stalking, or violence.

13. RESOURCE OF RELEVANT TERMS AND DEFINITIONS IN NORTH DAKOTA

Because some of the offenses in this Policy are also crimes under State law, the University provides this summary of relevant North Dakota terms and definitions as a resource. Community members who are involved in legal action related to a sexual crime or offense under North Dakota law should consider speaking with an attorney for specific information about relevant State law and legal advice.

13.1 The North Dakota Human Rights Act prohibits discrimination in employment on the basis of sex, including pregnancy, childbirth and related medical conditions (ND Cent. Code Sec. 14-02.4-01 et seq.). Sexual harassment is expressly included in the Act's definition of discrimination based on sex. The Act applies to all employers in the state. It is also unlawful under the state law to retaliate or threaten to retaliate against a person who files a complaint of sexual harassment, or testifies or assists in a proceeding or investigation.

13.2 Consent is defined in North Dakota as follows ([NDCC 12.1-17-08](#)):

1. When conduct is an offense because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury by all persons injured or threatened by the conduct is a defense if:
 - (a) Neither the injury inflicted nor the injury threatened is such as to

- jeopardize life or seriously impair health;
- (b) The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
- (c) The conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods, and the persons subjected to such conduct or injury, having been made aware of the risks involved, consent to the performance of the conduct or the infliction of the injury.

2. Assent does not constitute consent, within the meaning of this section, if:
- (a) It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the actor;
 - (b) It is given by a person who by reason of youth, mental disease or defect, or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
 - (c) It is induced by force, duress, or deception.

13.3 Domestic violence is defined in North Dakota ([NDCC 14-07.1-01](#)) as physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self- defense, on the complaining family or household members. The code defines family or household member as a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court. As the State of North Dakota includes persons who are in a dating relationship under the state's domestic violence laws, any violence committed by dating parties would fall under domestic violence.

13.4 [NDCC 12.1-17-07.1](#) states that no person may intentionally stalk another person. The state defines "stalk" as engaging in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and that serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation or harassment. The state defines course of conduct as a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity. The state defines immediate family as a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.

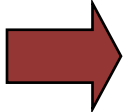
HISTORY:

New	September 29, 1980
Amended	October 7, 1987
Amended	June 28, 1991
Amended	April 1992
Amended	October 1997

Amended	August 1999
Amended	September 2000
Amended	September 2007
Amended	January 2008
Amended	February 2009
Housekeeping	April 14, 2016
Amended	January 16, 2017
Housekeeping	June 22, 2017
Housekeeping	November 9, 2017
Housekeeping	April 26, 2019

Policy Change Cover Sheet

This form must be attached to each policy presented. All areas in **red**, including the header, must be completed; if not, it will be sent back to you for completion.



If the changes you are requesting include housekeeping, please submit those changes to ndsuscc@ndsusd.edu first so that a clean policy can be presented to the committees.

SECTION: Policy 183: Nonrenewal and Dismissal of Nonbanded, Nonacademic Staff

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).

- Is this a federal or state mandate? ☒ Yes ☐ No

Describe change: Title IX regulatory changes were announced by the U.S. Department of Education on May 6, 2020. These policy changes must be implemented by August 14, 2020.

2. This policy change was originated by (individual, office or committee/organization):

- Office/Department/Name and the date submitted:
- Email address of the person who should be contacted with revisions:

This portion will be completed by Heather Higgins-Dochtermann.

Note: Items routed as information by SCC will have date that policy was routed listed below.

3. This policy has been reviewed/passed by the following (include dates of official action):

Senate Coordinating Committee:

Faculty Senate:

Staff Senate:

Student Government:

President's Cabinet:

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North Dakota State University

Policy Manual

SECTION 183

NONRENEWAL AND DISMISSAL OF NONBANDED, NONACADEMIC STAFF

SOURCE: SBHE Policy Manual, Section 608.2

1. This policy applies to all employees excluded from the broadbanding system who are not members of the academic staff, and, with respect to their positions as administrators or other non-academic positions, to employees with appointments to the academic staff.

This policy does not apply to:

- a. Chancellor and institution presidents.
 - b. Coaches.
 - c. Faculty – Employees with academic appointments are governed by SBHE Policy Sections 605.1, 605.2, 605.3, and 605.4.
 - d. Student residence hall assistants, work-study students and other students employed on a part-time basis for a limited term. The terms and conditions of employment for student resident hall assistants shall be stated in a written contract.
2. An employee may be dismissed, without cause, pursuant to written notice of termination in accordance with the following schedule:
 - a. At least three months, if written notice is given during the first year of service;
 - b. At least six months, if written notice is given during the second year of service or thereafter;

As used in this section 2, “service” means employment at the same institution or agency.

3. An employee may be dismissed based upon financial exigency as determined by the Board, loss of appropriations, loss of institutional or program enrollment, consolidation of organizational units or program areas or elimination of courses, in which cases the notice requirements of the preceding section shall not apply. If a dismissal is implemented pursuant to this section 3, no less than 90 days notice shall be given the employee.
4. An employee may be dismissed for just cause. Just cause means just cause for dismissal of staff employees as defined in the North Dakota University System Human Resource Policy Manual. (See NDSU 220.2) Notice of intent to dismiss for cause, stating the reasons for the proposed action, shall be given by a department head or other designated official unless the employee is an institution officer who reports directly to the institution’s chief executive, in which case the chief executive shall give notice. The notice shall be given at least five calendar days prior to the date of dismissal and the employee has the right, within that time, to respond in writing and request a pre-termination review. Following notice of intent to dismiss and, if requested by the employee, the pre-termination review, the department head or other designated individual, if the notice of intent to dismiss was not given by the chief executive, shall forward a recommendation to the institution's chief executive. The chief executive shall make a final decision and give written notice of that decision.

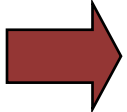
5. An employee who is dismissed for just cause pursuant to this policy may, within 20 days of dismissal, appeal the decision by filing a notice of appeal, accompanied by a specification of the reasons or grounds upon which the appeal is based, with the institution's chief executive. The chief executive shall appoint a hearing officer to conduct an evidentiary hearing and submit recommended findings, conclusions and a recommended decision. The hearing officer shall conduct the hearing according to appeal procedures governing hearings conducted by a staff personnel board that are set forth in Section 27 of the North Dakota University System Human Resource Policy Manual (*Policy 231 of the NDSU Policy Manual*). The chief executive shall make a final decision and provide written notice of that decision to the hearing officer and the employee within 20 calendar days of receiving the hearing officer's recommendation.
6. An employee who voluntarily or involuntarily leaves his or her non-academic position under this policy but holds a tenured faculty appointment may return to that appointment with all the rights and responsibilities of tenured faculty in the home department, unless a proceeding results in the discharge or demotion of the employee from the faculty position. Should the employee decide to return to the faculty appointment, his or her salary will be adjusted from a 12-month salary for the non-academic duties to a 9-month to 12-month faculty salary that is commensurate with the salaries of comparable tenured faculty members, unless a faculty salary was previously set in his or her contract at the time they assumed the non-academic position. Setting the return-to-faculty salary at the time a person with a tenured faculty appointment assumes a non-academic position is the preferred option. 7. Dismissal actions of **regular staff employees** are governed by the NDSU Policies 220 and 231.
7. This Policy shall not apply to conduct by an NDUS employee which is alleged to constitute sexual harassment under Title IX of the Education Amendments of 1972, which is governed by NDSU Policy 156.1.
8. Dismissal actions of **temporary staff employees** may occur at any time with or without cause (NDUS Human Resource Policy Manual, Section 2).
- ~~89.~~ — Dismissal or non-renewal actions for **faculty** are governed by NDSU Policy 350.1-350.4 and 352.

HISTORY:

New	June 1994
Amended	May 1996
Amended	February 1998
Amended	July 1999
Amended	December 1999
Amended	January 2000
Amended	January 3, 2013
Housekeeping	August 26, 2013
Amended	September 18, 2013
Amended	December 4, 2015
Amended	April 28, 2016
Housekeeping	June 27, 2016
Amended	May 9, 2018

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SECTION:

Policy 220: Staff Job Discipline/Dismissal

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).

- Is this a federal or state mandate? ☒ Yes ☐ No

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North Dakota State University

Policy Manual

SECTION 220

STAFF JOB DISCIPLINE/DISMISSAL

SOURCE: NDUS Human Resources Policy Manual, Section 25

1. A regular staff employee may be dismissed from employment, suspended without pay, changed to a lower pay rate, *or changed to a position with a lower pay rate*, for just cause. Just cause includes conduct related to the employee's job duties, job performance, or working relationships which is detrimental to the discipline or efficiency of the institution in which the employee is or was engaged.
2. The employing department shall notify the employee and the Director of Human Resources/Payroll of the proposed action in writing. The written notice must include:
 - a. A statement that the supervisor intends to dismiss, suspend, or lower the pay rate of the employee.
 - b. A statement identifying any policies violated by the employee.
 - c. A statement of the specific charges against the employee; citing the employee's behavior, dates and/or occurrences, witnesses, and other evidence against the employee.
 - d. Notice that the employee may provide the supervisor with evidence, explanation, or other information in writing which contradicts the allegations and evidence.
 - e. Notice of the employee's status until the final decision is made. (i.e. whether the employee to continue working or be placed on leave of absence with pay)
3. A regular staff employee who is being suspended without pay, changed to a lower pay rate for disciplinary reason or dismissed shall be entitled to a pre-action review. This review *will be conducted by the Director of Human Resources/Payroll* or designee and may be limited to the written record including the employee's written response to the allegations, or at the option of the Director of Human Resources/Payroll or designee may be conducted in person. The pre-action review shall be held no sooner than three working days from the time notice as provided to the employee.
 - a. The review official shall consider all evidence and will make a determination whether there are reasonable grounds to believe the charges against the employee are true and support the proposed action.

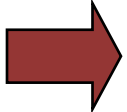
—The employee and the department head will be notified, in writing, of the review official's determination. The department head will then give the employee a written notice of his/her final decision. A notice of dismissal, suspension without pay, or demotion must include a written detailed statement of the basis for the action and inform the employee of their right to appeal.
4. This Policy shall not apply to conduct by an NDSU employee which is alleged to constitute sexual harassment under Title IX of the Education Amendments of 1972, which is governed by NDSU Policy 156.1.

HISTORY:

New	April 1992
Amended	June 1997
Amended	August 1999
Amended	February 11, 2014
Amended	December 16, 2015

Policy Change Cover Sheet

This form must be attached to each policy presented. All areas in **red**, including the header, must be completed; if not, it will be sent back to you for completion.



If the changes you are requesting include housekeeping, please submit those changes to ndsuscc@ndsusd.edu first so that a clean policy can be presented to the committees.

SECTION: Policy 230: Grievance Procedure for Conditions of Employment

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).

- Is this a federal or state mandate? ☒ Yes ☐ No

Describe change: Title IX regulatory changes were announced by the U.S. Department of Education on May 6, 2020. These policy changes must be implemented by August 14, 2020.

2. This policy change was originated by (individual, office or committee/organization):

- Office/Department/Name and the date submitted:
- Email address of the person who should be contacted with revisions:

This portion will be completed by Heather Higgins-Dochtermann.

Note: Items routed as information by SCC will have date that policy was routed listed below.

3. This policy has been reviewed/passed by the following (include dates of official action):

Senate Coordinating Committee:

Faculty Senate:

Staff Senate:

Student Government:

President's Cabinet:

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North Dakota State University

Policy Manual

SECTION 230

GRIEVANCE PROCEDURE FOR CONDITIONS OF EMPLOYMENT

SOURCE: NDUS Human Resource Policy Manual, Section 28

1. The grievance process begins when a regular staff employee presents in writing an allegation that there has been a violation, misinterpretation, or misapplication of a policy, procedure, or practice regarding the employee's employment conditions. Dismissal, change to lower pay rate, suspension without pay, reduction in force (see Section 223 Reduction in Force), and job family assignment (see Section 241 Broadbanding Policy), allegations of sexual harassment under Title IX (see NDSU Policy 156.1), and issues of illegal discrimination (see SBHE procedure 603) cannot be grieved pursuant to this section.
2. If an employee feels unfairly treated or has a complaint, the employee shall first discuss the issue with the immediate supervisor in an attempt to solve the problem at the lowest level possible. The discussion may include others within the supervisory chain.
3. All employees have the right to present grievances to their supervisors or department heads and are assured freedom from discrimination, coercion, restraint, or reprisal in presenting grievances.
4. At each step of the grievance procedure, the employee may be represented by another institutional employee or by a representative of the employee's choosing.
5. Process: NOTE: All references to work days shall be to actual days worked at the normal work site by the person required to respond. Any disposition which is not advanced within the time allowed at each level shall be considered settled and binding on the employee and the institution. At any level, the employee and the appropriate supervisor may agree, in writing, that additional time is required after the grievance has been filed in writing. A copy of all documents must go to the Director of Human Resources/Payroll or other designated campus official who shall keep official records of the progress of the grievance.
 - 5.1 (Step 1) If the discussion described in 2 does not lead to a resolution of the issue, then an employee shall submit his/her grievance in writing to the immediate supervisor and deliver a copy to the Director of Human Resources/Payroll or other designated campus official.
 - 5.1.1 If the grievance involves the immediate supervisor, the employee may begin the process with the next level of supervision.
 - 5.1.2 The written grievance will describe with specificity the management action which is the cause of the grievance, cite the policy, procedure, or practice involved, and provide a suggested remedy. The remedy must be applicable to the person grieving.
 - 5.1.3 A grievance must be brought within twenty working days from the act causing the grievance unless a longer period of time is provided by law or written agreement. The Director of Human Resources/Payroll or other designated campus official shall notify the employee and the supervisor whether the complaint meets the criteria for a

grievance. Within ten working days from this notification that the criteria has been met, the supervisor shall reach a decision and communicate it in writing to the employee. Every effort should be made to settle grievances at this stage.

5.1.4 A supervisor may confer with his/her supervisors

- 5.2 (Step 2) If the grievance is not settled at step one, the employee shall advance the written grievance to the next level of supervision within ten working days. The advanced grievance must include a copy of the original written grievance, the supervisory responses, and a letter describing the disagreement with the supervisory responses. The supervisor shall reply in writing to the employee's grievance within ten working days.

5.2.1 Advance of the grievance may not exceed three levels (not including the President). The third level of review will be at the Vice President level except in the case of other direct reports to the President. To facilitate the process where an employee has multiple layers of supervisory oversight, the Director of Human Resources/Payroll will designate the responding supervisors.

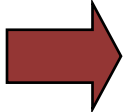
- 5.3 If a grievance is advanced to the institution President or designee after the Vice President's response or if an employee reports directly to the President, the President or designee shall review the grievance and render a decision within ten working days, or the President may appoint a Staff Personnel Board within ten working days. A Staff Personnel Board consisting of three appointed members shall review the grievance and supervisory responses and may investigate any issue pertaining to the grievance in an effort to provide a recommendation to the President or designee. The Staff Personnel Board must provide their recommendation within twenty working days of their appointment. The President or designee shall render a decision within ten working days of the Staff Personnel Boards recommendation. The decision of the President or designee shall be final.

HISTORY:

New	April 1992
Amended	August 1997
Amended	January 2007

Policy Change Cover Sheet

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SECTION: Policy 231: Appeal Procedure for Disciplinary and Reduction in Force Actions

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).

- Is this a federal or state mandate? ☒ Yes ☐ No

Describe change: Title IX regulatory changes were announced by the U.S. Department of Education on May 6, 2020. These policy changes must be implemented by August 14, 2020.

2. This policy change was originated by (individual, office or committee/organization):

- Office/Department/Name and the date submitted:
- Email address of the person who should be contacted with revisions:

This portion will be completed by Heather Higgins-Dochtermann.

Note: Items routed as information by SCC will have date that policy was routed listed below.

3. This policy has been reviewed/passed by the following (include dates of official action):

Senate Coordinating Committee:

Faculty Senate:

Staff Senate:

Student Government:

President's Cabinet:

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North Dakota State University

Policy Manual

SECTION 231

APPEAL PROCEDURE FOR DISCIPLINARY AND REDUCTION IN FORCE ACTIONS

SOURCE: NDUS Human Resource Policy Manual, Section 27

1. A Staff Personnel Board shall be appointed by the President to hear employee appeals and employee grievances pursuant to NDSU policy 230. This Board shall consist of three appointed members. The three members shall appoint a chairperson who shall conduct the hearing, unless the Staff Personnel Board appoints a hearing officer pursuant to Section 231.3.
 - 1.1 The Staff Senate Executive Committee shall recommend to the President, on an annual basis, a pool of nine employees for potential appointment to the Board for a specific hearing. Members must have a minimum of 5 years of employment at NDSU and should be generally representative of different banded categories. Pool members can serve a maximum of three consecutive years. Vacancies in the 9 member pool do not have to be filled during the year, but may be at the discretion of the Executive Committee.
 - 1.2 The President shall assign three members from the pool to be on the Staff Personnel Board for a specific grievance hearing. If a conflict arises and less than three members of the pool are available for a grievance hearing, the Executive Committee shall recommend a replacement for that hearing to the President for approval.
2. Any regular staff employee who has been suspended without pay, dismissed for cause, changed to a lower pay rate, or dismissed due to a reduction in force may request a hearing with the Staff Personnel by filing a written notice, accompanied by a specification of the reasons or the grounds upon which the appeal is based *and the remedy being sought* with the Director of Human Resources/Payroll. Such appeal must be filed with the Director of Human Resources/Payroll within five (5) working days following such action. The Staff Personnel Board shall hear both sides of the appeal and, after weighing all evidence presented to the Board, consider whether adequate cause for the institution's action existed, reporting its decision to the President.
3. The Staff Personnel Board may appoint a *qualified, institutionally recognized* person as a hearing officer with authority to conduct pre-hearing meetings, supervise discovery, advise the Staff Personnel Board or preside over the hearing.
 - 3.1 The Staff Personnel Board may hold joint pre-hearing meetings with the parties in order to (a) simplify issues, (b) effect stipulations of facts, (c) provide for the exchange of documentary or other information, or (d) achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective and expeditious. The employee, NDSU and their representatives shall participate in pre-hearing meetings upon request and comply with the directives of the Staff Personnel Board or its representative.
 - 3.2 The Staff Personnel Board shall serve written notice of hearing on the employee, *the department head* and the President, or their representatives, at least twenty calendar days prior to the hearing.

- 3.3 The employee and NDSU may stipulate to a decision on the basis of the written statements, in which case the Staff Personnel Board shall make its decision on that basis.
- 3.4 During the proceedings, NDSU is entitled to have counsel *or a representative* and the employee is entitled to have counsel or a representative of their choice at their own expense. Proceedings concerning the appointment or removal of an employee shall be closed, unless the employee requests that the proceedings be open. Either party or the Staff Personnel Board may invite up to two observers each to attend the proceedings.
- 3.5 A record of the hearing or hearings shall be made at NDSU's expense and shall be accessible to both parties. The record shall be made by a reporter or a stenographer, or by the use of an electronic recording device. The Office of Human Resources/Payroll shall maintain the official hearing record and the hearing file. A party shall be provided a copy of the record, or part of the record, at the requesting party's expense.
- 3.6 The findings of fact, conclusions and the decision shall be based solely on the evidence received by the Staff Personnel Board. The burden of proof that grounds for NDSU's actions exist shall rest with NDSU and be satisfied by a preponderance of the evidence in the record considered as a whole.
- 3.7 The Staff Personnel Board may admit any evidence which is of probative value in determining the issues or if the interests of justice will best be served by admitting the evidence. Every reasonable effort shall be made to obtain the most reliable evidence available. The Staff Personnel Board shall grant adjournments to enable either party to investigate evidence as to which valid claim of surprise is made.
- 3.8 The employee shall be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The institution shall cooperate with the Staff Personnel Board in securing witnesses and making available documentary and other evidence. The employee and the institution shall have the right to confront and cross-examine all witnesses. Testimony may be taken by deposition, including deposition by telephone or witnesses may testify by telephone, facsimile, video or other electronic means, as long as such use does not substantially prejudice the rights of any party. Affidavits may be received into evidence upon stipulation of the parties.
- 3.9 The Staff Personnel Board's findings of fact, conclusions, and recommendations with supporting reasons, shall be reported, in writing, to the President, *the department head*, the employee or their representative. The Office of Human Resources/Payroll shall transmit the official hearing record and file to the President. If the institution's action was a notice of dismissal and if the Staff Personnel Board concludes that adequate cause for dismissal has been established, but that a lesser penalty would be more appropriate, it may be recommended with supporting reasons. The President shall make a final decision and provide written notice of the decision to the Staff Personnel Board, *the department head* and the employee within fifteen calendar days of receiving the report.

4. This Policy shall not apply to conduct by an NDSU employee which is alleged to constitute sexual harassment under Title IX of the Education Amendments of 1972, which is governed by NDSU Policy 156.1.

HISTORY:

New	April 1992
Amended	September 1994
Amended	August 1997
Amended	February 1998
Amended	October 1999
Amended	May 2005
Amended	December 2005
Housekeeping	June 15, 2018

Policy Change Cover Sheet

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SECTION: Policy Number and Name SECTION 327

EVALUATION OF ACADEMIC ADMINISTRATORS

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).
 - Is this a federal or state mandate? ☐ Yes ☒ No
 - Describe change: This policy makes a number of changes to ensure that the periodic reviews of academic administrators are shared with departments and other academic units under the purview of the administrator in a timely fashion. Changes were also made to more effectively ensure that periodic reviews are conducted in an unbiased format, and that the review process is used for developmental, rather than punitive, purposes. Changes were made to better define who should provide feedback, how to identify conflicts of interest, and the means through which feedback is collected.
2. This policy change was originated by (individual, office or committee/organization):
 - Office/Department/Name and the date submitted Commission on the Status of Women Faculty – 02/25/2020
 - Email address of the person who should be contacted with revisions: Daniel.Friesner@nds.edu

This portion will be completed by SCC Secretary (Heather Higgins-Dochtermann).
Note: Items routed as information by SCC will have date that policy was routed listed below.

3. This policy has been reviewed/passed by the following (include dates of official action):

Legal Review:

Responsible Office:

Senate Coordinating Committee:

Faculty Senate:

Staff Senate:

Student Government:

Provost:

President:

Style Definition: Normal

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North Dakota State University

Policy Manual

SECTION 327

EVALUATION OF ACADEMIC ADMINISTRATORS

SOURCE: NDSU President
Faculty Senate

1. Introduction

North Dakota State University believes every university employee deserves regular evaluation of his or her professional duties as they relate to a formal job description and the university's needs. This process should be transparent and constructive, including an acknowledgment of the employee's achievements, as well as an assessment of his or her ability to match the university's expectations.

This policy pertains to the provost, full-time vice provosts, academic vice presidents who report to the provost, academic deans, full-time academic associate and assistant deans, directors of academic offices, and chairs and heads. The evaluation process will include input from a variety of groups; faculty will play a major role in evaluation of academic administrators.

2. Annual Review

Each administrator covered by this policy will be reviewed annually by the administrative supervisor to whom that person reports in accordance with Policy 167. Supervisors shall solicit feedback from all relevant stakeholders (including, but not limited to, faculty and staff who interact with the administrator) as a part of the annual review process. Feedback shall be collected through a consistent means, such as letters, interviews or surveys.

3. Comprehensive Review

All administrators covered under this policy will undergo comprehensive review. The first comprehensive review will be completed by the end of the administrator's third year of appointment. Subsequent reviews will occur every five years, to be completed by the end of the fifth year after the prior review. Interim reviews may be initiated by the administrator or by the person to whom the administrator reports. If a review indicates substantial areas of concern or lack of performance, the next comprehensive review will be completed within two years of that review.

4. Common Review Criteria

Review criteria will be based on the administrator's job description and may include, but are not limited to, the following:

- a) leadership, strategic planning and assessment;
- b) administration and management;
- c) commitment to institutional values including equity and diversity, academic freedom, and shared governance;
- d) external relations;
- e) service to the broad mission of the University.

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The relative importance of evaluation areas will vary with administrator job description; therefore, some criteria above many not apply and others may be added.

5. Procedures

Comprehensive reviews will be initiated by the administrator's supervisor, and must be conducted according to the procedures dictated by the specific unit and/or College. Each College should post their specific procedures on their College website. The Comprehensive Review Procedures for Academic Administrators are to be used for the evaluation of Deans, Vice Provosts, and Academic Vice Presidents. Comprehensive Review Procedures for Academic Administrators.

Review committees – consisting of tenured faculty, relevant administrators, and staff – will be formed in accordance with the Comprehensive Review Procedures. The review committee shall prepare a report summarizing its findings for submission to the supervisor. The supervisor shall be responsible for assembling a review committee to collect and summarize feedback from stakeholders. Feedback on the committee's composition may be solicited from the administrator under review. The composition of the committee should reflect the diversity of stakeholders with whom the administrator being reviewed interacts, as well as diversity based on gender and other protected factors. Individuals with a conflict of interest are ineligible to serve on the review committee. Conflicts of interest exist if there is a past or current relationship that compromises, or could have the appearance of compromising, a faculty member's judgment with regard to the candidate. The following list, while not exhaustive, illustrates the types of relationships that constitute a conflict of interest:

- A family relationship
- A marital, life partner or dating/romantic/intimate relationship
- An advising relationship (e.g., having served as the administrator's PhD or postdoctoral advisor)
- A direct financial interest and/or relationship
- Any other relationship that would prevent a sound, unbiased decision

The review committee shall prepare a report summarizing its findings for submission to the supervisor. Prior to the committee disseminating the report's findings, the administrator being reviewed will have an opportunity to respond to the summary report in writing. The administrator has 14 days to respond to the report, which will be submitted to the administrator's supervisor and the review committee.

Within 60 days of the submission of the report, the supervisor shall attend an open forum or faculty meeting and provide a verbal summary of the review. Copies of the summary report and the administrator's response will not be posted on publicly available (i.e., non-password protected) websites.

The supervisor will provide a summary of the review to the unit.

HISTORY:

New	July 1990
Amended	April 1992
Amended	January 1995
Amended	January 1996
Amended	February 1997
Amended	May 1997

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Amended January 2003
Amended October 2007
Housekeeping February 14, 2011
Housekeeping July 12, 2013
Amended January 9, 2017

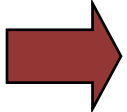
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Policy Change Cover Sheet

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SECTION: Policy 350.3: Board Regulations on Nonrenewal, Termination or Dismissal of Faculty

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).

- Is this a federal or state mandate? ☒ Yes ☐ No

Describe change: Title IX regulatory changes were announced by the U.S. Department of Education on May 6, 2020. These policy changes must be implemented by August 14, 2020.

2. This policy change was originated by (individual, office or committee/organization):

- Office/Department/Name and the date submitted:
- Email address of the person who should be contacted with revisions:

This portion will be completed by Heather Higgins-Dochtermann.

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Faculty Senate:

Staff Senate:

Student Government:

President's Cabinet:

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North Dakota State University

Policy Manual

SECTION 350.3

BOARD REGULATIONS ON NONRENEWAL, TERMINATION OR DISMISSAL OF FACULTY

SOURCE: SBHE Policy Manual, Section 605.1, 605.2, 605.3, 605.4

1. A probationary appointment may be terminated, without cause, with notice to the faculty member that the appointment will not be renewed.
 - a. Notice shall be given:
 - 1) At least 90 days prior to termination during the first year of probationary employment at the institution.
 - 2) At least 180 days prior to termination during the second year of probationary employment at the institution.
 - 3) At least one year prior to termination after two or more years of probationary employment at the institution.

If a faculty member is appointed during the academic year, then the initial contract shall indicate when the first academic year of service at the institution begins. For the purpose of this section, "academic year of service" means on a probationary appointment. The twelve months notice may be given at any point during the calendar year and the appointment terminates twelve months thereafter. (This NDSU language clarifies the interpretation that has been applied to this NDUS language throughout the University System.)

- b. A department chair, dean or other person authorized under institution policies to give such notice shall provide written notice of the decision, including a reference to the policy section pursuant to which the action is taken. The faculty member may within ten calendar days after receipt of the notice request a reconsideration by the deciding body or individual. The faculty member may incorporate a request for mediation in the request for reconsideration. The institution shall respond in writing to the faculty member within ten calendar days after receipt of the request.

Nonrenewal decisions shall be made in every instance by the University President. Recommendations for nonrenewal shall be initiated within the academic unit in accordance with Policy 352. Colleges shall have specific procedures for nonrenewal recommendations prior to the sixth year in accordance with Policy 352 and 350.3.2 (See below.). A department chair may initiate a review for nonrenewal at any time.

2. An institution may terminate a probationary appointment, effective at the end of any contract term, with no less than 90 days notice of nonrenewal, based upon a determination by the Board that a financial exigency exists which requires such action at an institution or institutions, or upon determination by the institution that such action is necessary because of loss of legislative appropriations, loss of institutional or program enrollment, consolidation of organizational units or program areas or elimination of courses. The notice of nonrenewal shall include a reference to the policy section pursuant to which the action is taken. When a probationary appointment is

terminated pursuant to this subsection, the provisions of subsection 1 do not apply.

3. A special appointment expires at the end of the term stated on the contract and may be renewed at the discretion of the institution. The decision to renew or not renew a special appointment is not reviewable under subsection 4 of this policy; it is, however, reviewable under Policy 353: Grievances – Faculty. Additionally, a special appointment may be terminated prior to the term stated on the contract. A decision to terminate a special appointment prior to the term stated on the contract is reviewable pursuant to subsection 4 of this policy. (See Policy 350.1, 4c.)
4. A faculty member on probationary or special appointment may, within twenty-one calendar days after receipt of notice of nonrenewal of a probationary appointment or termination of a special appointment or, if the faculty member requests reconsideration or the parties agree to mediation under paragraph b of subsection 1, within twenty-one calendar days of receipt of the results of the reconsideration or conclusion of mediation, request review of the decision and hearing by Standing Committee on Faculty Rights by following the process set forth in NDSU Policy 350.4. The request for review may be based on allegations that the institution failed to comply with applicable policies or gave the decision inadequate consideration, or that the nonrenewal decision violated (a) academic freedom, (b) rights guaranteed by the United States Constitution, or (c) terms of the employment contract or other written agreement. The allegation must be supported by a specification of the reasons why the decision violated these rights and a summary of the evidence supporting the allegation(s). “Inadequate consideration” means that the decision was arbitrary and capricious, or not the result of a conscientious and deliberative review process in which relevant evidence was considered and irrelevant evidence was excluded, or that the process lacked fundamental fairness.
5. A faculty member may terminate an appointment effective at the end of the term of the appointment by giving notice in writing at the earliest possible opportunity, but not later than May 15, or one month after receiving notification by the institution of the terms of an appointment for the coming academic year, whichever date occurs later. The faculty governance structure at an institution may recommend procedures permitting a faculty member to request a waiver of this deadline in case of hardship or for other good cause defined by those procedures. An institution may provide that failure without reasonable cause by a faculty member to return a contract by the time set forth in the contract shall constitute a resignation. Any return time so established by the contract shall be reasonable.

Resignation or Retirement

Generally accepted standards of professional ethics (see AAUP Statement on Recruitment and Resignation of Faculty Members) require faculty members who plan to resign or retire to give prompt notice in writing to their chair or supervisor. This includes prompt notice when employment is accepted elsewhere. Only in personal emergencies or for other compelling reasons, should faculty members leave during the academic year, except when this coincides with the expiration of their contractual obligations.

6. An institution may terminate an appointment of a tenured faculty member following a determination by the Board that a financial exigency exists which requires such action at an institution or institutions, or upon determination by the institution that such action is necessary because of loss of legislative appropriations, loss of institutional or program enrollment, consolidation of academic units or program areas, or elimination of courses. In such cases, significant consideration shall be given to length of service and tenure status in the retention of faculty members within the affected academic unit or program area, curriculum requirements, professional achievements, breadth of competence, and equal employment opportunity. A tenured faculty member terminated pursuant to this subsection shall be given written notice of termination,

including the reason(s) for the action, at least twelve months prior to the date of termination. Each institution shall establish procedures for implementing this policy.

- a. A tenured faculty member given notice of termination under this section may request that the institution circulate his or her vita to other academic units or program areas within the institution. In addition, the institution shall ensure that fair consideration is given to the faculty member, during the period of the terminal appointment, for vacant academic positions in the employing institution for which the faculty member is qualified. The faculty within any academic unit or program area shall have the major responsibility in determining qualifications for appointment therein. If a tenured faculty member accepts an appointment in a different academic unit or program area, the faculty member shall retain his or her tenure status, subject to approval of the Board.
- b. A position terminated under this section shall not be filled by a replacement within two years, unless the released faculty member has been offered appointment with tenure and a reasonable time within which to accept or decline it.
- c. The provisions of section 605.4 (NDSU 350.4) do not apply when a tenured faculty member is terminated under this subsection. The faculty member may, however, within twenty-one calendar days of receipt of notice of termination, file a request for review under processes established at the institution for that purpose.

- 1) *An administrative decision to terminate a tenured faculty member within the university shall be preceded by the following steps:*

- a) *Consultation with the dean of the college or equivalent unit involved regarding the justification for terminating tenured appointments.*
- b) *Consultation with the faculty and the relevant PTE committee in an academic unit or program regarding the termination of tenured appointments.*

- 2) *Once the administration decision is finalized following these consultations, the identification of faculty members for termination shall be made by the University president following recommendations by the dean.*

7. In accordance with section 305.1 of these policies, the faculty governance structure at each institution shall adopt procedures by which faculty participation is solicited before notice of termination is given any tenured faculty member pursuant to subsection 6. Faculty participation shall be solicited concerning:

- a. The extent to which there are grounds for termination of tenured appointments;
 - b. Judgments determining where within the overall academic program termination of appointments may occur; and
 - c. The procedure and criteria for identifying the individuals whose appointments are to be terminated.
- 1) *An administrative decision to terminate a tenured faculty member within the university shall be preceded by the following steps:*

- a) *Consultation with the Executive Committee of the Faculty Senate regarding the extent to which there are grounds for termination of tenured appointments.*
 - b) *Consultation with the Academic Affairs committee of the University Senate regarding the justification for terminating tenured appointments, if that is a consequence of the decisions; and*
 - c) *Consultation with the Academic Affairs committee, or the equivalent, of the college or equivalent unit involved regarding the justification for terminating tenured appointments.*
 - d) *Consultation with the faculty in an academic unit or program regarding the consequences of the decision.*
- 2) *Once the administration decision is finalized following these consultations, the identification of faculty members for termination shall be made by the University president following recommendations by the dean.*
8. A faculty member may be dismissed at any time for adequate cause. Adequate cause means: (a) demonstrated incompetence or dishonesty in teaching, research, or other professional activity related to institutional responsibilities, (b) continued or repeated unsatisfactory performance evaluations and failure to respond in a satisfactory manner to a recommended plan for improvement; (c) substantial and manifest neglect of duty, (d) conduct which substantially impairs the individual's fulfillment of his or her institutional responsibilities or the institutional responsibilities of others, (e) a physical or mental inability to perform assigned duties, provided that such action is consistent with laws prohibiting discrimination based upon disability, or (f) significant or continued violations of Board policy or institutional policy, provided that for violations of institutional policy the institution must notify the faculty member in advance in writing that violation would constitute grounds for dismissal, or the institutional policy must provide specifically for dismissal as a sanction.
- a) An authorized institution officer shall give written notice of intent to dismiss and specify the reasons for the action. The officer may, in the officer's discretion, also schedule a meeting with the faculty member to discuss the action. The notice shall state that the officer will forward to the institution president a recommendation to dismiss unless the faculty member, within twenty-one calendar days of receipt of the notice, requests a hearing before the Standing Committee on Faculty Rights. If the faculty member does not make a timely request for a hearing, the president, upon receipt of a recommendation to dismiss, shall make a decision and provide written notice and reasons for the action to the faculty member within ten business days of receipt of the recommendation.
- 1) *Written notice of the intent to terminate or dismiss shall be given to the faculty member.*
 - 2) *Appropriate administrative officers include the academic unit or program chair and the dean of the college or equivalent unit.*

The written notice of termination or dismissal from the President must in any event be given within 60 days of the initial written notice of intent to terminate or dismiss.

- b) A faculty member may, within twenty-one calendar days of receipt of notice of intent to forward to the institution president a recommendation to dismiss, request for a formal

hearing before the Standing Committee on Faculty Rights, pursuant to section 605.4. (NDSU 350.4)

c) Pending a final decision on dismissal for adequate cause, the faculty member may be suspended by the institution's president, or assigned to other duties in lieu of suspension, if it is reasonably determined that it is in the best interests of the faculty member or the institution to do so. The faculty member's salary and fringe benefits shall continue during a period of suspension. Salary and benefits shall be terminated upon a final decision by the institution president to dismiss the faculty member following conclusion of proceedings at the institution.

e)d) This section shall not apply to conduct by a faculty member which is alleged to constitute sexual harassment under Title IX of the Education Amendments of 1972, which is governed by NDSU Policy 156.1.

9. If the administration determines that the conduct of a faculty member, although not constituting ground for termination or dismissal, provides reasonable cause for imposition of a sanction, the administration shall inform the faculty member in writing of the sanction and the reasons for the sanction. A sanction means demotion, suspension (but not including suspension pending a dismissal or termination decision), salary reduction or loss of salary, or restriction or loss of privileges imposed as a formal disciplinary measure. A sanction does not include implementation of an improvement plan or performance action plan or negative comments in a performance review, letter of reprimand or other document placed in a personnel file; rights to respond to a performance review or a letter of reprimand or other document placed in a personnel file are set forth in N.D.C.C. , 54-06-21 and institution grievance procedures adopted under SBHE Policy 612. If the sanction is imposed following a hearing by the Standing Committee on Faculty Rights and based on the hearing record, there is no further review. If the sanction is imposed without a hearing, the faculty member may request review upon filing with the institution's president and chair or senior member of the Standing Committee on Faculty Rights a request for review and specifications of reasons within twenty-one calendar days of receipt of notice of imposition of a sanction. The institution shall have twenty-one calendar days following receipt of the request for review to file a response. The Standing Committee on Faculty Rights shall review the matter according to procedures established at the institution for that purpose and issue a written report within twenty-one calendar days of receipt of the institution's response and may make a recommendation to resolve the dispute, stating its reasons. The institution shall make its final decision upon reconsideration and provide written notice of that decision to the faculty member within ten business days of receipt of the report and recommendation of the Standing Committee on Faculty Rights. Upon filing of a request for review pursuant to this subsection, imposition of the sanction shall be suspended pending a final decision of the institution's president following conclusion of those proceedings.

HISTORY:

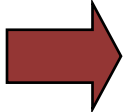
Replaces portions of Policy 605, SBHE Minutes April 25, 1995, pg 6554.

Amended	April 25, 1995
Amended	July 1, 1996
Amended	January 1997
Amended	October 1998
Amended	February 2001
Amended	June 2003
Amended	August 2003
Amended	March 2004
Amended	February 2005

Amended	November 2005
Amended	March 2010
Housekeeping	February 14, 2011
Housekeeping	February 27, 2012
Amended	March 5, 2012
Amended	June 22, 2015

Policy Change Cover Sheet

This form must be attached to each policy presented. All areas in **red**, including the header, must be completed; if not, it will be sent back to you for completion.



If the changes you are requesting include housekeeping, please submit those changes to ndsuscc@ndsusd.edu first so that a clean policy can be presented to the committees.

SECTION: Policy 350.4: Board Regulations on Hearings and Appeals

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).

- Is this a federal or state mandate? ☒ Yes ☐ No

Describe change: Title IX regulatory changes were announced by the U.S. Department of Education on May 6, 2020. These policy changes must be implemented by August 14, 2020.

2. This policy change was originated by (individual, office or committee/organization):

- Office/Department/Name and the date submitted:
- Email address of the person who should be contacted with revisions:

This portion will be completed by Heather Higgins-Dochtermann.

Note: Items routed as information by SCC will have date that policy was routed listed below.

3. This policy has been reviewed/passed by the following (include dates of official action):

Senate Coordinating Committee:

Faculty Senate:

Staff Senate:

Student Government:

President's Cabinet:

The formatting of this policy will be updated on the website once the content has final approval. Please do not make formatting changes on this copy. If you have suggestions on formatting, please route them to ndsuscc@ndsusd.edu. All suggestions will be considered, however due to policy format guidelines, they may not be possible. Thank you for your understanding!

North Dakota State University

Policy Manual

SECTION 350.4

BOARD REGULATIONS ON HEARINGS AND APPEALS

SOURCE: SBHE Policy Manual, Section 605.1, 605.2, 605.3, 605.4

1. A faculty member may request a hearing with the Standing Committee on Faculty Rights by filing a written notice, accompanied by a specification of the reasons or the grounds upon which the appeal is based, with the Committee chair or senior member of the Committee and the institution's president. The institution shall have ten business days from receipt by its president of the notice and specifications to file a response with the Committee Chair or senior member of the Committee and the faculty member.
2. The Committee shall appoint, at the expense of the institution according to institution procedures, a hearing officer with authority to conduct pre-hearing meetings, supervise exchange or collection of information, advise the Committee or preside over the hearing. The faculty member, the institution and their representatives shall comply with all reasonable directives and requests of the hearing officer appointed by the Committee. The institution shall provide necessary clerical support for the Committee, and upon request, for the hearing officer.
3. The Committee or the hearing officer shall hold a pre-hearing meeting or meetings in order to (a) simplify the issues, (b) effect stipulations of facts, (c) provide for the exchange of documentary or other information, or (d) achieve such other appropriate pre-hearing objectives as will make the hearing fair, effective, and expeditious. The faculty member, the institution and their representatives shall participate in pre-hearing meetings upon request and comply with the directives of the Committee or the hearing officer. (*"Discovery" is defined as the exchange or collection of information.*) Discovery shall be informal and formal depositions or interrogatories for the purposes of discovery are not permitted, except with agreement of the parties.
4. The Committee or the hearing officer shall serve written notice of hearing on the faculty member and the president or their representatives at least twenty calendar days prior to the hearing.
5. The faculty member and the institution may stipulate to a decision on the basis of the written statements, in which case the Committee shall make its decision on that basis.
6. During the proceedings the institution and the faculty member are entitled to have an administrative or academic advisor and counsel of their choice and at their own expense. Proceedings concerning the appointment or removal of a faculty member may, pursuant to N.D.C.C. Section 15-10-17, be closed, unless the faculty member requests that the proceedings be open, in which case the proceedings shall be open. Proceedings not concerning the appointment or removal of a faculty member, including proceedings concerning discipline not involving dismissal, shall be open.
7. A verbatim transcript of the hearing or hearings shall be made at the institution's expense and shall be accessible to both parties. A party shall be provided a copy of the record, or part of the record, upon request, at the institution's expense.

8. The findings of fact, conclusions and the decision shall be based solely on the evidence received by the Committee. In cases brought under section 605.3(4), the faculty member has the burden of persuasion to prove, by a preponderance of the evidence, that the action violated the faculty member's rights; in cases appealed pursuant to section 605.3(8) or (9), the burden of proof that grounds for the institution's action exist shall rest with the institution and be satisfied only by clear and convincing evidence in the record considered as a whole.
9. The Committee may admit any evidence which is of probative value in determining the issues or if the interests of justice will best be served by admitting the evidence. Every reasonable effort shall be made to obtain the most reliable evidence available. The Committee shall grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.
10. The faculty member shall be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. The institution shall cooperate with the Committee in securing witnesses and making available documentary and other evidence. The faculty member and the institution shall have the right to confront and cross-examine all witnesses. Testimony may be taken by deposition, including deposition by telephone, or witnesses may testify by telephone, facsimile, video or other electronic means, upon agreement of the parties or, absent an agreement, upon request of a party and determination by the Committee or hearing officer that such use does not substantially prejudice the rights of any party. Affidavits may be received into evidence upon stipulation of the parties.
11. The Committee's findings of fact, conclusions and recommendations, with supporting reasons, shall be reported, in writing, to the institution's president and the faculty member or the faculty member's representative. If the institution's action was a notice of dismissal and if the Committee concludes that adequate cause for dismissal has been established, but that a lesser penalty would be more appropriate, it may so recommend with supporting reasons. The president shall make a decision and provide written notice of the decision, including findings of fact and reasons or conclusions based on the hearing record, to the Committee and the faculty member within twenty calendar days of receiving the report. The faculty member or Committee may, within ten calendar days of the decision, submit a written response to the decision, to which the president may reply.

12. The decision of the president is final.

~~12-13.~~ This Policy shall not apply to appeals from a determination of responsibility regarding a formal complaint of sexual harassment under Title IX of the Education Amendments of 1972, which is governed by NDSU Policy 156.1.

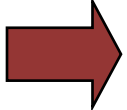
HISTORY:

Replaces portions of Policy 605, SBHE Minutes April 25, 1995, pg 6554.

Amended	April 25, 1995
Amended	March 1998
Amended	February 2001
Amended	August 2003
Amended	December 2005

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SECTION: Policy 601: Code of Student Conduct

1. Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).

- Is this a federal or state mandate? ☒ Yes ☐ No

Describe change: Title IX regulatory changes were announced by the U.S. Department of Education on May 6, 2020. These policy changes must be implemented by August 14, 2020.

2. This policy change was originated by (individual, office or committee/organization):

- Office/Department/Name and the date submitted: Dean of Students Office
- Email address of the person who should be contacted with revisions: emily.frazier@ndsuh.edu or casey.peterson@ndsuh.edu

This portion will be completed by Heather Higgins-Dochtermann.

Note: Items routed as information by SCC will have date that policy was routed listed below.

3. This policy has been reviewed/passed by the following (include dates of official action):

Senate Coordinating Committee:

Faculty Senate:

Staff Senate:

Student Government:

President's Cabinet:

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North Dakota State University

Policy Manual

SECTION 601

RIGHTS AND RESPONSIBILITIES OF COMMUNITY: A CODE OF STUDENT CONDUCT

SOURCE: NDSU President

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1. Introduction

1.1 General NDSU Values

North Dakota State University (NDSU) students have an opportunity to gain the most from their education when every member of the NDSU community takes responsibility to observe and help maintain a code of personal conduct that contributes to the educational effectiveness of the University. The Code of Student Conduct is derived from three core values that support an educationally purposeful environment:

- Respect for the NDSU community,
- Respect for the protection and rights of others, and
- Respect for students in the conduct resolution process.

The intent of this Code is to foster educational development of personal accountability and commitment to the community.

Respect for the NDSU Community

All NDSU stakeholders have a responsibility to respect the NDSU community. It is vital for all individuals to conduct themselves in a manner that does not negatively affect the welfare of themselves or others or the educational mission of the University. This includes promoting an

environment conducive to learning and nurturing a sense of shared and mutual community responsibility. Community responsibility also involves awareness of how personal decisions affect others.

Respect for the Protection and Rights of Others

A community respecting the protection and rights of others is necessary to provide a positive and enriching educational environment. Conduct that inhibits the educational process is of concern, whether it occurs on or off University premises.

Respect for Students in the Conduct Resolution Process

All NDSU students have identified rights within the Code of Student Conduct and as afforded by due process as outlined in this Code. The University will work with students in an educational and fair manner to assist them in reflecting upon and growing from their personal experiences.

1.2 General Complaint Procedures

Students may report general concerns, issues, and complaints utilizing the [Problems and Complaints](#) guidelines and form. The complaint procedure is designed to provide for orderly collection of information, to address students' complaints in a timely manner by appropriate University personnel, and to help students learn effective conflict resolution skills.

Students may also arrange a meeting with a staff member in the Student Affairs and Enrollment Management Office, Old Main 100, for advice and direction in resolving the problem. Complaints regarding student conduct covered in this Code will be resolved according to procedures described in this document.

1.3 Authority

The Vice Provost for Student Affairs and Enrollment Management (the "Vice Provost"), as delegated by the President, has responsibility for supervision of the process of handling the University's response to student violations of University rules and regulations, including the imposition of sanctions. All student non-academic conduct that violates University rules and regulations and conduct occurring off-campus that affects the University is considered the responsibility of the Vice Provost.

This authority includes the overall supervision of any administrative committees and boards charged with hearing complaints against students or student organizations for violation of those rules and regulations. Student organizations and University employees are required to inform the Vice Provost or designee whenever action is deemed necessary against a student or student organization.

The Code of Student Conduct contains statements of University policies relevant to student life. Development and enforcement of these standards of conduct are an educational

endeavor designed to foster students' personal, social, and ethical development. This document forms the basis for student conduct expectations as a member of the NDSU community. The enforcement of these standards serves to promote the protection of the rights, responsibilities, and health and safety of members of the NDSU community.

Conduct described in this Code is illustrative rather than exhaustive. The term "including" should be interpreted to mean "including, but not limited to." All ambiguities, inconsistencies, or clarifications of the Code will be resolved by the Vice Provost or designee. Faculty, staff, and students are encouraged to request clarification if a clause or rule is unclear. Final authority for interpretation of this Code lies with the Vice Provost.

Administrators identified in this document may designate one or more individuals to act on their behalf.

Questions should be referred to the Student Affairs and Enrollment Management Office, Old Main 100.

1.4 Individuals Covered Under this Code

For the purpose of this document, "student" is defined as any individual who has been admitted to the University, and is enrolled in one or more courses. Students may be held accountable under this Code for violations committed any time after they were admitted. Students are accountable for their guests' conduct; if a student's guest commits prohibited acts, the student may be sanctioned as if they had committed the violations themselves. Student organizations are held to the same conduct standards as individual students.

Additionally, individuals permitted by special status to utilize NDSU services may be held accountable under this Code. The University will use its discretion to determine if such action is necessary and/or appropriate.

Students may have varying roles within and outside of the University. As such, a student may be held accountable for prohibited conduct through multiple processes. Examples of other areas of accountability may include:

- Student athletes under the Student Athlete Code of Conduct
- Student leaders within student organizations
- Personnel actions with student employees
- Academic actions under academic programs' professional standards
- Criminal charges or civil suits

The University's procedures are educational and not criminal in nature, so separate proceedings do not constitute double jeopardy. The University may proceed under this Code before, during, or after the other NDSU administrative processes or legal proceedings. NDSU

does not typically wait for a court judgment prior to proceeding with University process. Findings under this Code may differ from judgments in criminal courts. Court judgments are not determinative of University findings.

2. Community Expectations

2.1 General Student Responsibilities

All students are expected to observe the University standards published in the [University Policy Manual](#). [Policy 601](#) outlines responsibilities that pertain specifically to students. However, students must follow all other University policies, procedures, contracts, or license agreements published elsewhere.

The University may address acts of prohibited conduct committed outside of University property when NDSU becomes aware of alleged Code violations through law enforcement or other third party reports.

2.2 Responsible Action Expectations

All students are encouraged to promote the well-being of themselves, fellow students, and others. If an individual needs emergency medical attention, particularly resulting from the use of alcohol or other drugs, it is critical that students take responsible action by calling an ambulance or other appropriate emergency response personnel (police, fire, etc.) to gain that assistance.

Responsible action includes:

1. **CALL** for help: In medical emergencies, immediate action should be taken by calling 9-1-1 either off or on campus. In non-emergency situations, students can also contact NDSU Police (701-231-8998) or notify Residence Life staff.
2. **STAY** with the individual until help arrives and notice has been given that assistance is no longer needed.
3. **COOPERATE** with responding staff or emergency personnel, including all requests for information and assistance.

Students/student organizations who take such responsible action, or for whom such action is taken, will not be subject to the student conduct process for alleged policy violations related to alcohol or drug use or minor policy violations, nor will the incident become part of the student's conduct record. However, students [including the student(s) needing assistance and reporter(s)] may be required to have an educational meeting with University personnel and/or complete an educational program. This protection may not apply if other conduct violations occurred within the same incident.

2.3 Student Conduct Communication

Student conduct communication will be sent to the student's email address as provided by the University. This address is considered the official form of communication for all purposes

and students are expected to monitor this account. (See [NDSU Policy 609, E-mail as an Official Communication Method to Students](#))

3. Prohibited Conduct

3.1 Violations of Law

Violation of local, state, or federal law is prohibited by this Code. The University reserves the right to address conduct occurring on or off campus that may be construed as potential or alleged violations.

3.2 Complicity in Prohibited Acts

Complicity in association with and/or participation in an act prohibited by this Code. To avoid being complicit in Code violations, students are expected to do one or more of the following:

- Personally confront those involved and stop the violation, except in cases of violence;
- Bring the violation to the awareness of a staff member; or
- Leave the scene of the violation, if not responsible for the space in which the violation is occurring.

3.3 Attempts to Commit Prohibited Acts

Attempting to commit prohibited acts is a violation of this Code and may be addressed as if the prohibited act had been committed.

3.4 Alcohol on NDSU Property

Regardless of a student's age, the manufacture, sale, transfer, purchase, transportation, possession, use or consumption of alcohol, and/or possession or display of empty alcohol beverage containers anywhere on NDSU owned or controlled property and/or sponsored or supervised events is prohibited.

3.5 Off Campus Alcohol

Illegal use or possession of alcohol off campus is prohibited including minor in possession/consumption/under the influence of alcohol, driving under the influence of alcohol, and public consumption of alcohol.

3.6 Drugs Other Than Alcohol

Possession, consumption, being under the influence, or transport of illegal drugs or any other controlled substances is prohibited except pursuant to a physician's, dentist's, or other authorized medical personnel's prescriptions (see next paragraph for information regarding medical marijuana). The manufacture, exchange, distribution, purchase, or sale of illegal drugs or controlled substances is prohibited. The possession of drug paraphernalia is prohibited.

Although North Dakota state law permits the use of medical marijuana, i.e., use by individuals possessing lawfully issued medical marijuana cards, federal laws prohibit marijuana use, possession, and/or cultivation at educational institutions and on the premises of other recipients of federal funds. The use, possession, or cultivation of marijuana for medical purposes is therefore not allowed in any NDSU housing or other University property, nor is it allowed at any University sponsored event or activity off campus.

3.7 Conduct While Under the Influence of Alcohol or Other Drugs

Being under the influence of alcohol or other drugs is prohibited when the student causes a disturbance or endangers, or may endanger, the safety of others, property, or themselves.

3.8 Alcohol at Student Organization Events

Sale of alcoholic beverages by students and student organizations is prohibited. This includes any action that can be remotely construed as an alcohol sale, such as charging admission to parties, passing the hat, selling empty cups, and selling drink tickets. Alcohol, if available, must be sold and served by licensed third party vendors.

Common sources or a bulk quantity of alcohol, such as cases or kegs, are not permitted at any student organization sponsored event, or in fraternity and/or sorority housing.

No activities or promotions shall encourage excessive and/or rapid consumption of alcoholic beverages. This includes contests, drinking games, and discounts or special pricing of alcoholic beverages. Use of alcohol at events is expected to be lawful and responsible.

Alcoholic beverages may not be used as awards or prizes in connection with events or activities. Prize coupons and/or gift cards donated by establishments with a liquor license must include the statement, "Not valid for purchase of alcohol."

Student organization or public funds may not be used for the purchase of alcoholic beverages or gift cards to alcohol establishments.

Recognized NDSU student organizations planning off campus events at a venue where alcohol may be present must complete and submit an [Alcohol Risk Management Form \(ARMA\)](#) and a guest list to the Student Activities Office, Memorial Union 120. Events involving alcohol must be closed events, intended only for organization membership and invited guests, and alcohol must be sold and served by a licensed third party vendor.

3.9 Advertising Related to Alcohol

Alcohol promotional activities, including advertising, shall not be associated with otherwise existing campus events, programs, or campus organizational functions on or off campus, and is prohibited. This includes novelty items, giveaways, and apparel associated with the event.

Advertising of establishments that sell alcohol must adhere to the following guidelines:

- Shall not include brand names, logos, prices, visual images, or verbal phrases that refer to consumption of alcoholic beverages;
- Shall not encourage any form of alcohol abuse or promote alcohol specials such as two for ones, happy hour drink specials, or any ads that encourage rapid and extensive consumption of alcohol;
- Shall not portray drinking as a solution to personal or academic problems or necessary for social, sexual, or academic success;
- Shall not associate consumption of alcoholic beverages with performance of tasks that require skilled reactions such as operation of motor vehicles or athletic performance; and
- Shall include a statement of low-risk such as “know when to say when” or “please use our products legally and in a responsible manner.”

For additional policy details, consult [NDSU Policy 155, Alcohol and Other Drugs: Unlawful and Unauthorized Use by Students and Employees](#).

3.10 Smoking

Smoking, including vaping, is prohibited on NDSU grounds and in University buildings, residence halls, apartments, and enclosed structures. See [NDSU Policy 153, Smoke-Free Facilities](#).

3.11 Animals

With the exception of animals authorized by NDSU or those defined as service animals under the Americans with Disabilities Act (ADA), privately owned animals are prohibited inside campus buildings. Animals in outdoor areas must be on a leash, must be under control of the owners or their designees at all times, and should not be left unattended. Owners are responsible for any health or safety issues that may arise due to the presence of these animals on University properties and at NDSU sponsored or supervised events. Questions may be directed to the Facilities Management Director, Thorson Maintenance Center, 701-231-7911. See [NDSU Policy 100.2, Use of Service and Assistance Animals](#).

3.12 Intellectual Property Infringement

Infringement of any intellectual property is prohibited. When reproducing or distributing information, students are responsible for observation of copyrights and other intellectual property rights of others by observing institutional and North Dakota University System (NDUS) policies and all state and federal laws. See [NDSU Policy 190, Employee Responsibility and Activities: Intellectual Property](#).

3.13 Use of NDSU's Name or Trademark

Use of NDSU's name without prior authorization is prohibited. See [NDSU Policy 700.1, Use of University Name](#).

3.14 Sale of Class Lecture Notes/Materials

Transferring class lecture notes or instructor provided materials for commercial purposes, unless approved by the course instructor, is prohibited. Note: This policy does not prevent note taking provided as part of an ADA accommodation.

3.15 Misuse of Proprietary Information

Unauthorized use or misuse of proprietary information, in any form, is prohibited.

“Proprietary” means property in which the University or its employees and/or students have a legal interest or responsibility to maintain confidentiality. See [NDSU Policy 343, Confidential Proprietary Information](#).

3.16 Computer Related Conduct

Failure to follow University acceptable use of electronic communication devices is prohibited. See [NDSU Policy 158; Acceptable Use of Electronic Communications Devices](#).

3.17 Deception/Falsification/Misrepresentation

Withholding information or providing false information is prohibited. This includes:

Misrepresentation or providing false identification

- Falsely representing an entity and/or committing or using the resources of an entity without proper authorization;
- Knowingly, intentionally, or recklessly making false accusations of prohibited conduct against another individual; and/or
- Altering, destroying, or falsifying evidence.

3.18 Financial Aid Misuse

Misuse of financial aid through fraud or abuse is prohibited.

3.19 Disruption of University Business

Disruption or obstruction of University business, facilities, and grounds, such that the function or service is materially or substantially disrupted or obstructed, is prohibited.

University business includes: teaching, research, administration, public service functions, meetings of University committees or boards, or any other authorized University activity or organization on or off University premises.

3.20 Failure to Comply

Failure to comply with the instructions or directions of all University and/or emergency personnel in the performance of their duties is prohibited. Such acts may include recklessly obstructing or delaying any University proceedings, providing misleading or false information during an investigation, resisting or fleeing a police officer, or failing to comply with assigned University directives or conduct sanctions.

3.21 Identification

Students are expected to carry University identification at all times. Failure to produce a University identification card upon request by any University personnel in the performance of their duties is prohibited.

3.22 Bribery

Offering, giving, receiving, or soliciting anything of value to persuade an individual to act in another's favor, is prohibited.

3.23 Arson

Unlawful or intentional damage or attempt to damage any real or personal property by fire or incendiary device is prohibited.

3.24 Burglary

Unlawful entry into a building or another structure with the intent to commit a felony or theft is prohibited.

3.25 Robbery

Taking or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of another by force or threat of force and/or violence or by putting another in fear of immediate harm is prohibited.

3.26 Motor Vehicle Theft

Theft or attempted theft of a motor vehicle is prohibited.

3.27 Theft of Property

Theft or removal of property belonging to another individual, the University, or any other entity is prohibited.

3.28 Theft of Services

Using University services to which one is not entitled is prohibited. This includes using campus laundry services intended only for campus residents, and the unauthorized use of University parking, dining, and/or printing services.

3.29 Possession of Stolen Property

Possession of goods that one knows or that any reasonable individual would realize were stolen is prohibited. This includes receiving, retaining, concealing, or disposing of property knowing that it was stolen.

3.30 Vandalism

The intentional destruction or defacement of property belonging to another individual, the University, or any other entity is prohibited. This includes writing on or tearing down bulletin

boards, spray painting or unauthorized chalking of buildings or sidewalks, and breaking or damaging property.

3.31 Trespassing

Entering and/or remaining in or on property to which a student does not have a legitimate right or purpose to enter or remain is prohibited. Such property may include vehicles, apartments, houses, fenced yards, construction sites, and/or other buildings or portions of buildings, such as roofs. Properties need not be specifically posted with No Trespass signs.

3.32 Unauthorized Sales, Solicitations, and Distribution of Materials

Unauthorized sales, solicitations, and/or distribution of leaflets, signs, or posters in residence halls, university apartments, or in any other campus buildings or property are prohibited. See [NDSU Policy 700, Services and Facilities Usage](#) and [NDSU Policy 154, Distribution of Literature](#), or contact:

Memorial Union

Director of Operations
Administrative Office, Room 246
Memorial Union

Residence Life Facilities

Associate Director of Residence Life
West Bison Court

Other Areas

Director of Facilities Management
Thorson Maintenance Center

3.33 Traffic Safety and Parking Regulations

Failure to follow University traffic safety and parking regulations is prohibited. See [NDSU Parking Regulations](#).

3.34 Unauthorized Entry/Use of Facilities

Unauthorized entry/use of facilities is prohibited. Examples of unauthorized entry and use include:

- Any University facility or portion thereof that has been reserved, restricted in use, or placed off limits;
- Any University facility after closing hours;
- Entry, use, or occupancy to spaces which students are not permitted, such as spaces limited by virtue of enrollment, employment, class schedule, and/or gender in facilities restricted by gender;

- All building roofs, fire escapes, steam tunnels, elevator shafts, equipment storage, mechanical rooms, and construction sites;
- Duplication, manufacture, possession, loaning, or use of any key/access card or unlocking device for use on University facilities, locks, or other property on University premises without proper authorization; and
- Entering a residential facility without being escorted by a resident or failure to escort non-residents.

3.35 Intimidation

Conduct in any form that involves an expressed or implied threat to an individual's personal safety, safety of property, academic efforts, employment, or participation in University sponsored activities is prohibited.

3.36 Unwanted Physical Contact

Unwanted physical contact by a student upon another is prohibited. Examples include kissing, hugging, and backrubs.

3.37 Physical Assault

Physical assault by a student on another is prohibited. Examples include use of physical force, violence, intoxicants, or other substances to restrict the freedom of action or movement of another, and/or endanger the health or safety of another, regardless if obvious or aggravated bodily injury is sustained.

3.38 Instigation/Provocation

The face-to-face use of personally abusive epithets that, when addressed to another, are inherently likely to provoke immediate violent reaction whether or not the reaction occurs is prohibited.

3.39 Noise Disturbances and Other Disorderly Conduct

Conduct that intentionally or recklessly creates a risk of public inconvenience, annoyance, or alarm without proper authority is prohibited. Examples include participating in or hosting noisy or loud parties/gatherings or other public disturbances on or off campus, making unreasonable noise, fighting, engaging in violent behavior, obstructing vehicular or pedestrian traffic, disturbing a lawful assembly, and streaking.

3.40 Discrimination, Harassment, and Retaliation

NDSU is fully committed to providing a safe and non-discriminatory learning, living, and working environment for all members of its university community. For complete information regarding discrimination, harassment, and retaliation please see [NDSU Policy 100, Equal Opportunity and Non-Discrimination](#), [NDSU Policy 162, Sexual and Gender-Based Harassment, Sexual Misconduct, and Title IX Policy](#), and [NDSU Policy 156, Discrimination, Harassment, and Retaliation Complaint Procedures](#).

Students are encouraged to report incidents or information related to discrimination, harassment, and retaliation as soon as possible. Any NDSU employee who becomes aware of a potential violation of NDSU Policy 100 involving students shall report the complaint or policy violation (see [Report Form](#)) either to the Title IX Coordinator/Equity Office or to the Student Affairs Office.

Title IX Coordinator/Equity Office
Old Main 201
Phone: 701-231-7708

Student Affairs and Enrollment Management Office
Old Main 100
Phone: 701-231-7701

3.41 Sexual and Gender-Based Harassment, Sexual Misconduct, and Title IX Compliance

NDSU strives to create a campus community free from sexual discrimination of any kind. For complete information regarding sexual misconduct and Title IX compliance, please see [NDSU Policy 162, Sexual and Gender-Based Harassment, Sexual Misconduct, and Title IX Policy](#).

Students are encouraged to report incidents or information related to sexual and gender-based harassment, sexual misconduct, and Title IX as soon as possible. Any NDSU employee who become aware of a potential violation of Policy 162 shall report the information (see [Report Form](#)) to the Title IX Coordinator/Equity Office or to the Student Affairs Office.

Title IX Coordinator/Equity Office
Old Main 201
Phone: 701-231-7708

Student Affairs and Enrollment Management Office
Old Main 100
Phone: 701-231-7701

3.42 Other Acts of Harassment

Any unwelcome action or any series of unwelcome actions that interfere with an individual's academic efforts, employment, personal safety, or participation in University sponsored co-curricular activities is prohibited.

3.43 Stalking

Stalking is prohibited. Stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct that would cause a reasonable individual to feel fear for the safety of self or others or to suffer substantial emotional distress. See [Policy 162](#).

3.44 Lewd or Obscene Conduct

Lewd or obscene behavior that infringes upon community standards with respect to sexuality is prohibited. Lewd behavior includes sexual acts in public places and exposing genitalia in nonconsensual circumstances.

3.45 Endangerment of Individuals

Endangerment of individuals is prohibited. Examples include:

- Willful failure to comply with orders issued by any emergency personnel during any real or perceived emergency condition or willful failure to follow safety standards;
- Tampering with any fire protection sign or device or any other emergency equipment, elevator controls, elevator shaft access, and/or other elevator equipment; and
- Creating a risk of bodily harm or creating the impression of risk of bodily harm to others.

3.46 Hazing

Hazing regardless of location, intent, or consent of participants is prohibited. Hazing is defined as any action or situation that implicitly or explicitly is required for student admission or affiliation with an organization or group. Such activities and situations include paddling in any form; creating excessive fatigue; forced consumption of any substance; forced road trips; morally degrading, demeaning, unsanitary, humiliating games or stunts; and harassment, ridicule, or other activities prohibited by law or University policy.

It is the responsibility of the organization and its leadership in conjunction with the (inter)national organization, if any, to protect potential members, members, or others associated with the organization from any hazing activity or practice conducted, condoned, or encouraged by the current members of the organization, alumni, or other associates.

3.47 Sporting Activity Restrictions

Use of skateboards, scooters, skates, hover boards, and bicycles inside any University facilities is prohibited. Use of water guns, water balloons, projectile launchers, and throwing of flying discs, balls, or other objects also are prohibited indoors, except when authorized. For guidance, contact the Director of [University Police and Safety Office](#).

3.48 Firearms/Explosives/Weapons

Unauthorized and/or illegal possession, display or use of firearms, explosives, or other weapons is prohibited.

- Firearms include airsoft guns, BB guns, dart guns, handguns, paint ball guns, pellet guns, rifles, shotguns, and stun guns or similar devices designed to deliver an electric shock.
- Explosives include bombs, fireworks, and other incendiary devices. Incendiary devices are defined as any flammable substance enclosed in a readily breakable container that can be equipped with an igniter of any type.

- Other weapons include martial arts implements, dangerous fuels and chemicals, and daggers, knives, sabers, swords, and bows and arrows. Any object may be considered a weapon when used to inflict or threaten infliction of bodily injury or property damage.

This policy shall not prohibit students or student organizations from possessing, storing, or using weapons at approved locations for the purpose of meeting requirements of educational programs and/or a student group recognized by the University. For authorization, contact the Director of the [University Police and Safety Office](#).

The [University Police and Safety Office](#) provides limited, temporary storage space for on-campus residents to store ammunition and sporting arms, such as those used for hunting and other shooting sports. Sporting arms should be checked in immediately upon arrival to NDSU and checked-out immediately prior to leaving the campus. An officer must be present for check-in/check-out. The [University Police and Safety Office](#) is open and available for check-in/check-out on a 24/7 basis.

4. Student Organizations/Activities

4.1 Responsibilities of Student Organizations and Affiliated University Groups

A student organization or an affiliated University group shall be deemed responsible for acts of prohibited conduct committed by individuals when such acts meet one or more of the following criteria:

- Are mandated, sponsored, approved, or encouraged by the group or organization, whether explicitly or implicitly;
- Take place in the context of a tradition, custom, or past practice of the group or organization; or
- Are reasonably foreseeable as a result of an activity carried on by the student organization or affiliated University group.

Students residing in properties owned by organizations or affiliated University groups will be held responsible for their conduct, conduct of their guests, and controlling access to their premises.

4.2 Student Organizations and Affiliated University Group Compliance with University Policy

Student organizations and affiliated University groups must comply with University policies, procedures, and regulations. Prohibited conduct includes misappropriation of funds, misuse of property, improper registration or misrepresentation of an organization or group, or abuse of student election regulations.

4.3 Conduct Resolution and Enforcement Procedures

For information concerning the Code resolution procedure(s) to be utilized, refer to Part 5.

Procedures and Part 6. Hearing Procedures for Potential Suspension or Expulsion Cases.

When a student organization or an affiliated University group is noticed with prohibited conduct, the presiding officer or students affiliated with the group shall be required to participate as representatives of the group in proceedings conducted under this Code.

In some cases, organizational officers or student members may also be noticed with individual violations related to the original incident involving the organization, in separate proceedings.

Because conduct records of student organizations are not protected by the Family Educational Rights and Privacy Act (FERPA), any individual is entitled to learn the results of conduct actions taken against student organizations as long as those disclosures do not compromise the privacy of any individual student's education record. In such situations, individual student names will be removed per federal protections.

4.4 Recognition

Recognition of student organizations is granted by the Congress of Student Organizations Commission and registered in the Student Activities Office in Memorial Union. Although student organizations are independent units which exist at NDSU and are not considered agents of the University, they are expected to uphold and comply with institutional and North Dakota University System (NDUS) policies and local, state, and federal laws.

Students and student organizations are free to examine and express opinions publicly and privately. They are free to support causes by orderly means that do not disrupt regular and essential operations of the University. At the same time, it should be made clear to the academic and the larger community that in their public expressions or demonstrations, students or student organizations speak only for themselves.

4.5 Membership

Membership in student organizations and affiliated University groups is limited to current students, faculty, and staff of NDSU.

4.6 Registration Requirements

The following information must be electronically filed with the Student Activities Office:

- Organization registration form,
- Privacy Statements by students in leadership positions, and
- Copy of the current constitution.

Students holding elected or appointed leadership positions must meet the following academic and good conduct eligibility standards:

- Must have attained and must maintain during the term of participation a minimal cumulative grade point average of 2.0 and may not be on academic probation.
- Must be an enrolled NDSU student.
- Must be in good conduct standing with the Student Affairs and Enrollment Management Office.

Additional information regarding eligibility for participation in co-curricular activities can be found on the Student Affairs and Enrollment Management [website](#).

4.7 National/International Affiliated Organizations

National/international affiliated organizations must uphold the policies and procedures of their national/international organizations in addition to University policies and procedures. University policies will supersede in the case of conflicting policies.

4.8 On and Off Campus Activities/Events

All on and off campus activities/events must follow all guidelines and procedures set by the Student Activities Office. For further information, contact the Student Activities Office, 120 Memorial Union or ndsusao@ndsus.edu.

4.9 Fraternities and Sororities

Membership

Social fraternities and sororities are chartered with a single institution and therefore are ineligible for Tri-College students; membership is limited to students enrolled at NDSU.

Residents of Greek Chapter Houses

Only initiated member(s) of that chapter currently enrolled at NDSU, or a house employee, may reside in the house during the fall and spring semesters without authorization from the Student Activities Office and chapter leadership.

Summer Rules

Fraternity and sorority presidents are to furnish names of the summer house managers to the Coordinator of Fraternity and Sorority Life, Student Activities Office. Chapter leadership is required to inform summer residents of University and fraternity/sorority life policies.

Alcohol and Other Drugs

- Fraternity Houses – No alcoholic beverages are permitted in common areas of chapter property at any time. Student members who are 21 years of age may consume alcohol that is less than 15% ABV in the privacy of their rooms/suites with no more than three others who are also 21 years of age or older. If multiple individuals live in one room/suite, all must be 21 years of age or older for alcohol to be present and/or consumed. Illegal drugs are not permitted on chapter or campus property at any time.

- Sorority Houses – National Panhellenic Conference policy requires alcohol free facilities for all house chapters. Illegal drugs are not permitted on chapter or campus property at any time.

Code Violations

As is the case with all University student organizations, fraternities and sororities will be held responsible for any conflicts with University policies occurring in chapter residences or at functions or social events sponsored by chapters.

5. Procedures

Resolution of Alleged Code Violations

The Code resolution process generally includes the following steps:

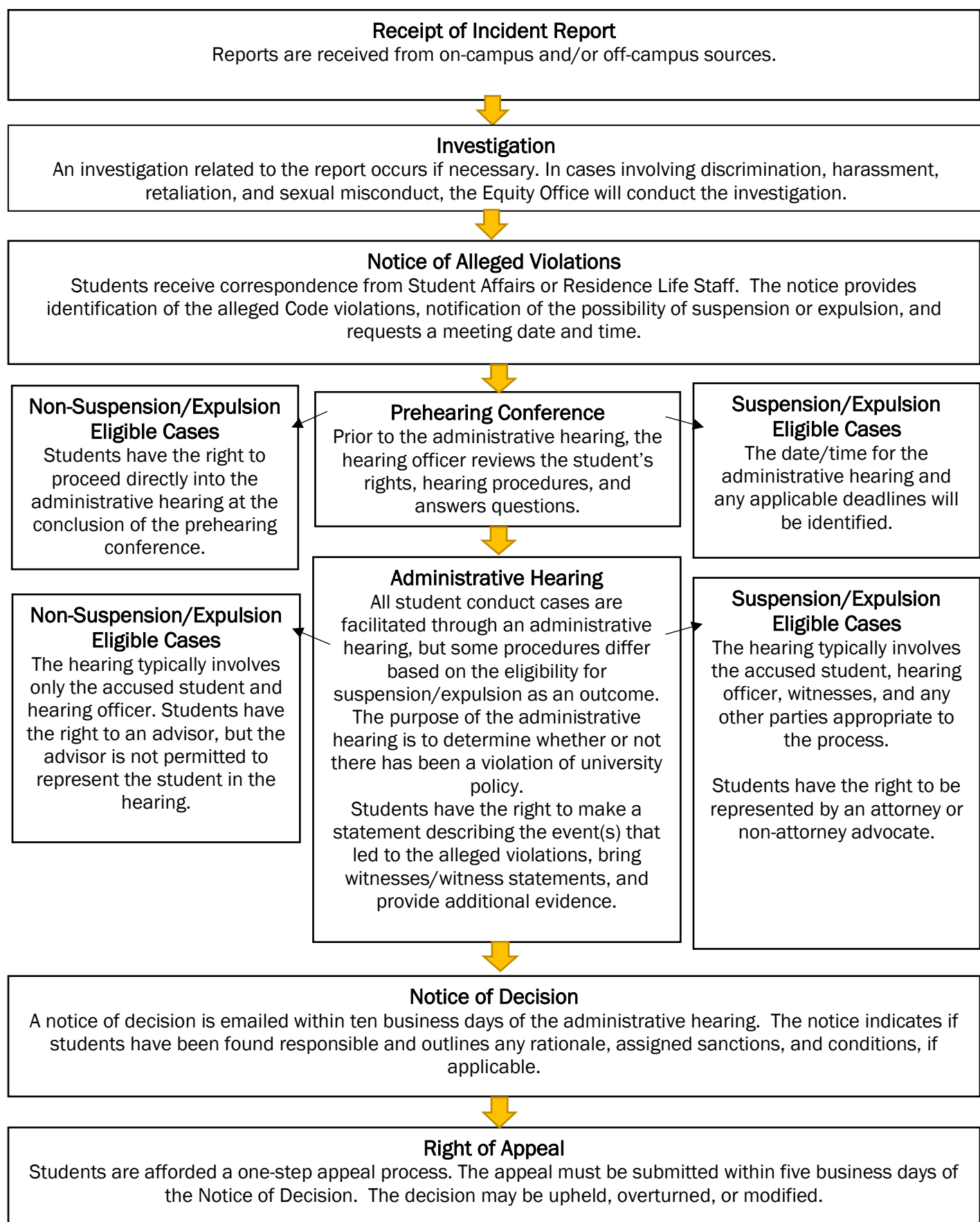
- Receipt of an incident report;
- Creation of a conduct file;
- Investigation of incident, if necessary;
- Implementation of interim or remedial measures, if necessary;
- Notice of alleged violations;
- Prehearing conference;
- Administrative hearing;
- Notice of decision;
- Right of appeal; and
- Notice of appeal decision.

This process is designed to:

- Provide for the education of students;
- Promote the health, safety, and well-being of University community members;
- Provide for fair inquiries concerning alleged violations of University policies;
- Determine whether or not any individual student has violated a University policy;
- Allow for consideration of extenuating or mitigating factors when a violation has been found to exist;
- Determine a resolution; and

Assist the student in reflecting upon and growing from their personal experiences. A detailed description of these steps is provided below. Cases related to discrimination, harassment, retaliation, and sexual misconduct may require some modification of the resolution process, as approved by the NDSU Title IX Coordinator. For additional information, see [NDSU Policy 156, Discrimination, Harassment, and Retaliation Complaint Procedures](#).

Resolution of Code of Student Conduct Violations Flowchart



occurred. Reports and investigations are used to determine whether a student is responsible

for alleged violations of the Code of Student Conduct.,

5.2 Reporting Alleged Code Violations

Alleged Code violations should be reported as soon as possible following the discovery of alleged prohibited conduct. Reports may be initiated by law enforcement, any member of the NDSU community, or other interested parties. An alleged violation should be reported to one of the following:

Student Affairs and Enrollment Office
Old Main 100
701-231-7701
ndsu.srr@ndsu.edu

Department of Residence Life
West Bison Court
701-231-7557
ndsu.residence.life@ndsu.edu

Equity Office
Old Main 201
701-231-7708
ndsu.eoaa@ndsu.edu

For cases of discrimination, harassment, retaliation, and sexual misconduct, see [Report Form](#).

5.3 Student Advisor Options

Students have the right to have an individual present who may act in an advisory capacity. Hearing advisors may not serve as witnesses, [unless otherwise allowed by Title IX regulations](#). If a student would like an advisor but needs assistance in identifying an appropriate individual, the Student Affairs and Enrollment Management Office will identify a trained staff or faculty member to work with the student.

If a student chooses to have an attorney present as his or her hearing advisor, NDSU may request legal representation be present as well. In cases that do not involve potential for suspension or expulsion, the role of an attorney shall be to advise his or her client, not to participate in the hearing, [unless otherwise allowed by Title IX regulations](#).

Any advisor, attorney, or non-attorney advocate who does not respect this provision may be cautioned by the hearing officer and, if they persist, may be asked to leave and the hearing will proceed.

In cases that could result in suspension or expulsion, attorneys or non-attorney advocates may fully participate, which means they may make opening and closing statements, examine and cross-examine witnesses present during the hearing, and provide the student with support, guidance, and advice throughout the process.

In Title IX cases, regardless of the potential of suspension or expulsion, the advisor will conduct the cross-examination.

5.4 Investigation

If an investigation is to take place, the student(s) will receive notice from the office conducting the investigation. The purpose of the investigation is to gather the facts, details and circumstances associated with a complaint. The investigation may include interviewing witnesses, reviewing documents to be considered, or completing other steps that will assist the Vice Provost or designee to determine whether action under the Code is warranted. Written findings of the investigation along with a recommendation for dismissal of the complaint or a recommendation of pursuing action under the Code will be produced by the investigator(s) and provided to the Student Affairs and Enrollment Management Office. If the report indicates reasonable cause to believe that a violation occurred, then the Vice Provost's designee may proceed with a Notice of Alleged Violations.

Upon receipt of notice, the University may investigate an allegation of Code violation, and may also initiate an investigation at the request of any member of the NDSU community or affected party. Designated, trained University personnel are authorized to investigate alleged violations of the Code.

All cases of discrimination, harassment, retaliation, and sexual misconduct involving a potential violation by a student shall be investigated by the Equity Office utilizing the procedures set forth in Sections 1 through 8.8 of [NDSU Policy 156](#). The Final Investigative Report as set forth in NDSU Policy 156 shall constitute the Investigation Determination for purposes of Section 5.7 below.

Any individual believed to have information relevant to an investigation may also be contacted and requested to make an appointment to discuss the matter. All information/evidence needs to be provided during the investigative phase in order to be considered for determining if a case will be dismissed or whether action will be pursued and in determining findings under the Code.

5.5 Interim or Remedial Measures

In the interest of safety and security, upon receipt of notice, interim or remedial measures may be implemented prior to a completed investigation or conduct hearing. Specific actions will be based on the circumstances of the allegations and may include no contact orders, housing/workplace changes, loss of privileges, and/or restricted access to campus.

5.6 Right to Entry

University policy on the privacy of student rooms stipulates that entry and search of University residences by University officials will be permitted only in one or more of the following instances:

- The student consents to the search;
- University officials responsible fear an imminent danger to health, safety, life, or property;
- The Vice Provost or designee provides a written administrative authorization specifying reasons for the search, objects of information sought, and area to be searched; or
- University officials fear imminent destruction of evidence relevant to a suspected violation of University policies.

When students are suspected of violating NDUS or NDSU Acceptable Use Policies, student computers, associated peripheral devices, and media storage devices may be taken into temporary custody on authority of the Information Technology Security staff to collect and preserve evidence of possible violations of local, state, or federal laws ([NDSU Policy 158, Acceptable Use of Electronic Communications Devices](#)). If additional questions remain, contact the [Information Technology Security Officer \(ITSO\)](#).

The University will not intervene between students and searches authorized under law by any law enforcement agencies. The University requires that University officials notify the Vice Provost and/or designee of searches when they become aware of searches by law enforcement.

The right to inspect residence hall rooms and university apartments without notice is reserved by the University for purposes of maintenance, cleaning, fire, personal safety and administering provisions of the license agreements. The University will provide reasonable notice, when possible. Such entry by the University shall not be regarded as a search, but is separately agreed to and authorized by the student through provisions in the residence hall or university apartment license agreements. Items that pose an imminent danger to health, safety, life, or property may be taken into temporary custody by residence life staff, university police, or other emergency personnel.

5.7 Notice of Alleged Violations

A written notice will be sent via authorized University email, to the responding student to arrange a prehearing conference.

The notice will include:

- Nature of the alleged violation;
- Date, time, and place of the alleged violation;
- Source of the information;

- Maximum sanction applicable if found in violation of the Code of Student Conduct;
- The student's right to be represented by an attorney or non-attorney advocate, at the student's expense, if suspension or expulsion are identified as potential sanctions; and
- Notice that a decision may be made in the student's absence based on the information currently available.

The student must be given notice in writing of a summary of the alleged violations and evidence to be presented in sufficient time to ensure an adequate opportunity to prepare for the hearing. The University will provide the student written notification of the hearing at least three business days prior to the hearing date. Students may consent to a shorter notice period, if they so choose.

5.8 Prehearing Conference

During the prehearing conference, the hearing officer will discuss the:

- Student's rights and responsibilities,
- Nature of the complaint and how the Code of Student Conduct may have been violated, and
- Process for resolution of alleged violations.

The student may request to proceed with an immediate hearing, except in cases that may result in suspension or expulsion.

5.9 Conduct Hearings

The Code of Student Conduct resolution process will be facilitated through an administrative hearing to determine whether or not there has been a violation of University policy. Although all cases are heard administratively, some procedures differ between cases that are or are not eligible for suspension/expulsion. The University reserves the right to determine procedures and appropriate individuals to include in the process. In an administrative hearing, the responding student has a right to make a written and/or oral statement describing the event(s) that lead to the alleged violations, bring witnesses or witness statements, and present evidence.

In all cases involving an allegation of discrimination, harassment, retaliation, or sexual misconduct, both reporting and responding students shall have equal procedural rights as detailed in [NDSU Policy 156, Discrimination, Harassment, and Retaliation Complaint Procedures](#).

University administrators will process conduct cases related to fraternities, sororities, and student organizations. Individual organizational boards will only address violations of organizational standards, not violations of this Code.

Non-Suspension/Expulsion Conduct Hearings

A non-suspension/expulsion conduct hearing is an administrative hearing that generally involves only the responding student and the hearing officer. The hearing officer is the individual appointed by the University to process an alleged violation of University policy. The hearing officer shall typically be a University employee; however, the University may, at its discretion, retain a non-employee to serve as a hearing officer at the University's expense.

Following the hearing, all applicable parties will receive a written notice of decision within 10 business days.

Suspension/Expulsion Conduct Hearings

A suspension/expulsion conduct hearing is an administrative hearing that involves the responding student, hearing officer, and any other individual(s) appropriate to the process. The hearing officer is the individual appointed by the University to process an alleged violation of University policy. The hearing officer shall typically be a University employee; however, the University may, at its discretion, retain a non-employee to serve as a hearing officer at the University's expense.

The hearing will be recorded and retained as part of the student's conduct file. The reporting (if applicable) and responding parties may access the recording, including for the preparation of an appeal. Requests for access should be directed to the Student Affairs and Enrollment Management Office. Following the hearing, all applicable parties will receive a written notice of decision within 10 business days.

5.10 Default Proceedings and Unresolved Alleged Code Violations

When a student/organization fails to appear for a hearing appointment without advance notice, or leaves the University with unresolved alleged violations, the hearing officer may make a decision in the student/organization's absence, providing the student/organization was issued adequate written notice of the date, time, and place of the scheduled hearing.

In certain cases, a registration hold may be placed on the student's records and the case will be archived until such time the student requests reactivation or a resolution of the pending matter.

5.11 Student Organizations in Default

In the event a student organization becomes inactive rather than appearing for a hearing, the default decision will typically be withdrawal of recognition granted by the Congress of Student Organizations Commission. In addition, officers of the organization at the time of the incident may face conduct proceedings individually (see Section 3.20, Failure to Comply) and may also be noticed with one or more of the original alleged violations of the Code arising from the alleged misconduct by the organization.

If the organization requests reactivation at a later date, the Vice Provost or designee will assign a hearing officer to meet with the student organization leadership to determine responsibility for the alleged violations, determine or recommend the appropriate sanction, and if that sanction is less than suspension or expulsion, will assess the need for any remedial measures.

5.12 Conflicts of Interest

Any hearing officer who has a conflicting interest in the particular case may not participate. Any party has the right to challenge the appointment of a hearing officer. Challenges must be submitted in writing to the Vice Provost or designee at least three business days prior to the hearing. If a party fails to raise an actual or reasonably perceived conflict by objecting three business days in advance, any objection is deemed to be waived. A hearing officer may not be disqualified solely based on his or her position in the University community.

5.13 Standard of Proof

The standard of proof is a “preponderance of the evidence” Which means the greater weight of the evidence indicates that a violation did occur. A student is found to have violated this Code when:

- The student admits to the violation, or
- Preponderance of the evidence indicates the student is in violation of the Code.

5.14 Witnesses/Witness Statements

Prior to the hearing, names of witnesses being called to the hearing must be submitted to the Student Affairs and Enrollment Management Office by a deadline set during the prehearing conference. All parties will be given reasonable opportunity to present witnesses and/or witness statements and will be allowed to address questions to any witnesses participating in the hearing. All questions will be addressed through the hearing officer; however, the hearing officer may allow for direct questioning of non-party witnesses. Witnesses will be given reasonable latitude to respond fully to questions and will only remain for the duration of their own testimonies.

Character witnesses are not permitted. The hearing officer will exclude any information from the hearing documentation that appears to be a character statement rather than facts or evidence related to the case.

5.15 Evidence

In cases that involve an investigation, all evidence is to be provided during the investigation. All parties will be given reasonable opportunity to present any written or oral information, documentation, or other evidence that is relevant in determining responsibility.

Due to the hearing being an educational process, formal rules of evidence do not apply. For

this reason, hearsay evidence may be permitted. Hearsay evidence refers to testimony given by a witness who speaks about information received from others, rather than information given directly by that witness. The value of such evidence is left to the discretion of each hearing officer.

5.16 Self Incrimination

Parties shall not be compelled to incriminate themselves by being obligated to testify that they engaged in conduct constituting a violation of this Code and/or local, state, or federal law.

5.17 Closed Hearings

All hearings are generally closed except to those who are part of the proceedings. The Vice Provost or designee may permit a limited number of NDSU personnel to be present as observers for the purpose of training. Other exceptions may also be made as deemed appropriate by the Vice Provost or designee.

5.18 Appeals

Students sanctioned for violations of any part of this Code of Student Conduct or relevant University policies may appeal. Reporting (if applicable) and responding students are limited to one appeal and that decision is final (see Section 8. Appeal Procedures).

6. Hearing Procedures for Suspension or Expulsion Cases

6.1 Introduction

With all parties present, the hearing officer will call the meeting to order and ask all parties participating in the hearing to introduce themselves and identify their role in the proceedings. The hearing officer will describe the general outline of the hearing and read the following honesty statement:

Honesty Statement

The University expects that all information presented in this hearing will be true and correct to the best of each participant's knowledge. If students willfully provide false information, they will be in violation of NDSU's Code of Student Conduct. As a result, they may also be subject to additional disciplinary action. Dishonest behavior by any faculty or staff members will be reported to supervisors for any necessary disciplinary action.

If a student is represented by an attorney or non-attorney advocate, the representative has the ability to fully participate in the hearing as indicated in section 5.3 Student Advisor Options. Hearing advisors, attorneys, and/or non-attorney advocates will be required to sign a confidentiality statement pertaining to information about all parties involved in the hearing. The hearing officer will dismiss witnesses until they are called to speak.

6.2 Case Presentation and Response

The hearing officer or designee will outline the process for presentation of the case. The responding and/or reporting parties will be permitted to respond to the alleged violations and present information that is relevant in determining whether the student violated one or more sections of the Code. The hearing officer is responsible for determining relevancy.

6.3 Questioning of Witnesses and Parties

All parties will be allowed to present witnesses who may be asked questions by any of the other parties. All questions will be directed to the hearing officer who will determine reasonableness and relevancy to the hearing. The hearing officer will seek clarification if necessary and request a response. As appropriate, the hearing officer may allow direct questioning of witnesses and parties, with the right to rescind the permission at any time.

6.4 Closing Statements

The reporting and/or responding parties (and investigator if applicable) will have an opportunity to make a closing statement.

6.5 Notice of Decision

The hearing officer will provide written notice of decision to the responding student (and reporting party if applicable). The written notice will include the findings, rationale, sanctions, and conditions for continued enrollment or re-enrollment, if any. The notice will generally be provided within 10 business days following the hearing. The Vice Provost may grant time extensions, if necessary.

7. Sanctions and Conditions

A sanction is a consequence placed upon any student for violations of specified University policies. Sanctions help define the student's relationship with the University in the context of current and potential future conduct, including a notice that further violations may lead to more severe conduct sanctions.

If a student is found not responsible for the alleged Code violation(s), no disciplinary action will be taken against the responding student. If a student is found responsible for one or more alleged Code violations, a sanction may be imposed. Sanctions may not include suspension or expulsion unless the student receives prior written notice that the case was serious enough to warrant suspension or expulsion. The sanctions listed below are assigned based on the severity of the incident and/or past conduct history:

- Written warning,
- Conduct probation,
- Supervised conduct probation,
- Conduct suspension, or
- Conduct expulsion.

The hearing officer will issue the written decision within 10 business days from the date of hearing. Sanctions of suspension are noted in the student's transcript throughout the duration of the suspension period, while sanctions of expulsion remain permanently.

When certain mitigating circumstances exist, such as an extended period of time between the incident and reenrollment, a finding of responsibility may result in no sanctions imposed.

With each sanction, conditions may be assigned. In addition, notification may be given to other University officials as necessary. Conditions include:

- Alcohol or other drug programming, evaluation, and/or testing;
- Written assignments;
- Participation in a specific activity or project;
- Restricted access;
- Loss of privileges;
- No contact orders; and/or
- Restitution.

In assigning a sanction and/or conditions for inappropriate student conduct, the hearing officer, in consultation with the Vice Provost designee, will consider factors, including:

- Facts of the case as presented from all relevant sources, including the parties;
- Existence of any physical evidence or written or oral information provided by the parties;
- Type and severity of the offense;
- Impact on the reporting party (if applicable), the educational community, and its members;
- Previous incidents of prohibited conduct committed by the responding student; and
- The ability and/or willingness of the responding student to accept responsibility.

Any Code violation that is determined to have been motivated by bias based on a protected class may result in enhanced sanctions above those typically assigned for the same violations when not motivated by bias. See [NDSU Policy 100, Equal Opportunity and Non-Discrimination Policy](#).

Repeated violations of this Code are relevant in determining a student's continued membership in the University community. Progressively more severe sanctions, including suspension or expulsion from the University, may be assigned, depending on the nature of the violation(s).

Parents or guardians of students under 21 may be contacted by an NDSU administrator following alcohol and/or other drug related incidents.

7.1 Sanctions

Written Warning

A warning is written notification that subsequent Code violations will typically result in more

severe sanctions.

Conduct Probation

Conduct probation is written notification of a specified period of review and observation during which the student must demonstrate the ability to comply with University policies; local, state, and federal laws; and any other conditions that have been assigned in writing. The specific terms of the probation will be determined on a case-by-case basis. Further Code violations may result in additional sanctions, including suspension or expulsion.

Supervised Conduct Probation

Supervised conduct probation is written notification of a specified period of review and observation during which the student must demonstrate the ability to comply with University policies and local, state, and federal laws. Supervised conduct probation requires meetings with a designated NDSU employee to monitor progress in behavioral, academic, social, vocational, and other areas of the student's life. The supervisor may assign educational tasks and/or projects as deemed necessary and appropriate to assist the student in personal growth. Further Code violations may result in additional sanctions, including suspension or expulsion.

Conduct Suspension

Conduct suspension is written notification that status as an enrolled student or registered student organization has been terminated. This termination is for a specified period of time not to exceed two academic years. In cases of crimes of violence, hate crimes, and/or Title IX related violations, the Vice Provost may specify a longer period of suspension.

- A student may not re-enroll at NDSU during the period of conduct suspension.
- The student's eligibility for any refund of tuition/fees will be subject to the University's normal withdrawal policy.
- The notice of conduct suspension will include the conditions for readmission that must be met prior to application for readmission. Students may obtain information regarding reactivation from Registration and Records or online through [One Stop](#). A meeting with a member of the Student Affairs and Enrollment Management staff may be required prior to acceptance of the student's application for readmission.
- The student's transcript will carry a notation "may not register for nonacademic reasons <effective date range>" without further explanation. Upon completion of the suspension, the notation will be removed by the University.
- A student who has been suspended must vacate residence life facilities within the time frame established in the written notice of the conduct suspension.
- In addition to being ineligible for enrollment, a student is also ineligible for employment with NDSU.
- A student who has been suspended is restricted from the NDSU campus during the specified period of suspension. The student will also be required to obtain prior written

permission from the Vice Provost or designee, before being on any portion of the NDSU campus during the period of suspension. Approval is generally granted only to permit a student to conduct business related to the University.

- Conduct suspension is a permanent conduct record, which means it may be retained indefinitely at the discretion of the Vice Provost, but not less than seven (7) years.
- Student organizations placed on suspension may have all rights and privileges provided by CSO revoked for the duration of their suspension. In order to regain all rights and privileges, the student organization is required to comply with and complete any and all sanctions and conditions.

Conduct Expulsion

Expulsion is written notification that the student is permanently ineligible to return to the University. The expulsion will be recorded on the student's transcript as "may not register for nonacademic reasons" and is a permanent record.

Conduct expulsion is a permanent conduct record, which means it will be retained indefinitely at the discretion of the Vice Provost, but not less than seven (7) years.

A student who has been expelled is restricted from the NDSU campus indefinitely.

Written requests for exceptions to this restriction may be directed to the Vice Provost or designee; however, approval is generally only granted for the purpose of conducting official University business. Requests for readmission will not be approved.

7.2 Conditions Written Assignments

Students may be required to complete written assignments as a means of reflecting and/or learning more about a particular topic.

Participation in a Specific Activity or Project

A student may be required to participate in a specific activity or project, such as public service, an educational class, meeting with a designated University official, and/or other assignment.

Loss of Privileges

A student may be denied various privileges associated with being a student at NDSU. Such privileges may include residing in, visiting, or accessing University property and facilities and participating in University events and/or student organizations.

No Contact Order

Students may be prohibited from direct or indirect physical and/or verbal contact with another individual or group. Reasonable restrictions to protect the safety and welfare of others may also be imposed. These include any and all forms of communication, access to University owned or controlled locations, and specified minimum distances.

Restitution

A student may be required to repair, pay the cost for repair, or pay for cost of replacement of any university or state property damaged by the student. In each case, the goal will be to return the damaged property to its existing condition at the time of damage. The determination of the method used to calculate restitution shall be the responsibility of the hearing officer, taking into consideration the fair market value or cost to repair the damaged item(s).

Alcohol / Drug Evaluation and/or Testing

The University reserves the right to require alcohol/drug evaluation and/or testing as a condition of enrollment or continued enrollment when:

- A student's conduct endangers or may endanger the safety of themselves, others, or property, and/or
- A pattern of misconduct has been demonstrated by a student.

8. Appeal Procedures

Students sanctioned for violations of this Code may make one appeal. Cases resulting in suspension or expulsion are appealed to the Vice Provost or designee. All other appeals are addressed to the Vice Provost or designee, or an administrator of Residence Life, depending upon who served as the hearing officer.

In all cases involving an allegation of discrimination, harassment, retaliation, or sexual misconduct, the reporting party is also allowed to file an appeal within the same parameters identified in 8.2. In these cases, an appeal could result in a different decision regarding the finding of responsible or not responsible and/or stronger, the same, or lesser sanctions than originally imposed.

8.1 Deadline for Appeals

An appeal of any conduct process decision must be made in writing within five business days following the date the sanction notice is provided to the student. In extraordinary circumstances, the Vice Provost may grant time extensions. The University reserves the right, however, to reduce the time allowed for a student appeal in cases that may have the potential to result in harm to an individual and/or property. The reduced time for appeal will be specified in the decision letter along with the rationale for allowing reduced time for an appeal. The appeal must be written by the student and shall contain the student's name, date of the decision or action, and reason(s) for the appeal.

8.2 Appeal Documentation

Appeals must be submitted to the appeal officer specified in the decision letter using the designated [appeal form](#). The documentation must specify in detail one or more of the following bases of appeal:

- The severity of the sanction was not consistent with the severity of the offense,
- The finding of the Code having been violated or not was not substantiated by the evidence, and/or
- The student's due process rights as outlined in this Code were violated, which materially or substantially impacted the decision. Those rights believed to be violated must be specified.

A copy of an appeal will be given to the other party who will have the opportunity to respond. Students will have no more than five business days to submit their response to the other party's appeal; however, the response cannot include an appeal if the time period for appeal has already expired. In cases that only involve a responding student, the appeal officer may not increase the sanctions/actions imposed by the hearing officer.

8.3 Emergency Provisions

Normally a properly filed notice of appeal suspends the imposition of sanctions until the appeal is decided; however, some emergency provisions may be maintained throughout the appeal to protect an individual and/or property. Such provisions will be explained in the original letter to the student outlining the decision, along with the rationale for maintaining those emergency provisions throughout the appeal.

8.4 Review

The appeal officer will review the written appeal documentation/response to appeal from the student(s) and materials from the original hearing, including the recording. In reviewing the appropriateness of sanctions, the student's entire conduct file may be considered.

8.5 Appeal Advisory Board

The appeal officer reserves the right to appoint an appeal advisory board to review appeals. In such instances, the appointed advisory board will make a recommendation that the appeal officer may accept or reject. The decision of the appeal officer will generally be issued within 10 business days of receiving the recommendation from the advisory board and that decision will be final.

8.6 Decision/Sanction

After reviewing appeal materials, the appeal officer may decide to do one of the following:

- Uphold the decision,
- Remand the case back to the original hearing officer,
- Adjust the sanction, or
- Assign a new hearing officer.

The decision on the appeal will generally be made within 10 business days of receipt of the

appeal, but may take longer during University recesses or in the event of complex cases.

9. Special Circumstances and Conditions

9.1 Registration/Graduation Hold

If a student (new, current, or returning) fails to respond to a request to meet to discuss an alleged violation of this Code, or fails to comply with sanctions and conditions assigned as a result of being found responsible for a violation of this Code, a hold may be placed on the student's eligibility to register or the student's current registration may be canceled. If registration is canceled, eligibility for any refund of tuition/fees will be subject to the University's withdrawal policy.

Students may not be permitted to graduate or officially withdraw from NDSU while disciplinary action is pending. If the student withdraws before NDSU becomes aware of the potential violation of this Code, the student's educational records may be placed on hold and the allegations must be resolved prior to the student's readmission.

9.2 Returning and/or New Students

If a student, during a period of non-enrollment, commits an act that violates this Code, a registration hold may be placed to prevent the student's registration until a hearing may be held on that matter. The student may be notified about the hold at the time the University is first notified about the incident, or notice may be provided when the student subsequently requests enrollment. In addition, a hearing officer, in consultation with the Vice Provost or designee, may place a registration hold to deny a student the eligibility to register. Reasons may include the student's arrest or when criminal charges are pending against the student, serious concerns arise about the health or safety of the student or others in the University community, and/or as otherwise provided by [NDSU Policy 607, Admission & Re-Enrollment Safety Risks; Background Checks](#).

9.3 Rehearing Requests for Cases Resulting in Suspension or Expulsion

Any student who is suspended or expelled has the right to request a reconsideration of the case based on new or contradictory evidence that was not available at the time of the original hearing, and/or evidence that the student was not afforded due process as outlined in this Code. A request for reconsideration of the case should be submitted to the Vice Provost. Information that may be considered may include police reports, transcripts of legal proceedings, and the outcome of any civil or criminal proceeding directly related to the appeal. [Student grievance proceedings based on allegations of Title IX violations are governed by NDSU Policy 156.1.](#)

9.4 Temporary Emergency Suspension

A student may be temporarily suspended by the Vice Provost, pending a hearing, when the student's actions or threats of action indicate a serious threat to the welfare and/or safety of an individual or property. No hearing will be required before a temporary suspension is imposed; however, one will be convened within five business days following the suspension. In unique circumstances, any alteration to this timeline will be at the discretion of the Vice Provost. If the suspension is upheld, the suspension remains subject to the rules outlined in Conduct Suspension (see Section 7.1 Sanctions) and remains a matter of permanent conduct record.

9.5 Administrative Withdrawal

A student may be subject to administrative withdrawal if it is determined by compelling evidence that the student's actions or threats of action indicate a serious threat to the welfare and/or safety of persons or property.

Students wishing to return to the University may obtain information regarding reactivation from Registration and Records or online through [One Stop](#). A meeting with a member of the Student Affairs staff also will be required prior to acceptance of the student's application for readmission.

9.6 Negotiated Withdrawal

In rare circumstances, a student may be allowed to negotiate a mutually agreed upon withdrawal for a specified period of time. Other conditions may also need to be met prior to application for reenrollment. Such conditions will be provided to the student in writing at the time of the negotiated withdrawal.

A student requesting readmission will be required to meet with the Vice Provost or designee prior to approval of the student's petition for readmission. The student must be academically eligible for readmission to NDSU and may be required to pass a criminal background check at the student's expense prior to readmission.

9.7 Crimes of Violence

The term "crime of violence" means:

- An offense that has an element of use, attempted use, or threatened use of physical violence against an individual or property of another; or
- Any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against an individual or property of another may be used in the course of committing the offense.

Examples include arson, auto theft, assault, aggravated assault, burglary, kidnapping/abduction, manslaughter, murder, resisting arrest through the use or threat of physical force, robbery, vandalism, and sexual offenses.

In cases of crimes of violence, the Vice Provost may increase, but not decrease, timelines stated in the Code and may determine by whom the case is heard.

Individuals who are victims of crimes of violence have a right to be notified of the outcome of complaint resolution procedures, upon written request to the Vice Provost. If the victim is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim.

Notification shall be limited to the responsible student(s), part(s) of the Code violated, and assigned sanction(s). Individuals in receipt of this information may assume personal civil liability for releasing this information to others.

10. Conduct Records

10.1 Disclosure

All conduct records are confidential and may not be disclosed in whole or in part except as provided under law, including the Family Education Rights and Privacy Act (FERPA), the USA Patriot Act, and lawful court orders.

The conduct record shall be separate from the student's academic record, but shall be considered a part of the student's educational record. All conduct records shall be retained in the Student Affairs and Enrollment Management Office or other offices as authorized by the Vice Provost.

As provided under FERPA, information concerning Code violations for alcohol and/or drugs may be shared with parents. In addition, Code violations may also be shared with some academic departments upon request and as necessary to fulfill their professional obligations. A procedure exists between Student Affairs and Enrollment Management and Athletics that provides for full exchange of information concerning Code violations by student athletes with the pertinent athletic personnel and the Athletic Director.

10.2 Retention and Destruction

In cases in which a student is found not responsible, all records related to that student's cumulative conduct history will be retained for seven years from the date of the incident.

Sanctions Less than Suspension or Expulsion

In cases in which a student is found in violation and receives a sanction less than suspension or expulsion, with or without additional conditions, all records related to that student's cumulative conduct history will be retained for seven years from the date of the student's last conduct violation. Student conduct records may be retained indefinitely at the discretion of the Vice Provost.

Suspension or Expulsion

In cases in which a student is found in violation and receives a sanction of suspension, conduct records may be retained indefinitely at the discretion of the Vice Provost, but not less than seven years. In cases in which a student is found in violation and receives a sanction of expulsion, conduct records will be retained on a permanent basis.

Student Organization Records

Records of conduct violations involving student organizations will be retained for seven years following the date of the incident. Student organization conduct records may be retained indefinitely at the discretion of the Vice Provost.

FINAL NOTE:

There are a number of additional University policies that pertain to students and are too numerous to include within the text of this Code. Students are urged to read these documents that may be found at the locations listed below. NDSU students are responsible for knowing the contents of all NDSU policies and may be held accountable under A Code of Student Conduct for any violations of policy.

Related University Policy Statements

[Bank and Investment Accounts for Student Organization Bank Accounts](#)

[License Agreement for University Apartments](#)

[NDSU Policy 154.1, Sale or Distribution of Racially and Sexually Offensive Material](#)

[NDSU Policy 155 Alcohol and Other Drugs: Unlawful and Unauthorized Use by Students and Employees](#)

[NDSU Policy 162.1, Consensual Relationships](#)

[NDSU Policy 703, NDSU Card Terms and Conditions](#)

[NDSU Policy 513, NDSU Collection Policy](#)

[SBHE Policy 401.2, Political Activities](#)

[SBHE Policy 506.1 Immunization](#)

[Student Organization Guidelines and Procedures](#)

HISTORY:

New	
Amended	September 27, 1999
Amended	May 31, 2011
Amended	August 23, 2014
Amended	September 18, 2015
Housekeeping	October 6, 2015
Housekeeping	June 23, 2017
Amended	August 22, 2017

