

Meeting Agenda

March 21, 2022

- I. Call to Order.
- II. Attendance.
- III. Adoption of the Agenda.
- IV. Approval of Meeting Minutes from February 14, 2022.
- V. Announcements.
 1. Dean Bresciani, President
 2. Margaret Fitzgerald, Provost
 3. Florin Salajan, Faculty Senate President
 4. Dennis Cooley, Faculty Senate Past-President
 5. Anastassiya Andrianova, Faculty Senate President-Elect
 6. Joshua Schroetter, Staff Senate President
 7. Laura Friedmann, Student Body Vice-President
 8. Philip Hunt, Registrar
 9. Alicia Laferriere, NDSU Bookstore
- VI. Committee and Other Reports.
 1. Budget Committee report
- VII. Consent Agenda.
 1. UCC Report
 2. Policy 156
 3. Policy 156.1
 4. Policy 162
 5. Policy 612
- VIII. Unfinished Business.
- IX. General Order.
- X. New Business.
 1. Resolution in Support of Ukrainian University Students, Faculty, and Staff
- XI. Adjournment.

Meeting Minutes

February 14, 2022

- I. Call to Order: 3:02pm
- II. Attendance: See Appendix 1.
- III. Adoption of the Agenda: Limb/Overton
 - Approved unanimously
- IV. Approval of Meeting Minutes from January 24, 2022
 - Approved by unanimous consent
- V. Announcements.
 - Dean Bresciani, President
 - The NDSU capital campaign raised over \$586,000,000, which exceeds the goal of \$400,000,000 set by the fundraising committee. It is an extraordinary performance in the state. No one has ever raised this much before. NDSU is consistently receiving over \$60 million each year from donors and sponsors. The sponsors and donors come from across the community.
 - Most of the gifts are endowed gifts. Endowments at the university are now over \$400,000,000, which makes NDSU more attractive to students and others. It could change our bond rating for the positive.
 - Margaret Fitzgerald, Provost
 - No report.
 - Florin Salajan, Faculty Senate President
 - The ad-hoc Committee on International Engagement and Global Initiative now has 4 senators on it. Pres. Salajan thanked them for their service. The Office of Study Abroad has placed a representative on the committee.
 - Reminded Senators about the call for Senators to attend the meeting in person to conduct Senate meetings in person.

- Dennis Cooley, Faculty Senate Past-President
 - At 12pm on 1 March 2022, there will be a public forum on academic freedom. The event is sponsored by Tri-College University, NDSU Student Government, Humanities ND, AHSS, and the Northern Plains Ethics Institute. More information about the event, including the zoom link, has been distributed through the NDSU employee listserv.
 - NDSU Student Government gave \$5,000 to the project on Free Speech/Academic Freedom.
 - A suggestion was made to invite legislators to the academic freedom events.
- Anastassiya Andrianova, Faculty Senate President-Elect
 - Made a modest request for the NDSU community. When working reports are shared in the community, please keep in mind the impact of the recommendations on Faculty well-being. Please share the recommendations with those affected by them before such recommendations are distributed to a wider public.
 - Happy Valentine's Day!
- Joshua Schroetter, Staff Senate President
 - Staff Senate has not had a lot of meeting time recently.
 - The Day of Honor event will be next week. An email will be going out to Faculty soon with more details of the program.
 - The Staff Senate is now in the process of accepting applications for the Staff Senate's scholarships.
 - The Gunkelman Award Ceremony is on 4 May 2022. Nomination forms will be open soon.
- Laura Friedmann, Student Body Vice-President
 - Not present.
- Philip Hunt, Registrar
 - No announcements.
- Susan Sell, Dean, Graduate School
 - Pres. Salajan welcomed the new dean to NDSU and the Faculty Senate.
 - Dean Sell stated that she has been here since January 3rd and is getting to know the communities and the weather.
 - Welcomes input in developing a strategic plan. Wants to make a welcoming graduate community in response to the campus survey.
 - Invited everyone to the upcoming 3MT event.

- Announced that there is a big uptick in applications – 900 application increase over last year’s in all categories.
- Marc Wallman, VP for Information Technology
 - Announced that there are changes coming to the faculty.
 - Made a reminder to store research and other data in a secure area.
 - ITS will be purging Zoom content more frequently than before. Anything over 9 months will be purged starting at the end of this semester.
 - If a faculty member is struggling in the classroom with its technology, the faculty member should contact ITS for help.
 - Question was raised about linking the NDSU system with Blackboard so that there is only one login instead of two.
 - Wallman stated that it is the NDUS system versus an NDSU system, which are not compatible. The one login cannot be done.
 - How can an instructor use both the NDSU Google Drive and a personal Google Drive?
 - The instructor can use two separate browsers to address the issue.
 - Can Faculty Senate be given the flyer identifying the upcoming changes that ITS has been handing out?
 - It will be sent to President Salajan to be distributed to the faculty.

VI. Committee and Other Reports.

- Budget Committee report
 - M. Petersen reported that there was nothing new to report. They are continuing to meet with the various ad hoc budget committees, and then giving recommendations to the Provost.

VII. Consent Agenda.

- UCC Report
- Policy 601.1
- Approved by unanimous consent

VIII. Unfinished Business.

IX. General Order.

- Resolution on Defending Academic Freedom to Teach about Race and Gender Justice, and Critical Race Theory
 - a. Motion returned to the floor in accordance with Motion to Postpone until the Faculty Senate’s February meeting. (Original motion: Motion to approve the resolution: Ross/Roberts)
- Pres. Salajan provided more background and updates since the last meeting. CCF met and approved an ad hoc committee to draft a resolution. The original parameters were rather vague. The ad hoc committee will draft a resolution and send it to CCF on 1 March 2022.
 - Pres. Salajan stated that he revised the resolution according to comments and suggestions received.
- Discussion.
 - Question raised about how this resolution will be delivered to the relevant parties.
 - One idea is to put the resolutions online on the Faculty Senate website.
 - There is no reference to the legislature in the resolution, only “external bodies” in order not to antagonize anyone or any specific body. Therefore, there is no need to send it to the legislature.
 - If the resolution becomes a public document, it can be shared with anyone.
 - A faculty member representative on the SBHE stated that the SBHE is in favor of NDUS Faculty Senates writing resolutions.
 - Suggestion to make the resolution clearer about the consequences of not teaching students fully about what happened in the past. Students will, therefore, be more likely to make the same mistakes or do the same bad things. How the resolution is phrased now is too generic.
 - Motion to amend original motion by substitution of the following: To approve the resolution with the minor changes suggested by Sen Selekwa: Cooley/Ross.
 - It was pointed out that the document has been available for discussion and suggestions for some time. Minor changes are acceptable, but no more than that.
 - Concern was raised about crafting language on the

floor.

- It was pointed out that since there had been plenty of time for changes, the time for revisions is over.
- Concern was raised about other suggested changes not being incorporated.
 - Pres. Salajan stated that the suggestions were considered and some of the revisions had already been made. The non-redundant ones that assisted in improving the resolution were incorporated.
- Questions were raised about what happens if this motion passes: Who makes the revision? Will the full Senate be able to look at the revision before it goes out?
 - The Faculty Senate Executive Team would revise and then the document would be adopted.
- Motion to amend by substitution failed (Vote 1. See Appendix 2): 12 Aye; 24 Nay; 1 Abstain
- Motion to approve resolution passed (Vote 2. See Appendix 2): 32 Aye; 4 Nay; 1 Abstain.

X. New Business.

XI. Adjournment at 4:09pm: Ross/Ungar.

- Approved unanimously

Appendix 1: Attendance

Name	Substitution	Present
Aldrich-Wolfe, Laura		X
Andrianova, Anastasiya		X
Arnold, Lisa		X
Amiri, Ali		X
Asa, Eric	Banawi, A	X
Berg, Eric		
Burt, Sean		X
Byrd, Christopher		X
Choi, Juwon		X
Christensen, Warren		X
Cooley, Dennis		X
Creese, John		
Emanuelson, Pam		X
Fellows, Kristen		X
Harringer, Shannon		X
Hassel, Holly		X
Hershberger, John	Hintz, V	X
Hong, Yontao (David)		X
Huseth-Zosel, Andrea		X
Jackson, Jeremy		X
Kilina, Svetlana		X
Larson, Jamee		X
Limb, Ryan		X
Lin, Zhibin		X
March, Raymond		
McGrath, Ryan		X
Nordstrom, Onnolee		X
O'Rourke, Stephen		X
Overton, Kimberly		X
Peltier, Allison		
Philbrick, Candace		X
Rahman, Mukhlesur		X
Roberts, David	Rayamahjee, V.	X
Ross, Darrell		X
Salajan, Florin		X
Selekwa, Majura		X
Smith, Matthew		X
Thompson, Sara		X
Tian, Ruilin	Jones, J.	X
Ungar, Abraham		X

Wood, Scott	x
Wu, Xiangfa	
Yan, Changhui	x
Yan, Guiping	x
Zhang, Qi	x
Zhao, Pinjing	x

Appendix 2: Voting Record

Session Name: Ballot 2-14-2022 5-50 PM

Date Created: 2/14/22, 2:33:29 PM **Active Participants:** 33 of 59

Questions: 2s

Results Detail

First Name	Last Name	Q1	Q2
ALDRICH-WOLFE	Laura	NAY	AYE
ANDRIANOVA	Anastassiya	NAY	AYE
ARNOLD	Lisa	NAY	AYE
BURT	Sean	NAY	AYE
BYRD	Christopher	NAY	AYE
CHOI	Juwon	AYE	AYE
CHRISTENSEN	Warren	AYE	NAY
COOLEY	Dennis	NAY	AYE
EMANUELSON	Pamela	NAY	AYE
FELLOWS	Kristen	NAY	AYE
HASSEL	Holly	NAY	AYE
HINSZ	Verlin	NAY	AYE
HONG	Yongtao	NAY	AYE
HUETH-ZOSEL	Andrea	AYE	AYE
JACKSON	Jeremy	NAY	NAY

JONES	Joseph	NAY	AYE
LARSON	Jamee	NAY	AYE
LIMB	Ryan	NAY	NAY
LIN	Zhibin	AYE	AYE
MCGRATH	Ryan	AYE	AYE
NORDSTROM	Onnolee	NAY	AYE
O'ROURKE	Stephen	AYE	AYE
OVERTON	Kimberly	NAY	AYE
PHILBRICK	Candace	NAY	AYE
RAHMAN	Md Mukhlesur	AYE	AYE
RAYAMAJHEE	Veeshan	NAY	ABS
ROSS	Darrell	NAY	AYE
SELEKWA	Majura	AYE	AYE
SMITH	Matthew	NAY	NAY
THOMPSON	Sara	NAY	AYE
WOOD	Scott	NAY	AYE
YAN	Changhui	AYE	AYE
ZHANG	Qi	ABS	AYE

Several Senators were unable to vote electronically. Their voice votes are recorded following the chart below.

Q1: AYE: Banawi, Kilina, and Ungar; NAY: Zhao; ABSTAIN: None.

Q2: AYE: Banawi, Kilina, Ungar, and Zhao; NAY: None; ABSTAIN: None.

**University Curriculum Committee Report
For Faculty Senate Meeting on March 21, 2022**

Program Update
B.S./B.A. Human Development & Family Science: Elementary Education – Change in program requirements.
Certificate Entrepreneurship – Change in program requirements.
B.S. Sport Management – Change in program requirements.
B.S.C.E. Civil Engineering – Change in program requirements.
Certificate Organizational Leadership – Undergraduate CIP code and program update.
B.S./B.A. Economics – Change in program requirements.
M.T.U.S. Transportation & Urban Systems – Change in program requirements.
M.M. Music – Change in program requirements.
D.M.A. Music – Change in program requirements.
B.S. Sport Management – Change in program requirements.
B.MUS. Music – Piano Performance – Change in program requirements.
Minor Theatre Arts – Change in program requirements and credit change.
B.S./B.A. Human Development & Family Science: Elementary Education – Change in program requirements.
B.S.Mfg.E. Manufacturing Engineering – Change in program requirements.
Graduate Certificate College Teaching – Change in program requirements.
B.S. Agricultural Systems Management – Change in program requirements.
Undergraduate Certificate Professional Writing – Change in program requirements.
Undergraduate Certificate Economic Computation – New program proposal.

New Courses			
Subject	No.	Title	Effective Term
CSCI	422	Introduction to Data Engineering	Fall 2022
ECE	479	Formal Verification	Fall 2022
NURS	190	Exploration of Nursing As A Career	Fall 2022
HDFS	730	Youth-Adult Relationships	Fall 2022
SCM	325	Managing Inventory and Materials	Fall 2022
SCM	425	Procurement & Sourcing	Spring 2023
SCM	435	Transportation & Distribution	Spring 2023
SCM	450	Supplier & Consumer Relations	Fall 2022
SCM	453	Financing the Supply Chain	Spring 2023
SCM	455	Supply Chain Technology Enablers	Spring 2023
SCM	457	Scheduling in Supply Chain Management	Fall 2022
SCM	465	International Supply Chain Management	Fall 2022
ACCT	740	Advanced Topics in Management Accounting	Summer 2023
CSCI	405	Principles of Cybersecurity	Fall 2022
ART	390	Advanced Studio Arts Development	Fall 2022
ECON	842	Microeconomic Theory II	Fall 2022
H&CE	696	Special Topics-Designing and Delivering Nonformal Education Programs	Fall 2022
POLS	654	Comparative Democratic Institutions	Fall 2022
POLS	710	Global Public Policy	Fall 2022
CSCI	605	Principles of Cybersecurity	Fall 2022
POLS	726	Harm Reduction for Policymakers	Fall 2022
ECON	841	Microeconomic Theory I	Fall 2022
ECON	842	Microeconomic Theory II	Fall 2022
ECON	211	Introduction to Computational Economics	Fall 2022
ECON	810	Econometrics I	Fall 2022
ECON	811	Econometrics II	Spring 2023

Changes in Course Descriptions and/or Requisites				
Subject	No.	Title	Title/Prerequisite/Co-requisite/Description Change	Effective Term
POLS	798	Master's Thesis	Course reactivation.	Fall 2022
THEA	115	World Film	General Education revalidation.	Fall 2022
VETS	255	Veterinary Diagnostic Imaging	Change in prerequisites. Remove VETS 125, VETS 135, VETS 136, VETS 256. Add ANSC 218, ANSC 219.	Fall 2022
AS	194	Individual Study	Course inactivation.	Fall 2022
AS	196	Field Experience	Course inactivation.	Fall 2022
AS	199	Special Topics	Course inactivation.	Fall 2022
AS	291	Seminar	Course inactivation.	Fall 2022
CFS	200	Introduction to Food Systems	Course inactivation.	Fall 2022
HDFS	360	Adult Development and Aging	Requisite change. Adding enrolled in Aging Studies Certificate.	Fall 2022
HDFS	357	Personal and Family Finance	Requisite change. Removing HDFS 242.	Fall 2022
HDFS	477	Financial Counseling	Requisite change. Adding HDFS 357 prerequisite.	Fall 2022
LA	New # 442 Old # 342	New title: Advanced Grading + Drainage Old title: Site Development and Detailing II	Course number, title, description and requisite changes. New description: Intermediate exploration into site engineering and construction practices within Landscape Architecture. Course emphasis towards proficient site grading, stormwater management calculations, and design communication practices. Adding LA 341 prerequisite.	Fall 2022
LA	New # 444 Old # 441	New title: Advanced Construction Drawing + Documentation Old title: Site Development and Detailing III	Course number, title, description and requisite changes.	Fall 2022
CSCI	428	New title: Artificial Intelligence, Ethics, and the Environment Old title: Computational Techniques for Environmental Sustainability	Course title, description and requisite change. New description: An advanced exploration into the materials, methods, and applications of construction detailing within Landscape Architecture. Course emphasis in the development of technical details, preparation of construction drawings, and use of computer-aided software. Remove prereq LA 372 and coreq LA 471 Add prereq LA 442	Fall 2022
MUSC	623	New title: Piano Pedagogy Old title: Piano Pedagogy I	Course credit, title and description change. Change credit from 2 to 3. New description: Approaches to piano teaching of beginning to advanced students. May be repeated. Remove Music major or minor prereq	Fall 2022

TIPS	101	Introduction to Native American & Indigenous Studies	General Education revalidation.	Fall 2022
PHRM	540	Public Health for Pharmacists	Change in requisites. Remove PHRM 352 Add PHRM 353 with a grade of "C" or higher	Fall 2022
PHRM	575	New title: Pharmacy Practice Management Old title: Pharmacy Management	Requisite and title change. Remove PHRM 350 and PHRM 352 Add PHRM 353 and all prereqs need grade of "C" or higher.	Fall 2022
PHIL	216	Business Ethics	General Education revalidation.	Fall 2022
CSCI	374	Computer Organization and Architecture	Course description and requisite change. New description: This course provides an overview of the fundamentals of computer organization (physical design) and architecture (logical design) and relates this to contemporary design issues. Topics include machine level representation of data, assembly level organization, memory system organization and architecture, system connection, memory, input/output, instruction sets, CPU structure and functions and the control unit operation. Remove ECE 173, ECE 275 with a grade of C or better Add CSCI 161 or equivalent	Fall 2022
ENVE	360	Environmental Chemistry for Water and Wastewater	Requisite change. Remove prereq ENVE 250 Add co-req CHEM 240	Fall 2022
ENVE	450	Environmental Engineering Chemistry Laboratory	Requisite change. Remove co-req ENVE 360 Add prereq ENVE 360	Fall 2022
HNES	217	Personal and Community Health	General Education revalidation.	Fall 2022
ACCT	410	Fraud Examination	Requisite change. Change prereq to: Prereq: ACCT 200 with a minimum grade of C. Restricted to College of Business major or minor and a 2.50 minimum NDSU grade point average.	Fall 2022
VETS	455	Veterinary Applied Pharmacy Practices	Requisite change. Remove prereq VETS 386 and co-req VETS 457 Add Admission to Veterinary Technology Program	Fall 2022
MICR	354	Scientific Writing	Course inactivation.	Fall 2022
MICR	373	Equine Health	Course inactivation.	Fall 2022
MICR	450	Infectious Disease Pathogenesis	Course inactivation.	Fall 2022
MICR	650	Infectious Disease Pathogenesis	Course inactivation.	Fall 2022
MICR	450L	Infectious Disease Pathogenesis Laboratory	Course inactivation.	Fall 2022
MICR	650L	Infectious Disease Pathogenesis Laboratory	Course inactivation.	Fall 2022
MICR	472	Clinical Immunology	Course inactivation.	Fall 2022
MICR	672	Clinical Immunology	Course inactivation.	Fall 2022

MICR	722	International Health Systems, Policy and Biosecurity	Course inactivation.	Fall 2022
MICR	723	International Animal Production, Disease Surveillance and Public Health	Course inactivation.	Fall 2022
MICR	724	Applied Epidemiology and Biostatistics	Course inactivation.	Fall 2022
MICR	752	Advanced Topics in Food Safety Microbiology	Course inactivation.	Fall 2022
MICR	756	Advanced Topics in Public Health Microbiology	Course inactivation.	Fall 2022
MICR	775	Molecular Virology	Course inactivation.	Fall 2022
MICR	785	Pathobiology	Course inactivation.	Fall 2022
MICR	801	Foundation in Microbiology Research I	Course inactivation.	Fall 2022
MICR	802	Foundation in Microbiology Research II	Course inactivation.	Fall 2022
THEA	101	Department Participation	Course inactivation.	Fall 2022
THEA	665	Directing II	Course inactivation.	Fall 2022
THEA	797	Master's Paper	Course inactivation.	Fall 2022
IME	330	Manufacturing Processes	Requisite change. Change ME 212 from prereq to co-req	Fall 2022
VETS	457	Veterinary Pharmacology	Requisite change. Remove co-req VETS 455	Fall 2022
CHP	301	Research Methods in Health Services	Requisite change. Add Open to all majors	Fall 2022
CSCI	New # 779 Old # 879	Advanced Data Mining	Course description and requisite change. New description: Advanced level of modern data mining technologies and methods, specifically dimensionality reduction, network embedding and analysis, deep neural networks and application of these data mining approaches to various applications. Python and coding experience are required. Remove Prereq CSCI 679	Fall 2022
ENVE	250	Fundamentals of Environmental Engineering	Requisite change. Remove Co-req CHEM 240	Fall 2022
ENGL	220	Introduction to Literature	General Education revalidation.	Fall 2022
HNES	336	Methods of Coaching	Requisite change. Add Junior standing to prereq.	Fall 2022
PLSC	465	Advanced Landscape Plants	Course credit and description change. Change credit from 2 to 3. New description: Nomenclature, identification, and landscape characteristics of native and introduced deciduous and evergreen woody plants grown in Upper Midwest. Emphasis on cultivar introduction, trademarks/patents, adaptation, and diversity within species. 3 lectures. S (even years)	Fall 2022

PLSC	665	Advanced Landscape Plants	Course credit and description change. Change credit from 2 to 3. New description: Nomenclature, identification, and landscape characteristics of native and introduced deciduous and evergreen woody plants grown in Upper Midwest. Emphasis on cultivar introduction, trademarks/patents, adaptation, and diversity within species. 3 lectures. S (even years)	Fall 2022
GEOL	201	New title: Climate Change and Energy Old title: The Geology of Climate Change and Energy	Title, description, Gen Ed change. New description: Exploration and analysis of Earth system processes, geologic and instrumental records of global-scale climate change, and the interrelationship of climate change and energy consumption from fossil fuels. Add Global Perspectives to General Education.	Fall 2022
TL	823	New title: Seminar in Supply Chain Research Old title: Contemporary Supply Chain Research	Course title, description and requisite change. New description: This course focuses on challenges and research opportunities in supply chain management. Topics include supplier and customer relationships, distribution, warehousing, information technology enablers, transportation issues in supply chain, supply chain sustainability, supply chain resilience, different types of inventory challenges, and human factors in supply chain. The ability to perform and present supply chain research is cultivated. Remove: Prereq: TL 811	Fall 2022

Policy Change Cover Sheet

This form must be completed for each policy presented. All areas in red including the header must be filled in or it will be sent back to you for completion. Gender-inclusive language should be used in revised and new policies submitted to SCC.

*If the revisions you are requesting include housekeeping changes, please submit the housekeeping changes first. The SCC Secretary will notify you once the housekeeping changes have been made and you can submit the Policy Change Cover Sheet at that time. Please submit housekeeping changes to ndsuscc@ndsu.edu.

Refer to the [NDSU Senate Coordinating Council process](#) for more information about housekeeping changes.

Policy Number and Name: Policy 156: Discrimination, Harassment, and Retaliation Complaint Procedures

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):

Updated Equity Office to Equal Opportunity and Title IX Compliance Office
Included addition in Section 2.5 as recommended by FIRE to assist NDSU in obtaining green light status
Updated new report/complaint Qualtrics form link
Updated who may be delegated investigations
Removed timeline for filing complaint
Added Ombudsperson as confidential resource
Updated Student Affairs Office to Dean of Students Office
Changed "charges" to "action" regarding student conduct process
Updated timeline to complete investigation to be consistent with other policies
Updated mandatory training requirements
Added NSF and NIH to Section 12.1

UPDATE - Per Matt Hammer on 11/4/2021: Updated Section 8.6 and notification regarding delay of investigation

Is this a federal or state mandate: Yes No

Individual/Department/Committee or Organization submitting the policy change:

Heather Higgins-Dochtermann

Date Submitted to SCC Secretary: November 8, 2021

Email address of the person who should be contacted if revisions are requested:

heather.higginsdocht@ndsu.edu

The SCC Secretary will keep record of all actions taken on this policy change request on the SCC policy tracking spreadsheet. You will be notified once the policy has been approved and updated or if further revisions are requested.

North Dakota State University

Policy Manual

SECTION 156

DISCRIMINATION, HARASSMENT, AND RETALIATION COMPLAINT PROCEDURES

SOURCE: NDSU President

1. INTRODUCTION

- 1.1 North Dakota State University (NDSU) prohibits discrimination in its employment decisions and educational programs and activities on the basis of age, color, gender expression/identity, genetic information, marital status, national origin, physical or mental disability, pregnancy, public assistance status, race, religion, sex, sexual orientation, spousal relationship to current employee, status as a U.S. veteran, or participation in lawful activity off NDSU's premises during nonworking hours which is not in direct conflict with the essential business-related interests of NDSU, or other protected classes as defined by federal, state, or local law. (See [NDSU Section 100, Equal Opportunity and Non-Discrimination Policy](#)).
- 1.2 NDSU is committed to providing a safe and non-discriminatory learning, living, and working environment for all members of its university community. Specifically, NDSU is committed to taking action to:
 - 1) Stop discrimination;
 - 2) Remedy the effects of discrimination;
 - 3) Prevent the recurrence of discrimination; and
 - 4) Educate the university community about their rights and responsibilities regarding discrimination.
- 1.3 NDSU has committed itself to the establishment and adoption of procedures to resolve complaints of discrimination in violation of NDSU's Equal Opportunity and Non-Discrimination Policy, including complaints of harassment or retaliation. A central purpose of these complaint procedures is to provide a system at NDSU to conduct adequate, reliable, and impartial investigations of complaints of discrimination. NDSU's primary concern is to enact and implement complaint procedures that encourage reporting of discrimination and that ensure the rights of NDSU students, employees, and all other participants in its educational programs and activities are protected.

2. DEFINITIONS

- 2.1 **Discrimination** – Different or unequal treatment of an individual (or group), based on one or more of the protected classes of the individual (or group), except as where permitted or required by law, that negatively affects their education, employment, or other participation in educational programs or activities.
 - 2.1.1 Protected classes for purposes of these procedures are: age, color, gender expression/identity, genetic information, marital status, national origin, physical or mental disability, pregnancy, public assistance status, race, religion, sex, sexual orientation, spousal relationship to current employee, status as a U.S.

veteran, or participation in lawful activity off NDSU's premises during nonworking hours, which is not in direct conflict with the essential business-related interests of NDSU. (See [NDSU Section 100, Equal Opportunity and Non-Discrimination Policy](#)).

2.2 **Discrimination complaint** – A complaint alleging discrimination in violation of NDSU's Equal Opportunity and Non-Discrimination Policy, including complaints of harassment or retaliation.

~~2.3 **Equity Director**—For purposes of these procedures, the Equity Director is NDSU's Vice Provost and Title IX/ADA Coordinator.~~

~~2.4 **Equity Office**—For purposes of these procedures, the Equity Office is NDSU's Office of the Vice Provost for Faculty and Equity.~~

2.5 **Harassment** - A form of discrimination; unwelcome oral, written, graphic, or physical conduct, based on one or more of the protected classes (see 2.1.1) of an individual (or group), that is sufficiently severe, persistent, or pervasive so as to unreasonably interfere with their education, employment, or other participation in educational programs or activities or that creates a working, learning, or educational program or activity environment that a reasonable person would find hostile, intimidating, or abusive. Harassment may include, but is not limited to [the following, when a part of conduct that meets the standard set forth above;](#) threats, physical contact or violence, offensive jokes, insults or put-downs, slurs or name calling, vandalism/graffiti, or offensive objects or pictures. Petty slights, annoyances, and isolated incidents (unless very serious) typically do not rise to the level of harassment.

3. FILING A DISCRIMINATION COMPLAINT

3.1 Current or former NDSU students or employees, applicants for admission or employment, or any other participants in NDSU's educational programs or activities, or any group thereof, are encouraged to file a complaint if they believe they have been discriminated against in violation of NDSU's Equal Opportunity and Non-Discrimination Policy, which may include a complaint of harassment or retaliation. A complaint may be filed concerning alleged discriminatory conduct that occurred on NDSU's premises or off campus.

3.1.1 **How to file a discrimination complaint** - A discrimination complaint is initiated by completing a NDSU Discrimination/Harassment/Retaliation Complaint Form (Complaint Form) and filing it with the ~~Equity Director~~[Equal Opportunity and Title IX Compliance Director](#). The Complaint Form is available online at <https://www.ndsu.edu/equity/forms/> https://ndstate.co1.qualtrics.com/jfe/form/SV_cYXm01BTRKZi8HY or by contacting the ~~Equity Office~~[Equal Opportunity and Title IX Compliance Office](#) in ~~Suite 201~~, Old Main ~~201~~, NDSU Main Campus, Fargo, ND 58108, 701-231-7708, ndsu.eoaa@ndsu.edu. ~~The Complaint Form is also available in the Student Affairs Office, Memorial Union 250, NDSU Main Campus, 701 231 8240. The Complaint Form can be submitted via email at ndsu.eoaa@ndsu.edu or by bringing it to the Equity Office.~~ The ~~Equity Office~~[Equal Opportunity and Title IX Compliance Office](#) is available to assist with completing the Complaint Form as needed.

The ~~Equity Office~~[Equal Opportunity and Title IX Compliance Office](#) will investigate all discrimination, harassment, retaliation, and sexual misconduct complaints involving

employees utilizing the procedures set forth in this policy and will coordinate the resolution of those complaints.

The ~~Equity Office~~ Equal Opportunity and Title IX Compliance Office will investigate ~~all~~ may delegate discrimination, harassment, retaliation, and sexual misconduct complaints to another appropriately trained individual or office as needed utilizing Sections 1 through 8.8 of this policy if the complaint identifies an alleged violation by a student. The resolution of the complaint, including pre-hearing, hearing and appeals, will be conducted by the ~~Student Affairs Office~~ Dean of Students Office, in coordination with the ~~Equity Office~~ Equal Opportunity and Title IX Compliance Office, pursuant to NDSU Policy 601. Additionally, the Equal Opportunity and Title IX Compliance Office may delegate discrimination, harassment, retaliation, and sexual misconduct complaints to Human Resources if the complaint identifies an alleged violation by a staff member.

- 3.1.2 **Deadline for filing a discrimination complaint** - NDSU encourages those who believe they have been discriminated against to file a discrimination complaint as soon as possible. ~~Unless the Equity Director agrees otherwise in writing, the Complaint Form _____ must be submitted within 180 calendar days of the most recent incident of discrimination.~~
- 3.1.3 **Confidentiality cannot be guaranteed** - Depending on the nature of the discrimination complaint, NDSU will keep the complaint and its investigation confidential to the extent that it is possible. However, confidentiality cannot be guaranteed under these procedures as NDSU may have an obligation to take specific actions once aware of alleged discriminatory conduct.
- 3.1.4 **Confidential support resources** - If seeking a confidential resource, NDSU students may contact the NDSU Counseling Center at 212 Ceres Hall, NDSU Main Campus, 701-231-7671 and the Student Health Service (Wallman Wellness Center, NDSU Main Campus, 701-231-7331). The Faculty/Staff Assistance Program, as described in NDSU Section 134, is a confidential resource for NDSU employees. Additionally, the Ombudsperson is a confidential resource for NDSU faculty and NDSU graduate students. The Ombudsperson may be contacted at the NDSU Main Library, Lower Level, Room 20C, 701-231-5114, or kristine.paranica@ndsu.edu.
- 3.1.5 **Anonymous reporting** - NDSU students, faculty, and staff may submit an anonymous form to report acts of bias, bigotry, or hate at NDSU. 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/> https://ndstate.co1.qualtrics.com/jfe/form/SV_cYXm01BTRKZi8HY.

4. RETALIATION PROHIBITED

- 4.1 NDSU encourages reporting of discrimination and will not discipline any individual (or group) who makes a good faith report of discrimination. Any individual (or group) reporting discrimination or otherwise participating in these procedures is entitled to protection from retaliation as a result of their activity under these procedures. Retaliation may include, but is not limited to, intimidation, harassment, reprisal, or other negative changes in education or employment. Anyone who believes they have been retaliated against for their

participation under these procedures is encouraged to file a Complaint Form, which will be processed under these procedures as a separate matter from the originally filed discrimination complaint, if any. Anyone found responsible for retaliation will be subject to disciplinary action, up to and including termination or expulsion.

5. REMEDIAL MEASURES

- 5.1 Upon receipt of a discrimination complaint or as otherwise informed of alleged discrimination under these procedures, NDSU will, where appropriate, take reasonable steps to remedy the harm to those affected by discriminatory conduct. Remedial 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.

6. PRELIMINARY EVALUATION OF DISCRIMINATION COMPLAINT

- 6.1 **Preliminary evaluation determination** - The ~~Equity Director~~[Equal Opportunity and Title IX Compliance Director](#) will evaluate the discrimination complaint and decide to either: (1) pursue further action; or (2) dismiss the discrimination complaint. A discrimination complaint may be dismissed if: (1) it fails to allege any facts that suggest discrimination, harassment, or retaliation; or (2) an appropriate resolution or remedy has already been achieved. NDSU will not dismiss a complaint because it alleges discriminatory conduct that took place off campus. Rather, in the course of its investigation of the complaint, NDSU will determine whether the alleged off-campus conduct: (1) occurred within the context of an educational program or activity; and/or (2) has created or reasonably may create a hostile educational or work environment.

Unless there are extenuating circumstances, the preliminary evaluation will be completed within 3 business days of receipt of the discrimination complaint and the decision will be provided in writing to the individual (or group) who filed the complaint. If the ~~Equity Director~~[Equal Opportunity and Title IX Compliance Director](#) requires further information from the individual (or group) who filed the discrimination complaint before making a decision, the decision will be made within 3 business days of receipt of the additional information requested. In the case of a dismissal, the ~~Equity Director~~[Equal Opportunity and Title IX Compliance Director](#) may provide information or guidance regarding other avenues for support or resolution of the complaint, if appropriate and available.

If the complaint is dismissed, the Reporting Party may submit a request for reconsideration of the complaint within 3 business days of receipt of the preliminary evaluation determination. The Reporting Party may submit additional documentation or information that supplements the original complaint. This may include, but is not limited to, additional evidence or names of witnesses. Complaints resubmitted with no additional information will not be reviewed for reconsideration. Submit all reconsiderations to the ~~Equity Director~~[Equal Opportunity and Title IX Compliance Director](#) or by contacting the ~~Equity Office~~[Equal Opportunity and Title IX Compliance Office](#) in ~~Suite 201~~, Old Main ~~201~~, NDSU Main Campus, 701-231-7708, ndsu.eoaa@ndsu.edu. As needed, the ~~Equity Office~~[Equal Opportunity and Title IX Compliance Office](#) is available to facilitate finding a resource to assist the party with completing a request for reconsideration.

- 6.2 **Notice of action** – If the ~~Equity Director~~[Equal Opportunity and Title IX Compliance Director](#) determines that further action on a discrimination complaint is warranted, the ~~Equity~~

[Office Equal Opportunity and Title IX Compliance Office](#) will provide written notice to the individual (or group) who filed the discrimination complaint and the individual (or group) against whom the complaint was filed (collectively, the Parties) within 3 business days of the determination made pursuant to 6.1 unless there are extenuating circumstances that delay the proposed timeline. The written notice will include, at a minimum: (1) the names of the Parties; (2) the basis for the discrimination complaint; (3) a statement that retaliation is prohibited; (4) a statement that requested responses or documentation must be provided in a timely manner; and (5) a description of the resolution process, including a copy of the relevant procedures. A modified notice of action may also be provided to an administrator, supervisor, or the [Student Affairs Office Dean of Students Office](#) who has control over the environment in which the alleged discriminatory conduct took place. The intent of the modified notice of action is to preserve confidentiality to the extent possible while also putting the administrator, supervisor, or [Student Affairs Office Dean of Students Office](#) on notice of their responsibility to monitor for retaliation or further discrimination.

7. INFORMAL RESOLUTION

- 7.1 **Informal resolution defined** - Informal resolution is a process in which the Parties attempt to agree upon the resolution of a discrimination complaint without a comprehensive investigatory and determination process. Unless there are extenuating circumstances, the entire informal resolution process will be completed within 30 calendar days of its initiation.
- 7.2 **Informal resolution is optional** - When providing the notice of action to the Parties, the Equity Office may inquire if the Parties are interested in attempting to resolve the discrimination complaint through informal resolution. The Parties will have 3 business days to individually decide if they would like to use informal resolution and should inform the [Equity Office Equal Opportunity and Title IX Compliance Office](#) of their decisions in writing. The informal resolution process will only be used upon mutual agreement of the Parties. Either party may inform the [Equity Office Equal Opportunity and Title IX Compliance Office](#) at any time that they want to discontinue their participation in the informal resolution process and the formal resolution process will commence. The [Equity Director Equal Opportunity and Title IX Compliance Director](#) reserves the right to deny the Parties the option of using the informal resolution process if it is deemed to be inappropriate or inadequate as applied to a particular discrimination complaint.
- 7.3 **Informal resolution process** - Informal resolution may involve the [Equity Office Equal Opportunity and Title IX Compliance Office](#), the [Dean of Students Office](#), HR, administrators, supervisors, and/or external moderators working with the Parties to arrive at an appropriate and mutually agreeable resolution of the discrimination complaint. The informal resolution process will not require that the Parties meet face-to-face to resolve the discrimination complaint but may allow it, depending on the nature of the complaint and the power differential between the Parties.
- 7.4 **Informal resolution agreement** - If the Parties resolve the discrimination complaint through the informal resolution process, the [Equity Office Equal Opportunity and Title IX Compliance Office](#) will draft an informal resolution agreement, which the Parties will sign. A signed copy of the informal resolution agreement will be provided to the Parties, as well as to any administrator, ~~or supervisor,~~ ~~or Student Affairs Office~~ provided with a modified notice of action as described in 6.2. There is no available appeal of a signed informal resolution agreement.

8. FORMAL RESOLUTION

- 8.1 **Formal resolution applicability** - The formal resolution process will commence if: (1) either party elects to use the formal resolution process instead of the informal resolution process; (2) the Parties are unable to mutually agree upon a resolution under the informal resolution process; or (3) the [Equity Director/Equal Opportunity and Title IX Compliance Director](#) determines the informal resolution process is inappropriate or inadequate as applied to a particular discrimination complaint.
- 8.2 **Comprehensive investigation** – A properly trained investigator(s) will conduct a comprehensive investigation under the formal resolution process in an adequate, reliable, and impartial manner. Unless there are extenuating circumstances, including when the Parties are unable to mutually agree upon a resolution under the informal resolution process, a comprehensive investigation will commence within 5 business days of providing the notice of action to the Parties as described in 6.2. A comprehensive investigation will include the following steps, as relevant and available:
- (1) An interview with each of the Parties;
 - (2) Interviews with witnesses identified by the Parties or determined otherwise;
 - (3) A review of evidence provided by the Parties or collected otherwise; and
 - (4) An opportunity for the parties to submit questions of each other and/or the witnesses. Upon receipt of any such questions, the investigators will determine which questions, if any are relevant, and present them to the intended recipient for a response.

Equal opportunity will be given to the Parties to access and present evidence during the investigation. The Parties will be provided with periodic status updates throughout the course of the investigation.

- 8.3 **Investigator(s)** - A staff member(s) in the [Equity Office/Equal Opportunity and Title IX Compliance Office](#) may conduct the comprehensive investigation of the discrimination complaint or the [Equity Director/Equal Opportunity and Title IX Compliance Director](#) may delegate investigative duties to another properly trained investigator(s). Within 3 business days of notice of the identity of an investigator(s), either party may provide the [Equity Director/Equal Opportunity and Title IX Compliance Director](#) with a written request asking that another investigator(s) be assigned if the party believes there is a conflict of interest with the investigator(s). Where appropriate, a new investigator(s) will be assigned and the [Equity Director/Equal Opportunity and Title IX Compliance Director](#) will provide the Parties with written notice of the newly assigned investigator(s).
- 8.4 **Responsibilities of the Parties** – Deadlines for completing actions under these procedures will be communicated in writing to the Parties, who must make every effort to comply with the deadlines communicated to them. Timeliness is particularly important under the formal resolution process as determinations may be made based on available information if a party fails to respond in a timely manner to action requested by an investigator(s). In extenuating circumstances, an extension to a deadline may be granted by the [Equity Director/Equal Opportunity and Title IX Compliance Director](#) and will be communicated in writing to the Parties.
- 8.5 **Standard of proof** – In all cases, the applicable standard of proof for determining responsibility for an alleged violation is “preponderance of the evidence” – meaning, in order for an individual (or group) against whom a discrimination complaint was filed to be

held responsible for discrimination, it must be determined that it is *more likely than not* that the individual (or group) violated NDSU's Equal Opportunity and Non-Discrimination Policy, which may include harassment or retaliation.

In cases involving an alleged violation by an employee, the determination of responsibility shall be made by the investigator(s).

In cases involving an alleged violation by a student, the determination of responsibility shall be made by the Hearing Officer, consistent with the procedures detailed in NDSU Policy 601.

8.6 Preliminary investigative report – After an investigator(s) has finished the comprehensive investigation of a discrimination complaint, the investigator(s) will draft a preliminary investigative report.

For complaints involving an alleged violation by a student, the report shall include the findings of the investigation along with a recommendation for dismissal of the complaint or a recommendation of pursuing [action charges](#). If there is reasonable cause to believe that a violation has occurred, the recommendation shall be to pursue [action charges](#); if such reasonable cause is not present, the complaint shall be dismissed. Reasonable cause is a lower standard than preponderance of the evidence, and shall mean that there are just or legitimate grounds to believe that a violation has occurred.

For all other complaints, the report shall include the findings of the investigation along with a determination whether the individual (or group) against whom the discrimination complaint was filed is responsible for discrimination, including harassment or retaliation.

The report will also include, at a minimum, a summary of the relevant information gathered during interviews and otherwise that informed the preliminary investigation. Unless there are extenuating circumstances, the report will be drafted within ~~30~~ [90](#) calendar days [or a reasonable amount of time after](#) ~~of~~ initiation of the comprehensive investigation. [If the report is not completed within 90 days, the Investigator will notify Parties and communicate the reason for the delay.](#) The report will be provided to the Parties and, if applicable, a Review Committee as determined by the ~~Equity Office~~ [Equal Opportunity and Title IX Compliance Office](#) (see 8.7). The Parties will have 5 business days from receipt of the report to respond to the preliminary investigative report and/or any information found in the report in writing. [Parties may request an extension, which may or may not be granted.](#) As needed, the ~~Equity Office~~ [Equal Opportunity and Title IX Compliance Office](#) is available to facilitate finding a resource to assist a party with putting its response in writing.

8.7 Review Committee – A Review Committee, at the discretion of the ~~Equity Office~~ [Equal Opportunity and Title IX Compliance Office](#), may be utilized to provide feedback on the preliminary investigative report. Unless there are extenuating circumstances, a Review Committee will meet within 10 calendar days of issuance of the preliminary investigative report in order to finalize the investigative report. The Review Committee will be comprised of no fewer than 3 properly trained NDSU faculty or staff members that do not have a conflict of interest with the Parties. If a party believes there is a conflict of interest with a member(s) of the Review Committee, the party should follow the procedures and deadline established in 8.3 to dispute the member(s). Prior to meeting, Review Committee members will review the preliminary investigative report and any written response to the report made by the Parties. The Review Committee may ask the investigator(s) who issued the preliminary investigative report to be available during their meeting in order to answer questions related to the investigation and to provide access to documentation in the

investigative file as needed. In limited circumstances, the Review Committee may request that the investigator(s) gather additional information if the committee decides it cannot make a recommendation without the additional information. In that case, each party will be provided with the additional information gathered and will have the opportunity to respond to it in writing.

- 8.8 **Final investigative report** –Upon completion of any feedback provided by a Review Committee, the preliminary investigation report will become the final investigative report. For complaints involving an alleged violation by a student, the final report shall be provided to the [Student Affairs Office](#)~~Dean of Students Office~~ along with a recommendation for dismissal of the complaint or a recommendation of pursuing [action](#)~~charges~~. If there is reasonable cause to believe that a violation has occurred, the recommendation shall be to pursue [action](#)~~charges~~; if such reasonable cause is not present, the complaint shall be dismissed.

The final investigative report for employees will include recommended disciplinary action, if any, in addition to a finding as to whether, discriminatory conduct, including harassment or retaliation, occurred. The final investigative report as well as notice of the right to appeal for employees as afforded in 8.12, will be provided in writing to the Parties.

- 8.9 **Disciplinary action for discriminatory conduct** – NDSU does not tolerate discrimination, including harassment or retaliation, and will take appropriate disciplinary action against anyone found responsible for discrimination. Students found responsible for discrimination under the procedures in Rights and Responsibilities of Community: A Code of Student Conduct (Section 601) will be subject to disciplinary action, up to and including expulsion. Employees found responsible for discrimination under these procedures will be subject to disciplinary action, up to and including termination. The disciplinary action recommended by the Review Committee will depend on the severity of the discriminatory conduct and whether the individual (or group) was previously found responsible for discrimination.

- 8.10 **Imposition of disciplinary action** –If neither party exercises the right to appeal as afforded in 8.12, the [Equity Director](#)~~Equal Opportunity and Title IX Compliance Director~~ will either: (1) notify any administrator or supervisor provided with a modified notice of action as described in 6.2 that the matter has been resolved without recommended disciplinary action; or (2) provide the final investigative report to the appropriate administrator, supervisor, whether previously provided a modified notice of action as described in 6.2 or otherwise, and consult with the administrator or, supervisor regarding imposition of the recommended disciplinary action. If either party exercises the right to appeal, (1) or (2) will be conducted by the [Equity Director](#)~~Equal Opportunity and Title IX Compliance Director~~ once the appeal process has concluded.

Disciplinary action will be imposed for employees by the appropriate administrator or supervisor on behalf of NDSU. If the administrator or supervisor disagrees with the recommended disciplinary action, the administrator or supervisor must provide a basis for disagreement in writing to the [Equity Director](#)~~Equal Opportunity and Title IX Compliance Director~~ within 3 business days of receipt of the final investigative report.

- 8.11 **Conclusion of formal resolution** – The formal resolution process shall be carried out using reasonably prompt time frames and without deliberate indifference pursuant to these Procedures and any applicable NDSU policies.

- 8.12 **Appeal of investigative report** – Within 5 business days of receipt of the investigative report either party may appeal the report by completing a NDSU Discrimination Appeal Form (Appeal Form) and filing it with the [Equity Director Equal Opportunity and Title IX Compliance Director](#). The Appeal Form is available online at <https://www.ndsu.edu/equity/forms/> https://www.ndsu.edu/fileadmin/equity/Equity/Title_IX_Forms/Appeal_Form.pdf or by contacting the [Equity Office Equal Opportunity and Title IX Compliance Office](#) in Suite 201, Old Main, NDSU Main Campus, 701-231-7708, ndsu.eoaa@ndsu.edu. The Appeal Form can be submitted via email at ndsu.eoaa@ndsu.edu or by bringing it to the [Equity Office Equal Opportunity and Title IX Compliance Office](#). As needed, the [Equity Office Equal Opportunity and Title IX Compliance Office](#) is available to facilitate finding a resource to assist a party with completing the Appeal Form.

The grounds upon which a party can request an appeal are: (1) the recommended disciplinary action is substantially disproportionate to the findings; (2) procedural error led to an improper investigative report; and/or (3) new evidence that was previously unavailable should be considered as it could have had a significant impact on the investigative report. If an appeal is granted [by the Equal Opportunity and Title IX Compliance Director](#) under (3), the [Equity Director Equal Opportunity and Title IX Compliance Director](#) will require that the Review Committee meet again to determine if the investigative report should be altered in light of the new evidence. The party who did not provide the new evidence will have the opportunity to respond to the evidence in writing. If the investigative report is altered under (3), the Parties will be afforded the opportunity to appeal again under (1) and/or (2) within 5 business days of receipt of the altered investigative report. If an appeal is granted under (1) or (2), the [Equity Director Equal Opportunity and Title IX Compliance Director](#) will evaluate the investigative report in an impartial manner in light of the information found in the Appeal Form and will alter or reaffirm the investigative report accordingly. Unless there are extenuating circumstances, the appeal process will be completed within 10 business days of submission of the Appeal Form and the results will be provided in writing to the Parties. In cases in which there is a conflict of interest, such as when the grounds for appeal involve action taken by the [Equity Director Equal Opportunity and Title IX Compliance Director](#), the [Vice Provost for Faculty Affairs and Equity](#) will conduct the appeal process.

9. INTERSECTION WITH OTHER RELEVANT NDSU POLICIES

- 9.1 The procedures described above do not eliminate the rights of a party to participate subsequently in pre-disciplinary action review and/or an appeal as afforded elsewhere under NDSU policy. Furthermore, for purposes of these procedures, an appeal process available to the individual (or group) against whom a discrimination complaint was filed must be available to the individual (or group) who filed the discrimination complaint.
- 9.2 **Nonbanded, nonacademic staff** – The applicable policy for nonbanded, nonacademic staff regarding subsequent pre-disciplinary action review and/or an appeal is NDSU [Section 183, Nonrenewal and Dismissal of Nonbanded, Nonacademic Staff](#).
- 9.3 **Regular staff employees** – The applicable policies for regular staff employees regarding subsequent pre-disciplinary action review and/or an appeal are NDSU [Section 220, Staff Job Discipline/Dismissal](#) and NDSU [Section 231, Appeal Procedure for Disciplinary and Reduction in Force Actions](#).
- 9.4 **Faculty** – The applicable policies for faculty regarding subsequent pre-disciplinary action review and/or an appeal are NDSU [Section 350.3, Board Regulations on Nonrenewal,](#)

[Termination or Dismissal of Faculty](#) and NDSU [Section 350.4, Board Regulations on Hearings and Appeals](#).

10. NOTICE OF MANDATORY REPORTING RESPONSIBILITIES AND TRAINING

10.1 It is the responsibility of the entire university community to foster a safe and non-discriminatory learning, living, and working environment. 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.

10.1.1 **Observance of discrimination** – All NDSU employees who observe discrimination, including harassment or retaliation, must document the discrimination and contact the [Equity Office/Equal Opportunity and Title IX Compliance Office](#) in accordance with 10.2.

10.1.2 **Report of discrimination** – All NDSU employees who receive a report of discrimination *involving a student*, including harassment or retaliation, must document the report and contact the [Equity Office/Equal Opportunity and Title IX Compliance Office](#) in accordance with 10.2. NDSU supervisors, managers, department heads, deans, directors, or administrators who receive a report of discrimination *involving employees*, including harassment or retaliation, must document the report and contact the [Equity Office/Equal Opportunity and Title IX Compliance Office](#) in accordance with 10.2. The provisions of 10.1.2 do not apply to confidential support resources providing services as described in 3.1.4.

10.2 To comply with 10.1.1 or 10.1.2, NDSU employees must promptly complete and submit an NDSU Discrimination/Harassment/Retaliation Report Form (Report Form) to the [Equity Director/Equal Opportunity and Title IX Compliance Director](#). The Report Form is available online at <https://www.ndsu.edu/equity/forms/> https://ndstate.co1.qualtrics.com/jfe/form/SV_cYXm01BTRKZi8HY or by contacting the [Equity Office/Equal Opportunity and Title IX Compliance 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/Equal Opportunity and Title IX Compliance Office](#) can assist with completing the Report Form as needed. The [Equity Office/Equal Opportunity and Title IX Compliance Office](#) is the official university record holder for documentation under these procedures.

10.3 Upon receipt of a Report Form, NDSU will initiate its discrimination complaint procedures.

10.4 **Mandatory training** - All [new](#) NDSU employees must complete [in-person](#) equal opportunity and non-discrimination training [within 60 days of their employment start date. Additionally, all fulltime employees must complete in-person equal opportunity and non-discrimination training every three years. on an annual basis.](#) In addition to mandatory training, employees are encouraged to contact the [Equity Office/Equal Opportunity and Title IX Compliance Office](#) with any questions they may have related to equal opportunity and non-discrimination at NDSU, including inquiries regarding their responsibilities as mandatory reporters.

11. DISCRETIONARY INVESTIGATION

11.1 The [Equity Office/Equal Opportunity and Title IX Compliance Office](#) reserves the right to initiate an investigation under these procedures at its discretion in the absence of a

discrimination complaint or report of discrimination in order to fulfill NDSU's commitment to taking action to stop discrimination, remedy its effects, and prevent its recurrence.

12. FILING WITH AN EXTERNAL AGENCY

- 12.1 An individual (or group) also has the right to file a discrimination complaint with one or more of the following external agencies. Please note that these agencies have their own deadlines for filing a discrimination complaint. Please contact the agencies directly for more information about applicable deadlines.

[National Science Foundation \(NSF\)](#)

[Phone: 703-292-8020](#)

[TTD: 800-281-8749](#)

programcomplaints@nsf.gov

https://nsf.gov/pubs/policydocs/pappg20_1/pappg_11.jsp#XIA

[National Institutes of Health \(NIH\)](#)

[Phone: 301-480-6701](#)

[TTY: 301-402-9612](#)

granteeharassment@nih.gov

<https://grants.nih.gov/grants/policy/harassment/actions-oversight/allegation-process.htm>

North Dakota Department of Labor and Human Rights

Phone: 1-800-582-8032

TTY: 1-800-366-6888

humanrights@nd.gov

www.nd.gov/labor

U.S. Department of Education

Office for Civil Rights

Phone: 1-800-421-3481

TDD: 1-800-877-8339

OCR@ed.gov

www2.ed.gov/ocr

U.S. Equal Employment Opportunity Commission

Phone: 1-800-669-4000

TTY: 1-800-669-6820

info@eeoc.gov

www.eeoc.gov

HISTORY:

New	December 20, 1977
Amended	September 1993
Amended	January 1996
Amended	June 2000
Amended	October 2007
Housekeeping	September 2009
Amended	March 16, 2010
Housekeeping	February 14, 2011
Amended	April 25, 2016
Housekeeping	May 20, 2016
Amended	August 22, 2017

Housekeeping February 6, 2019
Amended March 15, 2021

Policy Change Cover Sheet

This form must be completed for each policy presented. All areas in red including the header must be filled in or it will be sent back to you for completion. Gender-inclusive language should be used in revised and new policies submitted to SCC.

*If the revisions you are requesting include housekeeping changes, please submit the housekeeping changes first. The SCC Secretary will notify you once the housekeeping changes have been made and you can submit the Policy Change Cover Sheet at that time. Please submit housekeeping changes to nds.scc@nds.edu.

Refer to the [NDSU Senate Coordinating Council process](#) for more information about housekeeping changes.

Policy Number and Name: Policy 156.1: Title IX Complaint Procedures

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):**

The change reflects the Cardona decision which allows a decision-maker at a postsecondary institution to now consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at the live hearing, in reaching a determination regarding responsibility in a Title IX grievance process (<https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf>). Additionally, this new language mirrors the language proposed to be used in NDUS Policy 520: *Title IX – Sexual Harassment*.

Is this a federal or state mandate: Yes No

Individual/Department/Committee or Organization submitting the policy change:
Heather Higgins-Dochtermann

Date Submitted to SCC Secretary: October 5, 2021

Email address of the person who should be contacted if revisions are requested:
heather.higginsdocht@nds.edu

The SCC Secretary will keep record of all actions taken on this policy change request on the SCC policy tracking spreadsheet. You will be notified once the policy has been approved and updated or if further revisions are requested.

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 investigate.
- 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. If deemed reliable and relevant by the decision-maker, and not otherwise subject to exclusion under the Policy, the decision-maker may consider the statements of persons who were not present at the hearing, or persons who were present at the hearing but refused to answer a cross-examination question. This includes, but is not limited to, opinions and statements in police reports or other official reports, medical records, court records and filings, investigation notes of interviews, emails, written statements, affidavits, text messages, and social media posting. The decision-maker shall determine the appropriate weight to afford the statements under the circumstances and will do so in a fair and equitable manner. 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. Disciplinary sanctions may not be imposed until the conclusion of the Title IX appeal process.

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. Title IX Appeal Process.

- 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. Upon conclusion of the Title IX appeal process or on the date following the deadline for filing an appeal pursuant to this section, NDSU may implement any remedies or disciplinary sanctions

imposed in the determination regarding responsibility or upheld on appeal, as appropriate. 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 additional appeal from a determination regarding responsibility for a period of at least one year following the original decision pursuant to SBHE Policy 514. Such appeals may only be filed based on new information, contradictory information, and information indicating that the student or student organization was not afforded due process, and such appeal may not be based on grounds previously raised during the Title IX appeal process. 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	August 14, 2020
Amended	April 6, 2021

Policy Change Cover Sheet

This form must be completed for each policy presented. All areas in red including the header must be filled in or it will be sent back to you for completion. Gender-inclusive language should be used in revised and new policies submitted to SCC.

*If the revisions you are requesting include housekeeping changes, please submit the housekeeping changes first. The SCC Secretary will notify you once the housekeeping changes have been made and you can submit the Policy Change Cover Sheet at that time. Please submit housekeeping changes to ndsuscc@ndsu.edu.

Refer to the [NDSU Senate Coordinating Council process](#) for more information about housekeeping changes.

Policy Number and Name: Policy 162: Sexual and Gender-Based Harassment and Sexual Misconduct

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):

Added links previously missing in Sections 1.2, 1.6, 12
Updated link in Section 4.1
Updated Campus Resources listed in Section 5.3
Updated Equity Office name change to Equal Opportunity and Title IX Compliance Office throughout policy
Updated contact from Title IX Coordinator to Equal Opportunity and Title IX Compliance Office throughout policy
Updated report/complaint form link throughout policy
Updated training requirements in Section 10.2
Included addition in Section 12.16 as recommended by FIRE to assist NDSU in obtaining green light status

Is this a federal or state mandate: Yes No

Individual/Department/Committee or Organization submitting the policy change:
Heather Higgins-Dochtermann

Date Submitted to SCC Secretary: September 16, 2021

Email address of the person who should be contacted if revisions are requested:
heather.higginsdocht@ndsu.edu

The SCC Secretary will keep record of all actions taken on this policy change request on the SCC policy tracking spreadsheet. You will be notified once the policy has been approved and updated or if further revisions are requested.

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 [Policy 156.1: Title IX Complaint Procedures](#) ~~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)~~. [Policy 156.1: Title IX Complaint Procedures](#). 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 <u>Equal Opportunity and Title IX Compliance Office</u>	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
<u>Ombudsperson*</u>	<u>701-231-5114</u>	<u>Main Library, Lower Level, 20C</u>
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 Equal Opportunity and Title IX Compliance -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/> https://ndstate.co1.qualtrics.com/jfe/form/SV_cYXm01BTRKZi8HY or by contacting ~~the Title IX Coordinator or~~ the Equity Office Equal Opportunity and Title IX Compliance 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 ndsucaaa@ndsu.edu or by bringing it to the Equity Office. The Equity Office~~Equal Opportunity and Title IX Compliance 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~~Equal Opportunity and Title IX Compliance 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~~Equal Opportunity and Title IX Compliance 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 ~~Equal Opportunity and Title IX Compliance Office~~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~~ Equal Opportunity and Title IX Compliance 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~~ Equal Opportunity and Title IX Compliance 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~~ Equal Opportunity and Title IX Compliance 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~~ Equal Opportunity and Title IX Compliance 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~~ Equal Opportunity and Title IX Compliance Office. The Report Form is available online at <https://www.ndsu.edu/forms/> https://ndstate.co1.qualtrics.com/jfe/form/SV_cYXm01BTRKZi8HY or by contacting the ~~Equity Office~~ Equal Opportunity and Title IX Compliance 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~~ Equal Opportunity and Title IX Compliance Office can assist with completing the Report Form as needed. The ~~Equity Office~~ Equal Opportunity and Title IX Compliance 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 [Equal Opportunity and Title IX Compliance Director](#) ~~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.~~ **Mandatory training** - All new NDSU employees must complete in-person equal opportunity and non-discrimination training within 60 days of their employment start date. Additionally, all fulltime employees must complete in-person equal opportunity and non-discrimination training every three years.
- 10.3 Employees are encouraged to contact the ~~Title IX Coordinator or the Equity Office~~ [Equal Opportunity and Title IX Compliance 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 Complaint Procedures](#), ~~[Policy 156.1: Title IX Grievance Procedures \(link\)](#)~~ and ~~[State Board Higher Education Policy 520 \(link\)](#)~~ and [State Board Higher Education Policy 520: Title IX - Sexual Harassment](#).

- 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 the following, when a part of conduct that meets the standard set forth above:

- 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.

Commented [HH1]: Recommended by FIRE to get green coding.

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
Amended	August 14, 2020
Amended	December 14, 2020

Policy Change Cover Sheet

This form must be completed for each policy presented. All areas in red including the header must be filled in or it will be sent back to you for completion. Gender-inclusive language should be used in revised and new policies submitted to SCC.

*If the revisions you are requesting include housekeeping changes, please submit the housekeeping changes first. The SCC Secretary will notify you once the housekeeping changes have been made and you can submit the Policy Change Cover Sheet at that time. Please submit housekeeping changes to ndsuscc@ndsus.edu.

Refer to the [NDSU Senate Coordinating Council process](#) for more information about housekeeping changes.

Policy Number and Name: 612: Immunization Requirements

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):

These changes are being made as the result of a NDUS statewide audit of campus immunization policies and to comply with NDUS policy 506.1.

Here is a summary of what was changed:

- Separated the exemptions as its own bullet (see #3) as these exemptions apply to both immunizations so it looks cleaner.
- Modified the language and moved the information about the MMR and the 28 day rule to stay with the MMR section (#1) because it is not really an "exemption", but just the timing required by CDC.
- We also added "after age 16" for the meningitis section (#2) as this was missing and is part of the [NDUS Procedure 506.1](#).
- Matt Hammer suggested moving the last sentence of section one to the second sentence of the paragraph. It seems out of place at the end of the section.

Is this a federal or state mandate: Yes No

Has been recommended by an NDUS audit.

Individual/Department/Committee or Organization submitting the policy change:

Vice Provost for Student Affairs and Enrollment Management on behalf of Student Health Service

Date Submitted to SCC Secretary: 10/7/2021

Email address of the person who should be contacted if revisions are requested: Carin.Engler@ndsus.edu

The SCC Secretary will keep record of all actions taken on this policy change request on the SCC policy tracking spreadsheet. You will be notified once the policy has been approved and updated or if further revisions are requested.

North Dakota State University

Policy Manual

SECTION 612 IMMUNIZATION REQUIREMENTS

SOURCE: NDSU President
North Dakota SBHE Policy 506.1

1. Students enrolled in a course offered for credit at any institution must provide documentation of immunity against measles, mumps and rubella in accordance with this policy. If a student has had one immunization, they are considered compliant for 28 days but must agree to have a second immunization no less than 28 days later. The President shall adopt procedures implementing this policy. ~~The procedures shall establish exemptions for students enrolled only in distance learning courses and other students who have limited contact with resident student populations. The procedures shall also provide for additional exemptions upon application under established campus procedures if: (a) immunization is contraindicated by a medical condition; (b) a student has had one immunization and agrees to have a second one no less than one month later; or (3) a student's beliefs preclude participation in an immunization program. If a student has had one immunization, they are considered compliant for 28 days but must agree to have a second immunization no less than 28 days later.~~

2. Students ages 21 and younger must provide documentation of immunity against meningococcal disease after age 16 in accordance with this policy. The President shall adopt procedures implementing this requirement. ~~Exemptions may be provided upon application under established campus procedures if: (a) immunization is contraindicated by a medical condition; or (b) a student's beliefs preclude participation in an immunization program.~~

- ~~2-3.~~ The procedures shall establish exemptions for students enrolled only in distance learning courses and other students who have limited contact with resident student populations. The procedures shall also provide for additional exemptions upon application under established campus procedures if: (a) immunization is contraindicated by a medical condition or; (b) a student has had one immunization and agrees to have a second one no less than one month later; or (3) a student's beliefs preclude participation in an immunization program.

- ~~3-4.~~ Each institution shall establish procedures for screening international students for tuberculosis. Testing is required of new students from all countries except those classified by U.S. health officials as "low risk for tuberculosis."

HISTORY:

New	Sept 2015
Amended	November 11, 2015

**RESOLUTION IN SUPPORT OF UKRAINIAN
UNIVERSITY STUDENTS, FACULTY, AND STAFF**

RATIONALE:

WHEREAS Russia's invasion of Ukraine is an attack on human rights and democracy and a violation of international law that is taking the lives of innocent civilians; and

WHEREAS President Putin has used historical falsehoods and propaganda to justify Russia's attack on Ukraine's sovereignty; and

WHEREAS National University of Kyiv Mohyla-Academy [has suspended all lectures](#) and their students are joining the Ukrainian Armed Forces; and

WHEREAS students from Ukraine studying in the United States and Ukrainian Fulbright participants are under severe stress due to their families, friends, and loved ones facing military aggression in Ukraine, and may not be able to return to their homes in the foreseeable future; and

WHEREAS American academics across the nation are [speaking out against Russian aggression](#) and in support of Ukraine.

RESOLUTION:

THEREFORE BE IT RESOLVED that NDSU Faculty Senate condemns in the strongest terms Russia's unprovoked and unjustified attack on sovereign Ukraine; and

BE IT FURTHER RESOLVED that the NDSU Faculty Senate stands in firm support with university students, faculty, and staff in Ukraine; and

BE IT FURTHER RESOLVED that the NDSU Faculty Senate stands in firm support with university students, faculty, and staff in Russia who oppose the war.

Adopted by the NDSU Faculty Senate on March XX, 2022.