SECTION 156
EQUAL OPPORTUNITY GRIEVANCE PROCEDURES

SOURCE: NDSU President

1. INTRODUCTION

1.1 The purpose of these grievance procedures is to provide a fair and orderly system for review at North Dakota State University of alleged violations of equal opportunity laws, regulations, and policies that prohibit discrimination against all protected classes as defined in NDSU Policy 100.

1.2 Any individual or group filing a grievance under this procedure is entitled to protection from harassment, reprisals or retaliation as a result of having filed the grievance. Retaliation may, in itself, constitute grounds for a grievance.

1.3 Parties (the grievant and party whose action is the subject of the grievance) to a grievance filed under this procedure will make every effort to comply with the established timelines for giving notices and completing actions related to the grievance. In extenuating circumstances, these timelines may be extended by the NDSU Vice President for Equity, Diversity and Global Outreach ("Diversity Officer") in consultation with the parties.

2. ADMINISTRATIVE REVIEW OF GRIEVANCE

2.1 Any student, employee of the University, or any group of such persons who is affected by an apparent violation of equal opportunity laws, regulations, or policies shall be entitled to an administrative review of the grievance.

2.1.1 The review is initiated by completing the NDSU Formal Equal Opportunity Grievance Form (available from the NDSU Office for the Vice President for Equity, Diversity and Global Outreach) and filing it with the Diversity Officer. Unless the Diversity Officer stipulates otherwise, the grievance form must be submitted within six months of the alleged violation.

2.1.2 This review shall include: (1) an administrative inquiry into the facts of the case; (2) a discussion of the case by the Diversity Officer with the grievant and, the party whose action is the subject of grievance; (3) a conclusion by the Diversity Officer regarding whether or not the case involves a violation of equal opportunity rights; (4) an attempt to achieve a mutually acceptable resolution of the grievance; and (5) a written communication of that conclusion to the grievant and the party whose action is the subject of the grievance. Unless there are extenuating circumstances, the administrative review will be completed within 30 calendar days after the date of the filing.

2.1.3 As an alternative to this review, a grievant may pursue any channel of review applicable under another University policy (such as the Grade Appeals Board policy for students [Section 337], the Grievance Procedure for Conditions of Employment or
Appeal Procedure for Disciplinary and Reduction In Force Actions [Sections 230 and 231, respectively], or the Board Regulations on Nonrenewal, Termination or Dismissal of Academic Staff, the Board Regulations on Hearings and Appeals, or Grievances - Faculty [Sections 350.3, 350.4 and 353 respectively]).

3. VOLUNTARY MEDIATION

3.1 If the grievant and party whose action is subject of the grievance both agree to mediate, the provisions of Policy 350.5 - Mediation shall apply for all employees.

3.2 If voluntary mediation is unsuccessful, the grievant may request a hearing of the grievance pursuant to section 4.1.

4. GRIEVANCE HEARING

4.1 Either party of the grievance will have ten (10) working days to appeal the written conclusion in section 2.1.2 or from the termination of an unsuccessful mediation under section 3. A grievance shall be heard by a five member Equal Opportunity Hearing Committee. The Student Body President, Faculty Senate President and the Staff Senate President shall designate the chair and other members for this committee from among the University Equal Opportunity Hearing Panel, which shall consist of the following 18 members:

- 6 NDSU students appointed by the Student Body President,
- 6 NDSU faculty members appointed by the President of the Faculty Senate, and
- 6 NDSU broadbanded employees appointed by the Staff Senate President.

4.1.1 For each group of panel appointees, those responsible for designating the panel shall strive to have a diverse panel. Part-time students and regular employees are eligible for appointment.

4.1.2 Committee members shall disclose any conflict of interest they may have to the committee. The parties can also challenge a committee member for a conflict of interest. The Student Body President, President of Faculty Senate, and the Staff Senate President shall decide, by majority vote, whether challenges have merit. Replacements shall be appointed in the same manner as original appointments.

4.2 An Equal Opportunity hearing committee shall conduct its hearing in accordance with the following requirements: The committee may appoint a hearing officer with authority to conduct pre-hearing meetings, supervise discovery, advise the committee or preside over the hearing. The responsibilities for conducting the hearing are then assumed by the hearing officer, subject to decisions by the committee.

4.2.1 Any grievant requesting a hearing must file a written statement with the hearing committee indicating the grounds upon which a violation of equal opportunity is alleged to exist. Upon receipt of this statement, the committee chairperson shall schedule a date for an initial hearing.

4.2.2 The committee shall attempt to schedule hearing sessions only when all of its members are able to be present. If the committee decides, however, that the parties interests are best served by scheduling a session even when one or more of the committee members are not able to be present, then the absent members shall be
responsible for reviewing the tape recordings of that session to familiarize themselves with the evidence presented at that time.

4.2.3 Attendance at any hearing shall be limited to the committee members, the parties, and their attorneys or other representatives and witnesses, unless both the parties shall agree to offer an express invitation for a particular hearing or session to the public or representatives of the press. Witness may be sequestered whether the hearing is open or closed.

4.2.4 The committee chairperson shall preside at all sessions. Any party or representative wishing to present evidence, examine witnesses, summarize evidence, or present arguments shall do so only with the consent of the chairperson. The committee shall tape-record sessions (and/or hire a court reporter) at which testimony is heard and shall allow controlled access to the tape for review or transcription by any party as defined in subsection 1.3 directly involved in the proceedings. The committee shall also keep summary minutes of its proceedings.

4.2.5 At the beginning of a hearing, the committee shall provide an opportunity for opening statements to be made, first by the grievant, then by the party defending whose action is subject of the grievance. The committee shall then rely upon the opposing parties to call the necessary witnesses and present relevant evidence. The committee shall reserve the right, however, to call its own witnesses and to act in an investigative capacity itself, should the need arise.

4.2.6 The committee shall consider both oral testimony and written evidence. Upon receipt of any written statement or evidence provided by any party to the committee, the committee shall promptly provide the other party with a copy of such material. The committee can set its own rules for notice deadlines for disclosure of exhibits and witnesses. Any person offering testimony before the committee shall be subject to questioning by the committee members or either party with specific consent of the committee chairperson. The committee shall reserve the right to exclude redundant evidence as determined by a majority committee vote. The committee has authority to secure the testimony of essential witnesses or other relevant evidence. At the conclusion of a hearing, the committee shall provide an opportunity for either party to submit a written summary of its position.

4.2.7 The committee shall vote by secret ballot, and the committee chairperson shall vote on all questions. In order for the committee to find a violation of equal opportunity, the grievant must show by the greater weight of the evidence that such a violation did, in fact, occur. If an alleged harasser in a sexual harassment case claims consent as a defense and the person was in a position of power or control over the grievant, the burden of proof on the issue of consent is on the alleged harasser. The vote required for committee action will be a simple majority of total number of votes eligible to be cast. All voting results and any recommendations of the committee shall be promptly made available in writing to all of the parties involved in the case and the University President. The President shall be responsible for determining an appropriate administrative response to the findings, conclusions and recommendations. The decision of the President is final.
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