

UNIVERSITY OF NORTH DAKOTA

COMPLAINTS OF DISCRIMINATION OR HARASSMENT

POLICY AND PROCEDURES

I. EQUAL OPPORTUNITY/AFFIRMATIVE ACTION POLICY STATEMENT AND PROCEDURES FOR COMPLAINTS OF DISCRIMINATION OR HARASSMENT

A. Mission and Priorities

The University of North Dakota does not tolerate harassment in any form. Harassment is contrary to the stated mission of the University to serve "the state, the country, and the world community" and to encourage students "to make informed choices, to communicate effectively, to be intellectually curious and creative, to commit themselves to lifelong learning and the services of others, and to share responsibility both for their own communities and for the world." See University of North Dakota Mission Statement. Harassment is in direct conflict with the identified priorities of the University to "reflect and promote respect and appreciation for diversity, human rights, and differences of opinion"; to "maintain clear and open lines of communication"; and to "ensure a positive work environment." See University Campus Climate Priority Action Areas. The University of North Dakota recognizes that the existence of harassment disrupts all areas of the University community.

B. Employment

The University of North Dakota practices a policy of non-discrimination in recruiting, hiring, and promoting all of its employees — faculty, staff, and students. It is committed to administering all personnel actions including, but not limited to, demotion, transfer, use of facilities, treatment during employment, rates of pay or other forms of compensation, selection for training, lay off, or termination without regard to race, color, national origin, religion, sexual orientation, gender identity, genetic information, sex, age, creed, marital status, veteran's status, political belief or affiliation, or physical, mental, or medical disability unrelated to the ability to engage in activities involved with the job. The University of North Dakota actively supports an affirmative action program in order to provide equal employment and educational opportunity in all areas: academic, supportive, and construction.

C. Educational Programs and Activities

It is the policy of the University of North Dakota that there shall be no discrimination against persons because of race, religion, age, creed, color, sex, disability, sexual orientation, gender identity, national origin, marital status, veteran's status, or political belief or affiliation, and that equal opportunity and

access to facilities shall be available to all. This policy is particularly applicable in the admission of students in all colleges and in their academic pursuits. It is also applicable in University owned or University approved housing, food services, extracurricular activities, and all other student services. It is the guiding policy in the employment of students either by the University or by outsiders through the University and in the employment of faculty and staff.

D. Consensual Relationships

The University of North Dakota discourages consensual relationships, i.e., amorous, romantic, or sexual relationships, between faculty and students, staff and students, supervisors and subordinates, and students who have an authority relationship over other students. This policy is in effect when one individual has a control, power, authority, or responsibility position over another. UND expressly prohibits any form of sexual harassment of employees and students when a previous consensual relationship ceases to exist or such a relationship is rejected by one of the parties.

If the parties do engage in a consensual relationship as defined above, the person in the authority position is obligated to report the relationship to his or her department head or supervisor immediately. Failure to report the relationship or any significant delay in reporting may be cause for disciplinary action.

Documentation of the reporting and any subsequent actions taken by the department head or supervisor, such as advising the parties of the potential for sexual harassment charges if the relationship ends, is required.

II. HARASSMENT POLICY

Harassment of an individual or group that is related to their status in a protected class that is sufficiently severe, persistent, or pervasive so as to interfere with or limit the ability of the individual or group to participate in or benefit from the University of North Dakota's programs or activities is prohibited. Harassment may take the form of oral, written, graphic, or physical conduct that is related to an individual's or group's protected class status. This includes gender, race, national origin, religion, sex, age, veteran's status, sexual orientation, genetic information (GINA), color, disability, or other protected classes.'

III. REPORTING PROCEDURE AND DOCUMENTATION

All members of the University community are encouraged to report incidents of discrimination and harassment to University authorities. Complaints are to be handled

¹Title VI, Civil Rights Acts of 1964, as amended; Title IX, Education Amendments of 1972, as amended; Age Discrimination Act of 1975; Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1991; UND Faculty Handbook, Section 111-1.2, 1.2.1, 1.2.2; North Dakota State Board of Higher Education Policy Manual, Section 602.1; North Dakota University System Human Resource Policy Manual; UND Code of Student Life Section 1, 1-1, 1-3 1-13, 1-14, Appendix 1; Genetic Information Non-discrimination Act of 2008 (GINA).

at the lowest possible level to ensure a quick and effective response. Incidents of discrimination or harassment may occur in a variety of situations and therefore reporting should be to the following:

- A. Dean of Students Office — handles complaints by students and other University affiliated personnel, usually after being reviewed at the departmental level concerning behaviors of one or more students in social, cultural, living, academic, or related environments;
- B. UND Police Department — handles complaints by all individuals concerning hate crimes, criminal behavior, and activities, which may endanger an individual, a group, or property;
- C. Academic Deans — handle complaints: (i) of students in academic settings under their authority including, but not limited to, faculty or staff discrimination or harassment of a student in an academic environment; professional relationship; internship, cooperative education, clinical, field site, or student teaching experience; or personal (consensual) relationship; and (2) of faculty and staff in employment settings within the college and programs under the Dean's control;
- D. Non-Academic Department Heads — handle complaints: (1) of students, faculty, and staff in relation to functions under their authority; and (2) of employees under their authority;
- E. Residence Services — handles complaints of residents living in residence halls, University Children's Center, apartments, and camp/conference programs (regarding housing issues only);
- F. Student Financial Aid — handles complaints of students employed throughout the University in work-study and institutional employment and handles complaints concerning scholarships and other sources of financial aid;
- G. Graduate School — handles complaints of graduate students related to academic issues, graduate assistantships, awards, and scholarships directed to graduate students;
- H. School of Medicine and Health Sciences — handles complaints of medical students through the Office of Admissions and Student Affairs; handles complaints of medical residents through the Office of the Program Director at each resident site (Grand Forks, Fargo, Bismarck, and Minot), and the Office of the Dean. All other undergraduates and graduates of the School of Medicine and Health Sciences are handled by the Dean of Students Office and the Graduate School as applicable;
- I. School of Law — handles complaints of law students through the Office of the Dean;

- J. Affirmative Action Office — handles complaints of any discriminatory or harassment nature of students, faculty, staff, applicants for employment, contractors with the University, and non-University members who may believe that they have been denied aid, benefits, or services because of discrimination or harassment. The Affirmative Action Officer shall consult with and work with University offices, departments, officials, and the complaining party to resolve the complaint;
- K. Other administrative offices, centers, and individual faculty or staff may have initial notice of a discrimination or harassment problem and are to direct the person or group with the complaint to one of the above offices or departments for assistance; and
- L. Complaints against Deans, Department Heads, or Vice Presidents should be directed to their supervisors. A complaint against the President should be directed to the Affirmative Action Office.

IV. NOTICE TO THE UNIVERSITY

An individual or group believing that they have experienced discrimination or harassment in employment, in an educational program, or in services for which they are eligible should notify one of the above offices appropriate to the Complainant's status, promptly after the incident or act of discrimination or harassment occurs, or when the person has a reasonable knowledge or belief of the discrimination or harassment, preferably within 30 working days.

Information concerning an alleged prohibited discriminatory or harassing incident or situation, regardless of source or method of transmission, will be considered sufficient cause to begin an investigation. Depending upon the nature of the complaint or allegation, the University will try to keep the complaint or allegation confidential; however anonymity or confidentiality cannot be guaranteed.

Administrators, faculty, and staff are obligated to refer the individual and to notify the appropriate reporting office or the Affirmative Action Office, as defined in the procedures, about the content of the disclosure and incident information. Administrators, faculty, and staff may not dissuade an individual from informing them of a possible discriminatory or harassing situation. Administrators, faculty, and staff also are obligated to inform the individual of their required reporting obligations.

Once the University has notice of a complaint of discrimination or harassment through any administrator charged with investigating the complaint, that administrator shall notify the Affirmative Action Office immediately. As the office of record, all documentation shall be sent to the Affirmative Action Office when the case is completed. The Office of UND Police is the office of record for statistical data required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

V. PROCEDURES

A. Filing a Complaint

The appropriate “Reporting Office” or administrative authority, as noted above, shall take the complainant’s information, obtain the signature of the complainant with the information, notify the Affirmative Action Officer of the pending complaint and any other designated or appropriate administrative officers, and shall begin an investigation of the complaint. The investigation should commence within one week of receiving the complaint. This can be extended if individuals involved in the investigation are not immediately available. Notification of the accused should be given at the time the investigation commences. Complaints are to be handled at the lowest possible level to ensure a quick and effective response.

Complaints filed with the Affirmative Action Officer shall include the Complainant's information, the signature of the complainant, and any other relevant information. If appropriate, the Affirmative Action Officer will notify the appropriate administrative officer in whose area the complaint is alleged to have occurred and will either refer the complaint to one of the appropriate offices above for handling or work cooperatively with the appropriate office or administrator to investigate and to make a finding based on the facts.

The initial complaint may be in oral or written form. The complainant will be asked to sign a completed Complaint Form or sign a letter of complaint detailing the alleged charges. In order to fully investigate a complaint, it is best if the Complainant write an account of the alleged occurrences in his or her own words. This helps the Complainant to be clear as to events and gives the interviewer/investigator the best understanding of what was alleged to have occurred. If the Complainant does not choose to or cannot write an account, the Complainant may review and sign the written account taken by the interview/investigator. This review by the Complainant is necessary to make sure that all issues are included and understood. Failure to sign a statement may impede the University's ability to effectively resolve the complaint.

B. Investigation and Time Lines

The Affirmative Action Officer may investigate, assist, advise, or accept a lead role in investigating any complaint of discrimination or harassment. Other trained University personnel, including those that serve as human resources professionals or administrators, judicial officers, crisis team members, or members of the specially trained investigative pool may investigate or assist in investigations or in fact finding.

If, after an initial investigation is completed, it is determined that an allegation cannot be resolved without a more comprehensive investigation, a three-member team will be selected from a specially trained pool to do a thorough investigation of the allegation.

Most fact-finding investigations and results should be concluded as expediently as possible, preferably within 60 working days of the complaint's filing with the University official. However, investigations may be extended due to difficulty in obtaining documentation or unforeseen circumstances. In those situations, complaint investigations should be concluded in 120 working days. Reasons for exceptions shall be noted for the file. The complainant and the accused party shall be informed as to the progress or status of the investigation at the following stages: when it begins, if a determination is made to convene a three-member investigative panel, if an extension is given beyond 60 working days, and when the investigation is completed. These notifications should be within three days of the status change. The Affirmative Action Officer, or the office or administrator conducting the investigation, or the investigative team; if one has been established; will be responsible for these notifications.

C. Findings and Actions

Following the conclusion of the investigation, a finding will be made. The parties will be notified in writing as to the disposition of the complaint. If the finding determines that discrimination or harassment occurred, then corrections are to be instituted by the appropriately authorized administrator, administrative department, or division on behalf of the University. Disciplinary action against a student, faculty/academic staff member, or staff employee shall follow the established University procedures and due process requirements respective to the individual's status with the University. These procedures and due process requirements are found in the University of North Dakota Code of Student Life, the University of North Dakota Faculty Handbook, the North Dakota State Board of Higher Education Policies and Procedures, and the North Dakota University System Human Resources Manual. Other institutional actions may include, but are not limited to, changing procedures, processes, aids, benefits, or services applicable to the circumstances. Contractors with the University may be found in default of the contractual agreement(s) not to discriminate.

A record arising from a disciplinary action against an individual based on his or her employment status shall be a part of the individual's permanent and official employment file. This includes all faculty and staff and students in their capacity as student employees and graduate students employed as teaching, research, or service assistants. Disciplinary action that is taken against a student in relation to academic or other campus-related behaviors shall be managed by the Dean of Students Office, the Graduate School, the School of Law, and the School of Medicine and Health Sciences according to their processes and records retention, as is appropriate to the student's standing

Disciplinary action may include, but is not limited to, a verbal warning, written reprimand, suspension, probation, demotion, and up to and including termination of employment or privileges to remain as a student. Progressive disciplinary action is not required for either employment or student-conduct

issues arising from a finding of discrimination or harassment.

D. Appeals

An appeal by the complainant may occur only when a finding does not support the complainant's allegations. A complainant may appeal the finding in writing to the appropriate Vice President in whose area the complaint occurred. The appeal must be in writing and filed with the Vice President within 10 working days after the complainant receives notice of the findings. The Vice President shall review the documentation and make a determination to accept, reject, or modify the results of the findings. The Vice President shall have 30 working days to complete the appeal review. A written decision shall be sent to the complainant, the person or persons against whom the complaint was made, and appropriate administrative officers. An appeal to the Vice President completes the appeal process. No other appeal is available through the University. The President will handle an appeal of a complaint against a Vice President. In that instance, the President's review is final.

VI. DISCRIMINATION OR HARASSMENT COMPLAINTS MADE AS PART OF ANOTHER GRIEVANCE OR COMPLAINT PROCESS

Grievances filed through other processes outlined in the University of North Dakota Code of Student Life, the University of North Dakota Faculty Handbook, the North Dakota State Board of Higher Education Policies and Procedures, the North Dakota University System Human Resources Policy Manual, or related due process procedures may have as a component to the grievance an allegation of discrimination or harassment. The discrimination or harassment complaint shall be handled within that existing process and not as a distinct or separate process. The Office of Affirmative Action will be available for consultation regarding the investigation of the harassment portion of the complaint. The findings of the grievance shall include any determinations of fact related to the discrimination or harassment charges. Any appeal of the findings shall be according to the process appropriate to the status of the grievant.

Note that a complaint of discrimination or harassment is part of an on-going grievance shall be forwarded to the Affirmative Action Officer as part of the University's record of discrimination complaints.

VII. MONITORING CORRECTIVE ACTIONS

The University through its administrative offices and the Affirmative Action Office, on an annual basis, shall review any corrective actions taken to resolve a discrimination or harassment complaint. A report of the review shall be provided to the President. If a recurrence of a behavior occurs or a corrective action is not effective, then the University shall take remedial steps to ensure that discrimination or harassment is not occurring.

VIII. NON-RETALIATION FOR FILING A DISCRIMINATION OR HARASSMENT COMPLAINT

No member of the University shall intimidate, threaten, coerce, or discriminate against any individual because he or she filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the jurisdiction of the University's PROCEDURES FOR COMPLAINTS OF DISCRIMINATION OR HARASSMENT. Any complaint of retaliation shall be investigated as a new and separate complaint as provided in the PROCEDURES FOR COMPLAINTS OF DISCRIMINATION OR HARASSMENT.

IX. THE EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION DIRECTOR

The Affirmative Action Officer (Office address: Twamley Hall, Room 401; mailing address: Box 7097, Grand Forks, ND 58202-7097; phone 701-777-4171; e-mail address: und.affirmativeactionoffice@UND.edu) is assigned the responsibility to be the University's designated coordinator for receiving complaints of discrimination or harassment under the following federal regulations: Title IX of the Education Amendments of 1972 (sex/gender discrimination); Title VI of the Civil Rights Act of 1964 (race, color, national origin, discrimination); Age Discrimination Act of 1975 (age discrimination); Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1991 (disability discrimination); and other equal opportunity statutes for which a coordinator is not required. Any complaint or concern regarding discrimination or harassment, not resolved by the University, may be filed with the Office for Civil Rights, U.S. Department of Education, 500 West Madison, Suite 1475, Chicago, IL 60611