

UNIVERSITY OF NORTH DAKOTA

POLICY AND PROCEDURES FOR COMPLAINTS OF DISCRIMINATION OR HARASSMENT

I. NOTICE OF NONDISCRIMINATION

The University of North Dakota (UND) is committed to the principle of equal opportunity in education and employment. UND does not discriminate on the basis of race, color, national origin, religion, sex, age, disability, sexual orientation, gender identity, genetic information, creed, marital status, veteran's status, political belief or affiliation or any other status protected by law. Pursuant to Title IX of the Education Amendments of 1972, UND does not discriminate on the basis of sex in its educational programs and activities, employment and admission. UND will promptly and equitably investigate reports of discrimination or harassment and take disciplinary action as appropriate.

Retaliation in any form against a person who reports discrimination or participates in the investigation of discrimination is strictly prohibited and will be grounds for separate disciplinary action.

The University's policies and procedures for complaints of discrimination or harassment are found at <http://UND.edu/affirmative-action/files/docs/discrimination-harassment-policy-procedures.pdf> or in the University's *Code of Student Life* at <http://UND.edu/code/>.

Concerns regarding UND's equal opportunity and nondiscrimination policies, including Title IX, Title VI, Title VII, ADA, and Section 504 may be addressed to Donna Smith, Director of Equal Employment Opportunity/Affirmative Action and Title IX/ADA Coordinator, 401 Twamley Hall, 264 Centennial Drive Stop 7097, Grand Forks, ND 58202-7097, telephone 701.777.4171, email UND.affirmativeactionoffice@UND.edu or donna.smith@UND.edu or visit the website at <http://UND.edu/affirmative-action/>. A complaint or concern regarding discrimination or harassment may also be sent to the Office for Civil Rights, U.S. Department of Education, 500 West Madison, Suite 1475, Chicago, IL 60611 or any other federal agency.

II. DEFINITIONS

A. **Discrimination:** Discrimination is unfair or unequal treatment of an individual or a group based upon certain characteristics. Protected classes under University policy include race, religion, age, color, sex, physical or mental disability, national origin, creed, sexual orientation, gender identity, genetic information, marital status, veteran's status, and political belief or affiliation and any other status protected by federal or state law.

B. **Harassment:** Harassment is a specific form of discrimination. It is unwelcome and offensive conduct that is based upon an individual or group's membership in a protected class. Harassment is a violation of UND policy when it is objectively offensive and 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, including employment and academic pursuits.

Harassment may be oral, written, graphic or physical and may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work or academic performance.

C. Sexual Misconduct: Sexual misconduct includes dating violence, domestic violence, sexual assault, sexual exploitation, and sexual harassment. Sexual misconduct also includes assault, stalking, and other acts when the behavior is based on an intimate relationship and/or actual or perceived gender, gender expression, sex, or sexual orientation.

1. Dating Violence. See <http://und.edu/finance-operations/files/docs/6-13-preventing-responding-to-sex-offenses.pdf>.
2. Domestic Violence. See <http://und.edu/finance-operations/files/docs/6-13-preventing-responding-to-sex-offenses.pdf>.
3. Sexual Assault. See <http://und.edu/finance-operations/files/docs/6-13-preventing-responding-to-sex-offenses.pdf>. Sexual assault also includes the following:
 - a. Engaging in sexual contact and/or a sexual act with another person without that person's consent; and/or
 - b. Engaging in sexual contact and/or a sexual act with another person by any threat, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification.
4. Sexual Exploitation. Sexual exploitation includes, but is not limited to, the following:
 - a. Causing the incapacitation of another person for the purpose of compromising that person's ability to consent to a sexual act, sexual contact, or participate in sexually explicit photos, videos, or other forms of communication of a sexual nature;
 - b. Viewing, allowing another person to view, recording, or disseminating recordings of a sexual act, sexual contact, or sexually explicit photos, videos, or other forms of communication of a sexual nature without the consent of all involved; and/or
 - c. Inducing, by the use of false pretenses, someone to engage in a sexual act, sexual contact, or sexually explicit photos, videos, or other forms of communication of a sexual nature that the person would not have otherwise engaged.
5. Sexual Discrimination: Discrimination based upon an individual's sex, sexual orientation, gender identity, or marital/pregnancy status.
6. Sexual Harassment: Sexual harassment is a form of discrimination and includes unwelcome acts of verbal, nonverbal, graphic or physical aggression, intimidation or hostility based on sex, sexual orientation or gender identity. Sexual harassment is a violation of University policy when it is objectively offensive and sufficiently severe, persistent or pervasive so as to interfere with or limit the ability of an individual or group to participate in or benefit from university-sponsored programs or activities, including employment and academic pursuits. Sexual harassment may or may not

include conduct of a sexual nature and may involve individuals of the same or different sex, gender identity or sexual orientation.

D. **Responsible Employees (Title IX).** Title IX of the Education Amendments Act of 1972 designates certain employees as Responsible Employees and obligates those employees to share information about potential Title IX violations. Responsible Employees at UND are all benefitted employees in the Executive/Administration (0000/1000), Academic (2000), Professional (3000), Technical and Paraprofessional (4000), and Office Support (5000) broadband classifications; and non-benefitted employees who are adjunct faculty, part-time instructional faculty, coaches, graduate teaching assistants, Resident Assistants, and Hall Directors.

III. PROCEDURES FOR COMPLAINTS OF HARASSMENT OR DISCRIMINATION OTHER THAN SEXUAL MISCONDUCT

A. **Reporting.** All members of the University community who have experienced discrimination or harassment are encouraged to report this to University authorities. It is the University's policy to handle complaints at the earliest possible level to ensure a quick and effective response. Incidents of discrimination or harassment should be reported to the individual's supervisor, faculty member or Housing staff member, as appropriate. Reports may also be made to the following, as appropriate:

Office of Student Rights & Responsibilities – harassment by students
Human Resources Office – harassment by employees
University Police Department – all reports of criminal activity
EEO/AA Office – any complaint of harassment or discrimination

Reports of discrimination or harassment can be made using the following on-line submission form: <http://und.edu/affirmative-action/incident-report.cfm>

A University employee who receives a complaint of discrimination or harassment from another employee or a student, shall notify the EEO/AA Office immediately.

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.

B. **Investigative Process.** Reports of alleged prohibited discriminatory or harassing conduct, regardless of source or method of transmission, will be considered sufficient cause to begin an investigation. However, the University may be limited in its ability to respond to anonymous reports.

Reports accusing a student of engaging in discriminatory or harassing behavior will be resolved following the UND *Code of Student Life*.

The Director of EEO/AA may investigate, assist, advise, or accept a lead role in investigating any complaint of discrimination or harassment. Other appropriate University personnel may investigate or assist in the investigative process. Complaints will be investigated and resolved at the lowest possible level for most efficient resolution. The EEO/AA Office will work cooperatively

with any office or administrator investigating a complaint.

At the completion of the fact-finding process, the Director of EEO/AA or designee will review the investigative information and, using a preponderance of the information standard, determine whether university policy has been violated. The parties will be notified of the determination in writing. If the accused person is a University employee, the accused person's supervisor will also be notified of the determination. A determination should be issued within 60 calendar days of receipt of the complaint in the EEO/AA Office. The complainant and respondent will be notified if the determination will not be issued within 60 days and the reason for the delay.

Any disciplinary action against a student or 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 *UND Code of Student Life*, the *UND Faculty Handbook*, the *UND Staff 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.

C. Appeals. Appeals as part of the student conduct process will follow the *UND Code of Student Life*.

In cases of alleged employee misconduct, the complainant or respondent may appeal the determination to the Vice President in whose area the complaint occurred. The appeal must be in writing and must specify the basis or bases for appeal. The appeal must be received in the Vice President's office within ten business days of the appealing party's receipt of the determination. The Vice President shall review the appeal request and the investigative file and make a determination to accept, reject, or modify the determination. The Vice President shall have 30 business days to complete the appeal review. A written decision shall be sent to the parties 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.

D. Privacy. The University will keep all complaint information private but, depending on the circumstances, cannot guarantee confidentiality. The University will observe state and federal privacy laws and open records laws.

IV. PROCEDURES FOR COMPLAINTS OF SEXUAL MISCONDUCT (TITLE IX)

A. Reporting Sexual Misconduct (Title IX). Employees designated as Responsible Employees under Title IX who know or reasonably should know about an incident of sexual misconduct are required to share that information with the Title IX Coordinator or a Deputy Title IX Coordinator as soon as possible. Employees not designated as Responsible Employees are encouraged to share information about potential sexual misconduct with the Title IX Coordinator or a Deputy Title IX Coordinator.

Reports of sexual misconduct can be made using the following on-line submission form:
<http://und.edu/affirmative-action/incident-report.cfm>.

B. Investigative Process. Reports of alleged sexual misconduct, regardless of source or method of transmission, will be considered sufficient cause to begin an investigation. However, the University may be limited in its ability to respond to anonymous reports.

Reports accusing a student of sexual misconduct will be resolved following the UND *Code of Student Life*.

The Title IX Coordinator may investigate, assist, advise, or accept a lead role in investigating any complaint of sexual misconduct. Other appropriately trained University personnel may investigate or assist in the investigative process.

Both the complainant and the respondent will receive notice that an investigation is being conducted. The notice will include the summary of the allegations being made.

Employees may bring an attorney or non-attorney advisor with them to any meetings or proceedings under this investigation. However, advisor is there solely to support and advise the employee and may not directly participate in the meeting or proceeding. If an employee intends to bring an advisor to a meeting, they should notify the Title IX office of the chosen advisor's name and whether the advisor is a licensed attorney at least two days prior to the scheduled meeting.

At the completion of the fact-finding process, the investigators will prepare an investigative report. Both the complainant and the respondent will have an opportunity to review the investigative report. The report will include the written complaint (if any), a summary of the investigation and information gathered, summaries of any interviews, and the Title IX Coordinator (or designee's) determination as to whether the respondent has violated University policy. In order to make this determination, using a preponderance of the information standard, the Title IX Coordinator or designee will consider the record as a whole, including the nature of the alleged conduct and the context in which it occurred.

A determination should be issued within 60 calendar days of receipt of the complaint by the Title IX Coordinator. The complainant and respondent will be notified if the determination will not be issued within 60 days and the reason for the delay.

Any disciplinary action against an employee will follow the established University procedures respective to the employee's status. Disciplinary action against a student or 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 UND *Code of Student Life*, the UND Faculty Handbook, the UND Staff 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.

C. Appeals. Appeals as part of the student conduct process will follow the UND *Code of Student Life*.

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The President will handle an appeal of a complaint against a Vice President. In that instance, the President's review is final.

D. Privacy. The University will keep all complaint information private but, depending on the circumstances, cannot guarantee confidentiality. The University will observe state and federal privacy laws and open records laws.

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

Grievances filed through other processes outlined in the UND *Code of Student Life*, the UND Faculty Handbook, the UND Staff 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 EEO/AA Office 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 as part of an on-going grievance shall be forwarded to the EEO/AA Office as part of the University's record of discrimination complaints.

VI. NON-RETALIATION FOR FILING OR PARTICIPATING IN 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 Policies and Procedures for Complaints of Discrimination or Harassment. Any complaint of retaliation shall be investigated as a new and separate complaint as provided in the Policies and Procedures for Complaints of Discrimination or Harassment.