Status **Active** PolicyStat ID **16327479**

Origination	06/2018
Last Approved	08/2024
Effective	08/2024
Last Revised	08/2024
Next Review	08/2027

Owner	Donna Smith: Assistant VP for Equal Opportunity/Title IX
Area	Equal Opportunity/Title IX
References	Clery Act, NDCC, NDUS HR Manual + 6 more

Title IX Sexual Misconduct

COPY

POLICY STATEMENT

The University of North Dakota (UND/University) prohibits sexual misconduct, including sexual harassment, sexual assault, domestic violence, dating violence, and stalking that occurs within or in connection with a UND program or activity and is against a person in the United States. UND prohibits retaliation by its employees and students against a person who exercises their rights or responsibilities under any provision of state or federal law, including Title IX and the Violence Against Women Reauthorization Act (VAWA), or this policy.

Employees or students who violate this policy may face disciplinary action up to and including suspension, expulsion or termination. Third parties who commit sexual misconduct may have their relationships with the University terminated and/or their privileges of being on University premises withdrawn.

REASON FOR POLICY

UND is dedicated to providing a safe and non-discriminatory learning, living and working environment for all members of the University community. The University adopts this policy with a commitment to comply with Title IX of the Education Amendments of 1972 by responding promptly and supportively to people alleged to be victimized by sexual misconduct. UND also is committed to resolve allegations of sexual misconduct promptly and accurately under a predictably fair grievance process that provides due process protections to alleged victims and alleged perpetrators, and to effectively implement remedies

for victims.

The University's policy for addressing reports of sexual misconduct occurring outside the scope of Title IX is set forth in UND's Sexual Misconduct Policy (see Related Information).

The University's policy for addressing reports of discrimination based on sex, sexual orientation, gender identity, and pregnancy/parenting status is set forth in UND's Discrimination and Harassment Policy (see Related Information).

SCOPE OF POLICY

This policy applies to:

- President
- Vice Presidents
- Deans, Directors & Department Heads
- Area Managers & Supervisors
- Faculty
- Staff
- Students
- Others: Third Parties

COPY

CONTACTS

Subject	Contact	Telephone	Office/Department E-mail Web Address
Policy Clarification	UND Title IX Coordinator	701.777.4171	UND.eo.titleix@UND.edu Equal Opportunity & Title IX Website
Policy Clarification Related to Students/ Reporting Student Concerns	UND Community Standards & Care Network	701.777.2664	UND.communitystandards@UND.edu Community Standards & Care Network Website
Confidential Advisor	Community Violence Intervention Center (CVIC) CVIC at UND	Main Office: 701.746.0405 24/7 crisis line: 701.746.8900 Campus Advisor: 701.777.6550	http://cviconline.org CVIC at UND Website
Counseling Services for Students (confidential)	University Counseling Center	701.777.2127	Counseling Center Website
Employee Assistance Program (EAP)	The Village	800.627.8220	The Village Website

(confidential)			
Health Services for Students (confidential)	UND Student Health Services	701.777.4500	UND.studenthealth@UND.edu Student Health Services Website
Make a Report to Department of Education	Office for Civil Rights, U.S. Department of Education	312.730.1560	US Department of Education Office of Civil Rights Website
Report Possible Crime to Campus Police	University of North Dakota Police	701.777.3491 Call 911 for emergency	Report a Crime Website
Report Possible Policy Violations	UND Title IX Coordinator	701.777.4171	UND.eo.titleix@UND.edu Equal Opportunity & Title IX Website

DEFINITIONS

Actual Knowledge	Notice of sexual misconduct or allegations of sexual misconduct to UND's Title IX Coordinator or any UND official with authority to institute corrective measures on behalf of UND.
Coercion	Use of force, threats, intimidation, or pressure to compel someone to engage in unwanted sexual activity or to deter them from reporting a potential violation of this policy.
Complainant	An individual who is alleged to be the victim of conduct which could, after investigation, constitute sexual misconduct.
Confidential Employee	Any employee who is a licensed medical, clinical or mental-health professional (e.g., physicians, nurses, physicians' assistants, psychologists, psychiatrists, professional counselors and social workers, and those performing services under their supervision), when acting in that professional role in the provision of services; and (2) any employee providing administrative, operational and/or relational support for licensed employees in their performance of such services. A confidential employee will not disclose information about sexual misconduct to the University's Title IX Coordinator, or others, in a way that identifies the involved individuals without their permission (subject to the exceptions set forth in the Confidentiality section of this policy). UND has designated CVIC at UND Prevention Peers as confidential employees. Additional employees may be designated as confidential employees. Please contact the Equal Opportunity & Title IX Office for a current list of designated confidential employees.
Consent	Affirmative, informed, voluntary and active permission to engage in a mutually agreed-upon sexual act or contact. Consent is expressed by clear and unambiguous words or actions that a reasonable person in the circumstances would believe

COPY

	communicate a willingness to participate in a sexual act or contact. It is the responsibility of each person who wishes to engage in a sexual act or contact to obtain consent. The use of drugs or alcohol does not eliminate a person's responsibility to obtain consent. Consent cannot be obtained: • By the use of physical force, threats, intimidation, deception, or coercion; • From one who is incapacitated, such as due to mental or physical condition or the use of drugs or alcohol; • From one who is asleep or unconscious; or • From one who is not old enough to give consent under state law.
Dating Violence	Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of: • The length of the relationship; • The type of relationship; and • The frequency of interaction between the persons involved in the relationship.
Deliberate Indifference	A response to sexual misconduct which is clearly unreasonable in light of the known circumstances.
Domestic Violence	A felony or misdemeanor crime of violence committed by the following persons: • A current or former spouse or intimate partner of the victim; • By a person with whom the victim shares a child in common; • By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; • By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or • By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
Education Program or	Includes locations, events, or circumstances over which the

COPY

Activity	University of North Dakota exercises substantial control over both the respondent and the context in which the sexual misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University of North Dakota.
Employee	Any person employed for wages or salary by the University, in either full-time or part-time capacity, in any location or job. Examples include officers, faculty, staff, medical residents, graduate assistants, and student employees. Employee includes temporary, probationary and regular employees
Fondling	The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
Formal Complaint	A document filed by a complainant or signed by the Title IX Coordinator alleging sexual misconduct against a respondent and requesting that the University investigate the allegation of sexual misconduct.
Incapacitation	Incapacitation means a person lacks the ability to make informed, rational judgments about whether or not to engage in a sexual act or contact. A person may be incapacitated due to, but not limited to, a mental or physical condition or the use of drugs or alcohol. Signs that a person may be incapacitated include, but are not limited to, the following: • Inability to walk unassisted; • Inability to speak coherently; • Confusion on basic information; or • Being passed out or passing out.
Incest	Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
Official with Authority to Take Corrective Action	The following individuals have authority to institute corrective measures on behalf of UND and are obligated to inform the Title IX coordinator when they receive notice of sexual misconduct or allegations of sexual misconduct: • Title IX coordinator and deputy Title IX coordinators • Human Resources Managers and Directors • Department Chairs • Directors • Deans and Associate/Assistant Deans

COPY

	• Associate/Assistant Vice Presidents and similar level administrators • Athletic Director • Vice Presidents and similar level administrators • President
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 victim. This definition includes any gender of victim or perpetrator.
Respondent	An individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct.
Retaliation	Adverse action taken against an individual for engaging in protected activity. No person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or UND policy.
Sexual Assault	Title IX defines sexual assault as rape, fondling, incest, and statutory rape.
Sexual Harassment	As defined by Title IX, conduct on the basis of sex that satisfies one or more of the following: 1. An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct; 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to their education program or activity (this includes but is not limited to unwelcome conduct of a sexual nature, and may consist of unwelcome conduct based on sex or sex stereotyping); or 3. Sexual assault, dating violence, domestic violence or stalking. Sexual harassment that falls outside the scope of Title IX is defined and addressed in UND's Sexual Misconduct Policy (see Related Information).
Sex Stereotyping	Fixed or generalized expectations regarding a person's aptitudes, behavior, self-presentation or other attributes based on sex.
Stalking	Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: • Fear for the person's safety or the safety of others; or • Suffer substantial emotional distress.

COPY

Statutory Rape	Sexual intercourse with a person who is under the statutory age of consent.
Student	All persons taking courses at and/or receiving instruction through the University, whether credit hours are earned, full-time or part time, pursuing undergraduate, graduate, non-degree, or professional studies. The term student includes all persons who withdraw after allegedly violating the *Code*, who are not enrolled for a particular term but have a continuing relationship with the University, who have been notified of their acceptance for admission, or who are living in University residence facilities designated for students regardless of their current enrollment status. The term student includes both a student acting as an individual and to students acting in a group and/or a student organization, unless otherwise noted.
Student Employee	A student whose employment status is dependent upon being a student.
Supportive Measures	Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
Third Party	An individual who is not a student or employee of the University but has contact with the University such as an affiliate, volunteer, vendor, participant in a university-sponsored event, or campus visitor.
Title IX Sexual Misconduct	Sexual harassment, sexual assault, domestic violence, dating violence, and stalking as defined by Title IX and this policy. May be referred to as "sexual misconduct."

COPY

PRINCIPLES

UND prohibits sexual misconduct. UND utilizes procedures that provide prompt, fair, and impartial investigation and resolution of cases of sexual misconduct. UND is committed to providing supportive measures; appropriate grievance procedures; and prevention education for campus community members. Individuals found to have violated University policy may be subject to appropriate disciplinary action.

Jurisdictional Statement

This policy applies to reports of sexual misconduct, as defined by this policy, that occur within or in connection with a University education program or activity and against a person in the United States.

The University's Sexual Misconduct Policy (see Related Information) applies to reports of sexual misconduct occurring outside the scope of Title IX.

The University's Discrimination and Harassment Policy (see Related Information) applies to reports of

discrimination based upon sex, sexual orientation, gender identity, pregnancy, parental status, and other protected classes.

If you Have Experienced Sexual Violence

If you have experienced sexual violence, there are several options available to assist you. Only you can decide what plan of action is right for you. However, you may consider each of the following:

- Getting to a safe place.
- Avoiding the destruction of evidence by bathing, douching, changing clothes, or cleaning up in any way. Preserve evidence in a paper bag for possible future action. Also, keep copies of emails, text messages, and voice messages.
- Pursuing medical treatment. Post-assault medical care can be performed at a local emergency room. Many hospitals have a specialized examiner who can complete an exam for victims of sexual violence. Such an exam can help the victim receive an appropriate medical assessment and treatment and can preserve evidence for possible future action.
- Pursuing counseling services with appropriate agencies (e.g., UCC, EAP, CVIC (on- or off-campus), or private providers). Calling someone that is known and trusted, such as a friend or counselor, and discussing with this person the assault can help to evaluate the trauma to sort out next steps.
- Making a police report. You can initiate a campus and/or criminal complaint. You may obtain assistance from campus authorities in this notification.
- Making a report to a campus security authority (CSA), Title IX coordinator, deputy Title IX coordinator, or designated officials under Title IX.
- Making an anonymous report. An anonymous report to the police notifies them that an act of sexual violence has occurred but gives no names or identification.

COPY

Title IX Coordinator

The Title IX coordinator is charged with:

- Monitoring the University's compliance with Title IX;
- Ensuring appropriate education and training;
- Coordinating the University's investigation, response, and resolution of all reports under this policy; and
- Ensuring UND responds
    - Promptly and supportively to people alleged to be victims of sexual misconduct,
    - Resolves allegations of sexual misconduct promptly and accurately under a predictably fair grievance process that provides due process protections to alleged victims and alleged perpetrators, and
    - Effectively implements remedies for victims.

The Title IX coordinator is available to meet with any student, employee, or third party to discuss this policy or the accompanying procedures. The University has also designated deputy Title IX coordinators

who may assist the Title IX coordinator in the discharge of these responsibilities. The Title IX coordinator and deputy Title IX coordinators receive appropriate training to discharge their responsibilities.

The Title IX coordinator may designate a deputy Title IX coordinator or other appropriately trained individual to carry out any of the tasks or functions described in this document. When this procedure refers to Title IX coordinator, it is presumed to mean Title IX coordinator or designee.

A list of deputy Title IX coordinators can be found on the Equal Opportunity & Title IX website (see Related Information).

Inquiries regarding UND's equal opportunity and nondiscrimination policies, including Title IX, Title VI, Title VII, ADA and Section 504 of the Rehabilitation Act may be addressed to:

Assistant Vice President, Equal Opportunity & Title IX
Title IX/ADA Coordinator
University of North Dakota
Twamley Hall
264 Centennial Drive Stop 7097
Grand Forks, ND 58202-7097
Phone: 701.777.4171
Email: UND.eo.titleix@UND.edu
Equal Opportunity & Title IX Website

COPY

A complaint or concern regarding discrimination or harassment may also be addressed to:

Assistant Secretary for Civil Rights
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100
Phone: 800.421.3481
Email: OCR@ed.gov

In accordance with Title IX, UND notifies applicants for admission and employment, students, and employees of the name or title, office address, email address and telephone number of the Title IX coordinator. This information is prominently displayed on UND's website and in each handbook or catalog made available to the foregoing individuals.

Responding to Reports of Title IX Sexual Misconduct

Whether or not a formal complaint is filed, UND will respond promptly and without deliberate indifference when the Title IX coordinator or a deputy Title IX coordinator receives a report or otherwise has notice of sexual misconduct prohibited by this policy.

Presumption of Not Responsible

The respondent is presumed to be not responsible for the alleged conduct until a determination

regarding responsibility is made at the conclusion of the grievance process. The burden of proof and the burden of gathering evidence sufficient to make a determination regarding responsibility rests on UND.

Actual Knowledge of Sexual Misconduct

UND has actual knowledge of sexual misconduct when an official with authority to take corrective action receives notice of sexual misconduct or allegations of sexual misconduct. The official with authority is obligated to report the known information to the Title IX coordinator as soon as possible.

Whether or not a formal complaint is filed, UND will respond promptly and without deliberate indifference when UND has actual knowledge of sexual harassment (as defined by Title IX) within its educational program or activity in the United States.

Bias and Conflict of Interest

The Title IX coordinator, deputy Title IX coordinators, investigators, decision-makers, and all individuals who facilitate informal resolution processes, will be free from bias and conflict of interest. Examples of bias and conflict of interest include but are not limited to, personal animosity, illegal prejudice, and personal or financial stake in the outcome. Bias can relate to sex, race, ethnicity, sexual orientation, gender identity, religion, disability, national origin or other characteristics.

If a party believes any of the above individuals has a bias or conflict of interest that prevents them from serving impartially in the grievance process, the party may challenge that person's participation in the grievance process as provided in the procedures for Title IX Sexual Misconduct Response.

COPY

Exempt Records

Pursuant to N.D.C.C. §44-04-18.28, any record at the University that is related to a complaint or investigation under Title IX and contains personally identifiable information about a party to the complaint is an exempt record under North Dakota's open records and meetings law. Except as otherwise specifically provided by law (i.e. FERPA), an exempt record is a record that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity. For purposes of that exemption, "personally identifiable information' means information that directly identifies an individual, and information that, alone or in combination with other information, is linked or linkable to an individual and would allow a reasonable person who lacks knowledge of the relevant circumstances to identify the individual."

Confidentiality

Notwithstanding Chapter 44-04 of the North Dakota Century Code, pursuant to Title IX, the identity of any individual who has made a report or formal complaint of sex discrimination or sexual misconduct; the identity of any complainant, respondent or witness; and the content of any investigation, hearing or judicial proceeding arising thereunder, shall be confidential.

Confidentiality also exists in the context of laws that protect certain relationships, including with medical and clinic care providers (and those who provide administrative services related to the provision of

medical and clinic care), mental health providers, counselors, employees of domestic violence or sexual assault programs, and ordained clergy, all of whom may engage in confidential communications under North Dakota law. UND has designated individuals who have privileged communications as "confidential employees." When information is shared by an individual with a confidential employee or a community professional with the same legal protections, the confidential employee and/or community professional) cannot reveal the information to any third party except when an applicable law, professional standard or a court order requires or permits disclosure of such information.

UND will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

UND employees who are not confidential employees and do not play a role in Title IX grievance procedures will only share information related to a report of sexual misconduct with the Title IX coordinator. The information will only be further shared, as necessary, with the limited circle of University employees who participate in the grievance procedures, such as by providing supportive measures, facilitating a grievance process or informal resolution, or as otherwise included in the Procedures for Title IX Sexual Misconduct Response.

Confidential Resources

COPY

Consistent with the definition of confidential employees and licensed community professionals, there are a number of resources within the University and Grand Forks communities where students and employees can obtain confidential counseling and support. These resources include:

University Counseling Center (for students)
McCannel Hall Room 200
701.777.2127
Counseling Center Website

Student Health Services (for students)
McCannel Hall Room 100
701.777.4500
Student Health Services Website

CVIC at UND (for all)
Twamley Hall, Room 102
Campus Confidential Advisor: 701.777.6550
Main Office: 701.746.0405
24/7 Crisis Line: 701.746.8900 or 866.746.8900
CVIC at UND Website or CVIC Website

Employee Assistance Program (for employees)
800.627.8220
The Village Website

The above resources may assist in providing referrals to local confidential resources for UND students

and employees who reside in other locations.

Supportive Measures

Supportive measures may be offered to the complainant and the respondent regardless of whether a complainant files a formal complaint under this policy. If a formal complaint is filed, supportive measures will continue to be available to the complainant and respondent after the conclusion of the grievance process, as appropriate, whether there was a finding of responsibility or non-responsibility. The Title IX coordinator or deputy Title IX coordinator is responsible for coordinating the effective implementation of supportive measures.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive measures to the complainant or respondent will remain confidential to the extent that maintaining such confidentiality would not impair the ability of the University to provide supportive measures. Supportive measures may not restrict any party's rights under the United States Constitution. The University will not provide supportive measures that are clearly unreasonable in light of the known circumstances.

Individuals are encouraged to report to the Title IX coordinator any concerns about the failure of another to abide by any restrictions imposed through supportive measure(s) such as mutual no-contact orders. In the event of an immediate health or safety concern, individuals should contact 911 immediately. Disciplinary action may be taken for failing to abide by certain supportive measure(s).

COPY

Amnesty

In order to encourage complainants and witnesses to make reports of prohibited conduct and for all parties and witnesses to fully participate in the investigation, the University will not pursue disciplinary action against students or employees for disclosure of personal consumption of alcohol or other drugs (underage or illegal) or other minor offenses, where the disclosure is made in connection with a good faith report or investigation of prohibited conduct and the personal consumption did not place the health or safety of any other person at risk. The University may initiate an assessment or educational discussion or pursue other non-disciplinary options regarding alcohol or other drug use.

Employee Reporting Obligations

Specific employee reporting obligations are listed below. Sharing disclosures, reports or other known information about alleged sexual misconduct with the Title IX coordinator allows the University to meet its state and federal obligations and to appropriately address any sexual misconduct. Sharing such information with the Title IX coordinator also provides the University with the best opportunity to offer appropriate supportive measures to assist a complainant, assess any health or safety risk posed by the alleged sexual misconduct, and take immediate and appropriate steps to respond to the report.

Employees shall not dissuade an individual from reporting possible sexual misconduct. Employees with required reporting obligations should inform the individual of their reporting obligations as soon as it is

reasonably known that the individual may disclose information about sexual misconduct.

Employees are not required to make reports of sexual misconduct when such a report would be prohibited by law.

Confidential Employees

A confidential employee will not disclose information about sexual misconduct to the University's Title IX Coordinator, or others, in a way that identifies the involved individuals without the reporting party's permission (subject to the exceptions set forth in Confidentiality section of this policy).

Confidential employees must explain to any person who informs the confidential employee of conduct that reasonably may constitute sexual misconduct:

- The employee's status as confidential under Title IX and this Policy, including when the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sexual misconduct;
- How to contact the Title IX Coordinator and how to make complaint; and
- That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate informal resolution process or investigation.

COPY

Sexual Misconduct Involving Students

Regular/Benefitted and Temporary Employees

All employees, except confidential employees while acting within their confidential role and student employees, are required to report as soon as possible to the Title IX coordinator all information they know about suspected or potential sexual misconduct against students.

Student Employees

Students employed as Resident Assistants, Community Assistants, Resident Managers, Athletics Camp Coaches, Undergraduate Instructors, and Graduate Assistants, are required to report as soon as possible to the Title IX coordinator all information they know about suspected or potential sexual misconduct against students.

All other student employees are encouraged, but not required, to report suspected or potential sexual misconduct against students to the Title IX Coordinator.

Sexual Misconduct in the Workplace

Employees are strongly encouraged, but not required, to contact the Title IX Coordinator when they have been subject to conduct that reasonably may constitute sexual misconduct in the workplace. The Title IX Coordinator can provide information about supportive measures and resolution options.

Supervisors and Managers, Benefitted/Regular and Temporary

All supervisors and/or managers, including department chairs, are required to report as soon as possible to the Title IX coordinator all information they know about suspected or potential sexual misconduct

occurring in the workplace.

Non-Supervisory Employees, Benefitted/Regular and Temporary

When employees who are not supervisors or managers become aware of suspected or potential sexual misconduct occurring in the workplace, they are encouraged to provide the Complainant with the Title IX Coordinator's contact information and information about how to make a complaint of sexual misconduct. Non-supervisory employees are encouraged, but not required, to report information about suspected or potential sexual misconduct in the workplace to the Title IX coordinator.

Student Employees

Student employees are encouraged but not required to report information about suspected or potential sexual misconduct in the workplace to the EO/Title IX office. However, they may still have reporting obligations as detailed in the preceding section. (Sexual Misconduct Involving Students).

Clery Act Reporting

Individuals designated as campus security authorities under the Clery Act have separate and additional reporting requirements under the Act (see Annual Security & Fire Safety Report in Related Information).

Pursuant to the Clery Act, the University includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires the University to issue timely warnings to the University community about certain crimes that have been reported and may continue to pose a serious or continuing threat to students and employees. Consistent with the Clery Act, the University withholds the names and other personally identifying information as appropriate when issuing timely warnings to the University community.

COPY

Training

All University employees who have obligations to report sexual misconduct (see Employee Reporting Obligations, above) are required to complete annual training regarding how to respond to and report information about sexual misconduct.

All individuals involved in the grievance process, including, but not necessarily limited to, the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process, must receive training on the following areas:

- The definition of sexual harassment;
- The scope of the education program or activity;
- How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes; and
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Decision-makers must also receive training on the following areas:

- Any technology to be used at a hearing;
- Issues of relevance for questions and evidence, including when questions about the complainant's sexual predisposition or prior sexual behavior are not relevant;

Investigators must also be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Advisors assigned by the University will receive training regarding their role in the process. Advisors are not expected or required to have any specific level of training or experience.

All training materials used to train the foregoing individuals will be made available to the public by posting on the Equal Opportunity & Title IX website.

Individuals who have not completed training as required by this policy shall not investigate, adjudicate, or otherwise be involved in the grievance procedures associated with this policy.

Non-Retaliation for Filing or Participating in a Sexual Misconduct Complaint

Neither the University nor any employee, student, or affiliate may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, 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 the Title IX Sexual Misconduct Policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex misconduct, but arise out of the same facts or circumstances as a report or complaint of sexual misconduct, or a report or formal complaint of sexual misconduct, for the purpose of interfering with any right or privilege secured by the Title IX Sexual Misconduct Policy, constitutes retaliation.

Any complaint of retaliation shall be investigated as provided in the Procedures for Title IX Sexual Misconduct Response (see Related Information).

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Policy. Charging an individual with a policy violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation prohibited by this Policy. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Prohibition against False Statements

UND prohibits knowingly making false statements or knowingly submitting false information during the Title IX Sexual Misconduct grievance process. Doing so will subject the party making the knowingly false statement to disciplinary action.

Record Keeping

The University shall retain, for a period of seven years, records of:

COPY

- Each sexual misconduct 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.
- Any appeal and the result therefrom;
- In each instance, the University will document that the basis for its response to a report or complaint was not deliberately indifferent.Any informal resolution and the result therefrom;
- Any other actions, including supportive measures, taken in response to a report or formal complaint of sexual misconduct, or, if supportive measures were not provided, an explanation of why such a response was not clearly unreasonable in light of the known circumstances; and
- 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.

PROCEDURES

Reporting Sexual Misconduct

The University encourages anyone who experiences sexual misconduct to report the incident to the University. Any person may report sexual misconduct (whether or not the person making the report is the victim of the alleged behavior). The report may be made in any of the following ways:

- In person: Equal Opportunity & Title IX Office, Twamley Hall, Grand Forks, ND
- By mail: 264 Centennial Drive Stop 7097, Grand Forks, ND 58202
- By email: UND.EO.TitleIX@UND.edu
- By using the on-line EO/Title IX report (see Forms)
- By any other means that results in the Title IX Coordinator receiving the report, regardless of the time of day.

COPY

Reporting to Law Enforcement

A complainant who wishes to pursue criminal action in addition to, or instead of, making a report under these procedures should contact law enforcement directly:

- 911 (for emergencies)
- University Police: 701.777.3491 (for non-emergencies) or anonymous crime report (see Forms)
- Grand Forks Police Department: 701.787.8000 (for non-emergencies)

A report to the police can empower the complainant by exercising their legal rights and can aid in the protection of others. UND staff will assist the complainant in notifying the police if requested. The police will then advise the complainant of the legal process.

1. On-campus investigation is typically conducted by UPD. UPD has both an administrative role and a law enforcement role.

2. Off-campus cases are usually investigated by the Grand Forks Police or other law enforcement agency. When an investigation or legal proceeding occurs off-campus, services are still available through the University.

A complainant may choose to file a police report immediately or at a later date. There may be consequences to waiting to file a police report. Early reports may improve the preparation of a viable prosecution. Filing a police report immediately following the incident does not force the complainant to file charges and prosecute the respondent. However, it does aid in the preservation of valuable evidence if the complainant decides to pursue charges at a later date.

The State's Attorney makes all decisions regarding the prosecution of alleged crimes reported to law enforcement.

Filing a Formal Complaint

To request that UND investigate a report of sexual misconduct, or to engage in informal resolution processes, the complainant must file a formal complaint with the Title IX coordinator or a deputy Title IX coordinator. The formal complaint must be a written or digital document that identifies the complainant and respondent, provides a method to contact the complainant, and contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the complaint. This complaint may be filed with the Title IX coordinator in person, by mail, or by electronic means using any of the contact information below:

- In person: Equal Opportunity & Title IX Office, Twamley Hall, Grand Forks, ND
- By mail: 264 Centennial Drive Stop 7097, Grand Forks, ND 58202
- By email: UND.EO.TitleIX@UND.edu
- On-line: by submitting the digital formal complaint form supplied by the Title IX coordinator

COPY

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of UND.

The Title IX coordinator has discretion to sign a formal complaint when the complainant does not do so. The Title IX coordinator may take circumstances into account such as whether there are allegations of a pattern of misconduct, threats, violence, use of weapons, or similar factors. When the Title IX coordinator signs the formal complaint, the Title IX coordinator is not a complainant or otherwise a party to the complaint.

If Complainant Declines to File Formal Complaint

When the complainant declines to file a formal complaint, UND will seek to honor the preferences of the complainant whenever possible. However, the Title IX coordinator may determine that the totality of the known circumstances indicate there is a risk to the safety of the campus community if a grievance process is not initiated. In that case, the Title IX coordinator may sign a formal complaint. In such circumstances, the Title IX coordinator is not the complainant.

In such cases, the Title IX coordinator will advise the complainant that UND intends to proceed with a

grievance process, but that the complainant is not required to participate in the grievance process or in any other actions undertaken by UND. If the complainant declines to participate in the grievance process, the University's ability to meaningfully investigate and respond may be limited. The Title IX coordinator will make reasonable efforts to protect the privacy of the complainant. However, actions that may be required as part of the grievance process will involve speaking with the respondent and others who may have relevant information, in which case the complainant's identity may be disclosed.

Responding to Reports and Formal Complaints

The specific procedures for responding to reports and formal complaints of Title IX sexual misconduct are contained in the Procedures for Title IX Sexual Misconduct Response.

Supportive measures will be offered to the complainant and respondent before or after the filing of a formal complaint or where no formal complaint has been filed if the parties' identities are known to the University.

During the grievance process, the University will treat the complainant and respondent equitably. The University will presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process.

The University will objectively evaluate all relevant evidence, including both exculpatory and inculpatory evidence, and ensure that credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The parties have equitable opportunities to appeal the determination regarding responsibility after a hearing or any mandatory or permissive dismissal of a formal complaint.

COPY

Standard of Evidence to Determine Responsibility

The University applies the preponderance of the evidence standard when determining whether this policy has been violated. Preponderance of the evidence means that it is more likely than not that a policy violation occurred.

Disciplinary Sanctions and Remedies

Any disciplinary sanctions or remedies become effective when the determination regarding responsibility is final. Details regarding sanctions and remedies are found in the Procedures for Title IX Sexual Misconduct Response (see Related Information).

Non-Punitive Response

The University may respond to conduct that does not meet the definition of a policy violation by taking non-punitive action designed to promote a welcoming, inclusive, and safe environment.

Time Frame for Completion of Grievance Process

UND will carry out the grievance process in a reasonable and timely manner. The length of time

necessary to complete a fair and thorough process will vary depending upon the complexity of the facts, including the number of witnesses and volume of information provided by the parties; a request by law enforcement for temporary delay to gather evidence for a criminal investigation; to accommodate the availability of witnesses; to account for University breaks or vacations; or for other legitimate reasons.

UND aims to issue a determination regarding responsibility within 120 calendar days of receiving a formal complaint. If the parties choose an informal resolution process, UND aims to complete the process within 30 days of the date the parties agreed to use informal resolution. However, temporary delays or extensions of the time frames will be offered for good cause, 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. The investigator(s) or Title IX coordinator will notify the parties in writing of any delays and provide an explanation for the delay.

Consolidation of Complaints

Involving Multiple Parties

Complaints as to allegations of sexual misconduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual misconduct arise out of the same facts or circumstances, may be consolidated as determined to be appropriate by the Title IX coordinator.

COPY

Involving Multiple Policies

Grievances or complaints filed through other University, SBHE or NDUS policies may have as a component to the grievance a complaint under the Title IX Sexual Misconduct Policy. If the Title IX coordinator determines that the policies and procedures applicable to all grievances/complaints can be followed, the grievances or complaints may be administered as one process. If the Title IX coordinator determines that the policies and procedures applicable to the grievances or complaints conflict with each other and the conflict cannot be resolved, separate processes may be required. The Title IX coordinator and the office(s) under which any concurrent grievances or complaints have been filed will collaborate, as appropriate, in the investigation and resolution of the complaints.

If a complaint made under the Title IX Sexual Misconduct Policy also contains an allegation of a violation of another policy, the sexual misconduct grievance procedures will be followed to make a determination of responsibility under the Title IX Sexual Misconduct Policy. Decisions regarding responsibility for alleged violations of other policies will be based upon that policy and the associated procedures.

If a determination of responsibility under the Title IX Sexual Misconduct Policy has been issued, the University has discretion whether to proceed with a determination of responsibility under the other involved policy.

Some conduct may be prohibited by more than one policy. While a complaint may allege that conduct violates multiple policies, a respondent will not receive multiple disciplinary actions for the same conduct. For example, a respondent may be charged with violations of the Discrimination and

Harassment Policy and the Title IX Sexual Misconduct Policy for one incident. If found responsible, the respondent will not receive duplicate disciplinary actions for conduct that violates both policies.

RESPONSIBILITIES

Advisors: Party-Chosen	• Provide support, guidance and advice to the party during grievance proceedings • Accompany the party to meetings or proceedings as requested by the party • Ask all questions of the opposing party and all witnesses on behalf of the party at the live hearing • Present the party's opening and/or closing statements, if requested by party
Advisors: **UND-Appointed**	• Attend pre-hearing conference • Ask all questions, as identified by the party, of the opposing party and all witnesses, on behalf of the party at the live hearing • Read the party's opening and/or closing statements, if requested and provided by the party • Complete required training
Community Standards & Care Network	• Assist students in understanding their rights, responsibilities and options for reporting and support • Receive reports of sexual misconduct involving students • Provide support to students • Assist in the grievance procedure for students
Decision-Makers	• Oversee the live hearing held as part of the grievance process, ensuring that an equitable process is followed • Review the investigative report and consider evidence presented at the hearing. • Issue a fair and impartial written determination regarding responsibility for the alleged violation that is based upon the evidence presented • Receive and resolve any appeal in a fair and impartial manner • Complete required training

COPY

Employees (except most student employees)	• Share information about incidents of potential sexual misconduct with the Title IX coordinator as soon as possible
Informal Resolution Facilitators	• Facilitate informal resolution processes without conflict of interest or bias • Draft a resolution agreement that accurately reflects the parties' agreed upon resolution • Complete required training
Investigators	• Conduct an unbiased fact-gathering process • Send all not otherwise impermissible evidence obtained as part of the investigation to the parties and their advisor, if any • Create an investigative report that fairly summarizes relevant evidence and send it to the parties and their advisors, if any • Complete required training
Students, Employees and Other Campus Community Members	• Practice bystander intervention • Use words and actions to show our commitment to maintaining a safe campus climate
Title IX Coordinator and Deputy Title IX Coordinators	• Coordinate the University's compliance with Title IX, including the University's grievance procedures for resolving reports of sexual misconduct. • Oversee all sexual misconduct complaints, identifying and addressing any patterns or systemic problems that arise during the review of such complaints. • Assist students and employees in understanding their rights, responsibilities and options for reporting and support • Discuss supportive measures with complainant and respondents • Implement supportive measures as appropriate • Receive reports of sexual misconduct • Investigate or oversee investigation of complaints of sexual misconduct • Provide oversight for investigations and resolution of all sexual misconduct complaints

COPY

	• Facilitate informal resolution processes • Monitor UND's education program or activity for barriers to reporting information about conduct that reasonably may constitute sexual misconduct and take steps reasonably calculated to address such barriers • Complete required training
University Police Department	• Review and modify, if necessary, physical surroundings to enhance security and safety on campus • Provide input and personnel for education programs • Perform criminal investigations

RELATED INFORMATION

- 20 USC §§ 1681 – 1688 - Title IX of the Education Amendments of 1972 (Title IX)
- 34 CFR Part 106 - Nondiscrimination on the Basis of Sex in Education
- 34 CFR Part 668 – Institutional Security Policies and Crime Statistics (a.k.a. Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)
- 42 USC §§ 13701 – Violence Against Women Reauthorization Act of 2013 (VAWA)
- 42 USC Ch. 21 – Title VII of the Civil Rights Act of 1964 (Title VII)
- NDCC § 44-04-18.28 – Title IX records exempt
- NDCC §15-10.4-02 – Campus Free Speech Policy
- North Dakota University System (NDUS) Human Resource Policy Manual
- SafeUND
- State Board of Higher Education (SBHE) Personnel Policies
- State Board of Higher Education (SBHE) Policy 603.1 – Harassment and Discrimination
- State Board of Higher Education (SBHE) Policy 503.1 - Student Free Speech and Expression
- UND Annual Security & Fire Safety Report
- UND Code of Student Life
- UND Faculty Handbook
- UND Policy - Discrimination and Harassment
- UND Policy – Preventing Sexual Violence
- UND Policy – Sexual Misconduct
- UND Procedure –Discrimination and Harassment Response
- UND Procedure - Sexual Misconduct Response
- UND Procedure – Title IX Sexual Misconduct Response

COPY

- UND Staff Handbook
- UND Title IX Coordinators & Deputy Coordinators

FORMS

- Anonymous Crime Report Form
- Report Sexual Misconduct Form

APPENDICES

- Appendix 1 - Guidance on Consent and Incapacitation - See Attachments

Attachments

Appendix 1 - Guidance on Consent and Incapacitation

COPY

Approval Signatures

Step Description	Approver	Date
Policy Office	Jennifer Rogers: Director of University Policy	08/2024
Policy Owner	Donna Smith: Assistant VP for Equal Opportunity/Title IX	07/2024

References

Clery Act, NDCC, NDUS HR Manual, SBHE Policy, Title IX, Title VII, UND Policy, UND Procedure, VAWA