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Equal
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Area Equal
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IX
References Clery Act, NDCC,
NDUS HR Manual
+ 6 more

Title IX Sexual Misconduct

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may have their relationships with the University terminated and/or their privileges of being on University premises withdrawn.

This Policy applies to incidents that occurred on or after August 14, 2020.

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 sex-based discrimination and sexual misconduct occurring outside the scope of Title IX is set forth in UND's Sexual Misconduct 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

RELATED INFORMATION

20 USC §§ 1681 – 1688 - Title IX of the Education Amendments of 1972 (Title IX)	https://www.justice.gov/crt/title-ix-education-amendments-1972
34 CFR Part 106 - Nondiscrimination on the Basis of Sex in Education	https://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html
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))	https://www.ecfr.gov/cgi-bin/text-idx?SID=915c4528a072d83493a1ddd05151ce4f&mc=true&node=se34.3.668_146&rgn=div8
42 USC §§ 13701 – Violence Against Women Reauthorization Act of 2013 (VAWA)	https://www.justice.gov/tribal/violence-against-women-act-vawa-reauthorization-2013-0
42 USC Ch. 21 – Title VII of the Civil Rights Act of 1964 (Title VII)	https://www.eeoc.gov/laws/statutes/titlevii.cfm
NDCC § 44-04-18.28 – Title IX records exempt	http://www.legis.nd.gov/cencode/t44.html
North Dakota University System (NDUS) Human Resource Policy Manual	https://ndus.edu/human-resource-policy-manual/
State Board of Higher Education (SBHE) Policy 520 – Title IX – Sexual Harassment	https://ndusbpos.sharepoint.com/:w/s/NDUSPoliciesandProcedures/Ee0MFZxmihRMk7YJH6n-KiIB2Cf-U6MPRSNV091hOnPkOQ?rttime=SVInGq112Eg
SBHE Employee Policies and Procedures	https://ndus.edu/state-board-of-higher-education/sbhe-policies/600-heading-policies/

UND Code of Student Life	https://UND.policystat.com/?lt=nEb9f5IPhIT42yu4MIKV8w&next=%2Fpolicy%2F10296404%2Flatest%2F
UND Faculty Handbook	https://UND.policystat.com/?lt=nEb9f5IPhIT42yu4MIKV8w&next=%2Fpolicy%2F11175797%2Flatest%2F
UND Policy – Preventing and Responding to Domestic Violence, Dating Violence, Sexual Assault and Stalking	https://UND.policystat.com/?lt=nEb9f5IPhIT42yu4MIKV8w&next=%2Fpolicy%2F9576454%2Flatest%2F
UND Policy - Discrimination and Harassment	https://UND.policystat.com/?lt=nEb9f5IPhIT42yu4MIKV8w&next=%2Fpolicy%2F11275290%2Flatest%2F
UND Procedure - Responding to Reports of Title IX Sexual Misconduct	https://UND.policystat.com/?lt=nEb9f5IPhIT42yu4MIKV8w&next=%2Fpolicy%2F10417406%2Flatest%2F
UND Policy – Sexual Misconduct	https://UND.policystat.com/?lt=nEb9f5IPhIT42yu4MIKV8w&next=%2Fpolicy%2F11275269%2Flatest%2F
UND Procedure – Responding to Reports of Sexual Misconduct	https://UND.policystat.com/?lt=nEb9f5IPhIT42yu4MIKV8w&next=%2Fpolicy%2F11275256%2Flatest%2F
UND Staff Handbook	https://UND.policystat.com/?lt=nEb9f5IPhIT42yu4MIKV8w&next=%2Fpolicy%2F10313207%2Flatest%2F
UND Title IX Coordinators	https://campus.UND.edu/equal-opportunity/title-ix-coordinators.html

CONTACTS

Subject	Contact	Telephone	Office/Department E-mail Web Address
Policy Clarification	UND Title IX Coordinator	701.777.4171	UND.eo.titleix@UND.edu https://campus.UND.edu/equal-opportunity/
Policy Clarification Related to Students/Reporting Student Concerns	UND Community Standards & Accessibility for Students	701.777.2664	UND.communitystandards@UND.edu https://UND.edu/student-life/community-standards/
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 https://UND.edu/student-life/violence/cvic.html
Counseling Services for Students (confidential)	University Counseling Center	701.777.2127	https://UND.edu/student-life/counseling-center/
Employee Assistance Program (EAP) (confidential)	The Village	800.627.8220	http://www.villageEAP.com/
Health Services for Students	UND Student Health	701.777.4500	UND.studenthealth@UND.edu

(confidential)	Services		https://UND.edu/student-life/student-health/
Make a Report to Department of Education	Office for Civil Rights, U.S. Department of Education	312.730.1560	https://www2.ed.gov/about/offices/list/ocr/docs/howto.html
Report Possible Policy Violations	UND Title IX Coordinator	701.777.4171	UND.eo.titleix@UND.edu https://campus.UND.edu/equal-opportunity/
Report Possible Crime to Campus Police	University of North Dakota Police	701.777.3491 Call 911 for emergency	https://campus.UND.edu/safety/report-a-crime.html

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.
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).
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 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: <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> • 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	<p>A felony or misdemeanor crime of violence committed by the following persons:</p> <ul style="list-style-type: none"> • 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 Activity	<p>Includes locations, events, or circumstances over which the 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.</p>
Employee	<p>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</p>
Fondling	<p>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.</p>
Formal Complaint	<p>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.</p>
Gender Identity	<p>An individual's own understanding of self in regards to gendered terms that may include, woman, man, transgender, genderqueer, genderfluid, gender non-conforming, intersex, non-binary, Two Spirit, agender, and more. One's gender identity can be the same or different from their sex assigned at birth. Gender identity differs from sexual orientation.</p>
Incapacitation	<p>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:</p> <ul style="list-style-type: none"> • Inability to walk unassisted; • Inability to speak coherently; • Confusion on basic information; or • Being passed out or passing out.
Incest	<p>Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.</p>
Official with Authority to Take Corrective Action	<p>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:</p> <ul style="list-style-type: none"> • Title IX coordinator and deputy Title IX coordinators • Human Resources Managers and Directors • Department Chairs

	<ul style="list-style-type: none"> • Directors • Deans and Associate/Assistant Deans • 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.
Sex assigned at birth	The sex designated or recorded on an individual's birth certificate at the time of birth.
Sexual Assault	Title IX defines sexual assault as rape, fondling, incest, and statutory rape.
Sexual Orientation	An emotional, romantic or sexual attraction to other people.
Statutory Rape	Sexual intercourse with a person who is under the statutory age of consent.
Sexual Harassment	<p>As defined by Title IX, conduct on the basis of sex, sexual orientation or gender identity that satisfies one or more of the following:</p> <ol style="list-style-type: none"> 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; or 3. Sexual assault, dating violence, domestic violence or stalking. <p>Sexual harassment that falls outside the scope of Title IX is defined and addressed in UND's Sexual Misconduct Policy (see Related Information).</p>
Stalking	<p>Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:</p> <ul style="list-style-type: none"> • Fear for the person's safety or the safety of others; or • Suffer substantial emotional distress.
Student	<p>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 <i>Code</i>, 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.</p> <p>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.</p>
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.

PRINCIPLES

UND does not tolerate 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. 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. 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 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.

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.

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
 102 Twamley Hall
 264 Centennial Drive Stop 7097
 Grand Forks, ND 58202-7097

Phone: 701.777.4171
Email: UND.eo.titleix@UND.edu
Website: <https://campus.UND.edu/equal-opportunity/>

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.

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 Responding to Reports of Title IX Sexual Misconduct.

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 Resolving Title IX and Sexual Violence Reports.

Confidential Resources

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

<https://UND.edu/student-life/counseling-center/>

Student Health Services (for students)

McCannel Hall Room 100

701.777.4500

<https://UND.edu/student-life/student-health/>

CVIC at UND (for all)

McCannel Hall, Room 200

Campus Confidential Advisor: 701.777.6550

Main Office: 701.746.0405

24/7 Crisis Line: 701.746.8900 or 866.746.8900

<https://UND.edu/student-life/violence/cvic.html> or <http://cviconline.org>

Employee Assistance Program (for employees)

800.627.8220

<http://VillageEAP.com>

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).

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).

Sexual Misconduct in the Workplace

All supervisors and/or managers 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. Failure to do so may subject the supervisor or manager to appropriate discipline, up to and including termination of employment.

Employees who are not supervisors or managers of any level are strongly encouraged to report to the Title IX coordinator any information they know about suspected or potential sexual misconduct occurring in the workplace.

Sexual Misconduct Involving Students

All employees, except those listed below, 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. Failure to do so may subject the employee to appropriate discipline, up to and including termination of employment.

The following employees are encouraged, but not required, to report suspected or potential sexual misconduct against students:

- Student employees (except Resident Assistants, Undergraduate Instructors, and Graduate Assistants, who are required to report to the Title IX coordinator)
- Temporary Employees

Clery Act Reporting

Individuals designated as campus security authorities under the Clery Act have separate and additional reporting requirements under the Act. (see Preventing and Responding to Domestic Violence, Dating Violence, Sexual Assault and Stalking 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.

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 Responding to Reports of Title IX Sexual Misconduct (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:

- 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;
- 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
- 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.

In each instance, the University will document that the basis for its response to a report or complaint was not deliberately indifferent.

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, 102 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.

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)

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, 102 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)

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

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 specific procedures for responding to reports and formal complaints of sexual misconduct are based upon the applicability of Title IX to the reported conduct. Each set of procedures referenced below is guided by the same principles of fairness and respect for complainants and respondents.

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 Responding to Reports of Title IX Sexual Misconduct (see Related Information).

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.

Title IX Sexual Misconduct Complaints Made as Part of another Grievance or Complaint

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/complaints shall 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 of the

complaints.

If a formal complaint made under the Title IX Sexual Misconduct Policy also contains an allegation of a violation of another policy, the Title IX 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

Community Standards & Accessibility for Students	<ul style="list-style-type: none"> • 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
Employees (except temporary employees and most student employees)	<ul style="list-style-type: none"> • Share information about incidents of sexual misconduct with the Title IX coordinator as soon as possible
Officials with Authority to Take Corrective Action	<ul style="list-style-type: none"> • Share reports of sexual misconduct or allegations of sexual misconduct with the Title IX coordinator as soon as possible
Students, Employees and Other Campus Community Members	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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 • Facilitate informal resolution processes • Complete required training

University Police Department	<ul style="list-style-type: none"> • Review and modify, if necessary, physical surroundings to enhance security and safety on campus • Provide input and personnel for education programs • Perform criminal investigations
Decision-makers	<ul style="list-style-type: none"> • 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 live 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
Investigators	<ul style="list-style-type: none"> • Conduct a neutral fact-gathering process • Send all 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
Party-Chosen Advisors	<ul style="list-style-type: none"> • 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
UND-Appointed Advisor	<ul style="list-style-type: none"> • 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

FORMS

Anonymous Crime Report Form	http://UND.edu/public-safety/report-a-crime.cfm
Report Sexual Misconduct Form	https://campus.UND.edu/equal-opportunity/incident-report.html

APPENDICES

Appendix 1 - Guidance on Consent and Incapacitation	See attachments
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Attachments

Approval Signatures

Step Description	Approver	Date
Policy Office	Jennifer Rogers: Policy Office	03/2022
	Donna Smith: Assistant VP for Equal Opportunity/Title IX	03/2022

References

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

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