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# Responding to Title IX and Sexual Violence Reports Procedures

## REASON FOR PROCEDURE

The University uses this procedure to respond to reports of sexual harassment and sexual violence pursuant to its Title IX and Sexual Violence policy (see Related Information, Resources, and Forms below).

## CONTACTS

Specific questions should be directed to the following:

Subject	Contact	Telephone	Office or Department E-Mail / Web Address
Policy Clarification or to Report Possible Policy Violations	Title IX Coordinator	701.777.4171	<a href="mailto:UND.eo.titleix@UND.edu">UND.eo.titleix@UND.edu</a> <a href="https://campus.UND.edu/equal-opportunity/">https://campus.UND.edu/equal-opportunity/</a>
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	<a href="http://cviconline.org">http://cviconline.org</a> <a href="https://UND.edu/student-life/violence/cvic.html">https://UND.edu/student-life/violence/cvic.html</a>
Employee Assistance Program (confidential)	The Village	800.627.8220	<a href="http://www.VillageEAP.com">http://www.VillageEAP.com</a>
Make a report to Department of Education	Office for Civil Rights, U.S. Department of Education	312.730.1560	<a href="https://www2.ed.gov/about/offices/list/ocr/docs/howto.html">https://www2.ed.gov/about/offices/list/ocr/docs/howto.html</a>
Request Disability Accommodation to Participate in Process	ADA Coordinator	701.777.4171	<a href="mailto:UND.eo.titleix@UND.edu">UND.eo.titleix@UND.edu</a> <a href="https://campus.UND.edu/equal-opportunity/">https://campus.UND.edu/equal-opportunity/</a>

## DEFINITIONS

<b>Actual Knowledge</b>	Notice of sexual harassment or allegations of sexual harassment to UND's Title IX Coordinator or any UND official with authority to institute corrective measures on behalf of UND.
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<b>Complainant</b>	An individual who is alleged to be the victim of conduct which could, after investigation, constitute sexual harassment.
<b>Confidential Employee</b>	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 the above employees in their performance of such services. A confidential employee will not disclose information about sexual harassment or sexual violence 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).
<b>Consent</b>	<p>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.</p> <p>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.</p> <p>Consent cannot be obtained:</p> <ul style="list-style-type: none"> <li>• By the use of physical force, threats, intimidation, deception, or coercion;</li> <li>• From one who is incapacitated, such as due to mental or physical condition or the use of drugs or alcohol;</li> <li>• From one who is asleep or unconscious; or</li> <li>• From one who is not old enough to give consent under state law.</li> </ul>
<b>Dating Violence</b>	<p>Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.</p> <p>The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of:</p> <ul style="list-style-type: none"> <li>• The length of the relationship;</li> <li>• The type of relationship; and</li> <li>• The frequency of interaction between the persons involved in the relationship.</li> </ul>
<b>Deliberate Indifference</b>	A response to sexual harassment which is clearly unreasonable in light of the known circumstances.
<b>Domestic Violence</b>	<p>A felony or misdemeanor crime of violence committed by the following persons:</p> <ul style="list-style-type: none"> <li>• A current or former spouse or intimate partner of the victim;</li> <li>• By a person with whom the victim shares a child in common;</li> <li>• By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;</li> <li>• 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</li> <li>• 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.</li> </ul>
<b>Education Program or Activity</b>	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 harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University of North Dakota.
<b>Employee</b>	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.
<b>Fondling</b>	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.
<b>Formal Complaint</b>	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 harassment.
<b>Gender Identity</b>	The social attributes associated with being male and female. A person's gender identity may be different from their assigned biological identity.
<b>Incapacitation</b>	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: <ul style="list-style-type: none"> <li>• Inability to walk unassisted;</li> <li>• Inability to speak coherently;</li> <li>• Confusion on basic information; or</li> <li>• Being passed out or passing out.</li> </ul>
<b>Incest</b>	Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
<b>Official with Authority to Take Corrective Action</b>	The following individuals have authority to institute corrective measures on behalf of UND: <ul style="list-style-type: none"> <li>• Title IX coordinator and deputy Title IX coordinators</li> <li>• Human Resources Managers and Directors</li> <li>• Department Chairs</li> <li>• Directors</li> <li>• Deans and Associate/Assistant Deans</li> <li>• Associate/Assistant Vice Presidents and similar level administrators</li> <li>• Vice Presidents and similar level administrators</li> <li>• Athletic Director</li> <li>• President</li> </ul>
<b>Rape</b>	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.
<b>Respondent</b>	An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or violence.
<b>Retaliation</b>	Adverse action is 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.
<b>Sex</b>	For purposes of this policy, an individual's <ol style="list-style-type: none"> <li>1. Assigned classification based on biological or anatomical factors;</li> <li>2. Sexual orientation; and/or</li> <li>3. Gender identity.</li> </ol>
<b>Sexual Act</b>	Penetration, however slight, of the vagina or anus by another person with any object or with any body part. Any contact, however slight, between the mouth of one person and the genitals

	of another person is considered a sexual act.
<b>Sexual Assault</b>	Title IX defines sexual assault as rape, fondling, incest, statutory rape or any of the sexual offenses listed in NDCC 12.1-20. In addition, UND policy defines sexual assault to include the following: <ul style="list-style-type: none"> <li>Engaging in sexual contact and/or a sexual act with another person without that person's consent.</li> </ul>
<b>Sexual Contact</b>	Sexual contact includes any of the following, whether or not through clothing or other covering: <ul style="list-style-type: none"> <li>Any intentional touching of another person's genitals, buttocks, or breasts;</li> <li>Any touching of another person's body parts with an object or by another person's body for sexual or aggressive desires;</li> <li>Causing ejaculate, urine, feces, or other bodily fluids to make contact with any part of another person for sexual or aggressive desires; or</li> <li>Making another person touch and/or cause contact with you, themselves, or another person as described above.</li> </ul> Sexual contact does not include touching another person's body for appropriate safety, law enforcement, medical, or other similar needs.
<b>Sexual Orientation</b>	The sex of those to whom one is sexually attracted.
<b>Statutory Rape</b>	Sexual intercourse with a person who is under the statutory age of consent.
<b>Sexual Harassment</b>	As defined by Title IX, conduct on the basis of sex that satisfies one or more of the following: <ul style="list-style-type: none"> <li>An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct.</li> <li>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 based on sex or sex stereotyping even if not sexual in nature; or</li> <li>Sexual assault, dating violence, domestic violence or stalking.</li> </ul> Sexual Harassment as defined by UND is addressed in UND's Discrimination and Harassment Policy (see Related Information, Resources and Forms).
<b>Sexual Violence</b>	For purposes of this policy, sexual violence refers to sexual assault, rape, domestic violence, dating violence, and stalking.
<b>Stalking</b>	Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: <ul style="list-style-type: none"> <li>Fear for the person's safety or the safety of others; or</li> <li>Suffer substantial emotional distress.</li> </ul>
<b>Student</b>	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. 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.
<b>Supportive Measures</b>	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.
<b>Third Party</b>	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.

# PRINCIPLES

## Overview

The University uses this procedure to respond to reports of sexual harassment and sexual violence as defined in the Title IX and Sexual Violence Policy (see Related Information, Resources and Forms). The procedures below provide for prompt, equitable, and supportive responses to reports of sexual harassment and sexual violence. This document provides for grievance procedures that comply with Title IX requirements.

## PROCEDURES

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.

### Actual Knowledge of Sexual Harassment

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 and this policy) within its educational program or activity in the United States; and/or
- sexual violence (as defined by this policy) involving a UND student or employee regardless of the location or context in which it occurred.

### Responding to Reports of Sexual Harassment

Upon actual knowledge of sexual harassment, the Title IX coordinator or a deputy Title IX coordinator will contact the complainant, if the complainant's identity is known, and:

1. Discuss the availability of supportive measures;
2. Consider the complainant's wishes regarding supportive measures;
3. Inform the complainant that supportive measures are available with or without the filing of a formal complaint; and
4. Explain the process of filing a formal complaint.

The Title IX coordinator or a deputy Title IX coordinator will attempt to contact the complainant to discuss supportive measures but UND may be limited in its ability to respond further when:

1. The respondent is unknown or their name is not disclosed;
2. The respondent is not affiliated with UND; or
3. The report is made anonymously.

The University may also be limited in its ability to respond when the complainant is not identified.

### Supportive Measures

Supportive measures may be offered to the complainant or 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.

## **Requests for Accommodations**

If a party or other participant requires an accommodation for a disability in order to participate in any part of the process described herein, they may make that request to the University's ADA Coordinator (see Contacts).

## **Grievance Process for Formal Complaints**

### **Filing a Formal Complaint**

To request that UND investigate a report of sexual harassment or sexual violence, 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](mailto: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.

All formal complaints will be investigated, unless subject to mandatory dismissal (See Dismissals, below).

### **Consolidation of Formal Complaints**

Formal complaints as to allegations of sexual harassment 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 allegation of sexual harassment arises out of the same facts or circumstances, may be consolidated.

### **Challenges for Bias or Conflict of Interest**

The Title IX coordinator, deputy Title IX coordinators, investigators, decision-makers, and any individuals who facilitate an informal resolution process will be free of bias and conflict of interest. If a party believes any of the above individuals has a bias or conflict of interest that would prevent them from serving impartially, the party may challenge that person's participation in the grievance process. Any challenge must be made as soon as possible after the party learns of a



potential bias or conflict of interest.

The party must make the challenge in writing to the Title IX coordinator and state the reasons the individual is believed to hold a bias or conflict of interest. The Title IX Coordinator will review the challenge and may request additional information before making a determination. If the Title IX coordinator determines that the individual cannot serve impartially, the Title IX coordinator will appoint another appropriate individual to serve in that role.

If the challenge is in regard to the Title IX coordinator, a deputy Title IX coordinator will review the challenge and make a determination.

## Standard of Evidence to Determine Responsibility

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

## Notice of Allegations

When a formal complaint is received, the Title IX coordinator or deputy Title IX coordinator will provide a written notice to the known parties that will include:

1. Notice of the grievance process, including the availability of an informal resolution process;
2. Notice of the allegations of sexual harassment or sexual violence known at the time, including sufficient details to allow the respondent to prepare a response, including but not limited to:
  - a. The names of the parties;
  - b. The conduct allegedly constituting sexual harassment or sexual violence; and
  - c. The date and location of the alleged conduct.

This notice will be provided with sufficient time for the respondent to prepare a response before the initial interview.

3. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process.
4. A statement that the parties may have an advisor of their choice, who may be an attorney, and may inspect and review evidence. The statement will also indicate that if the party does not have an advisor of choice, UND will appoint an advisor to ask all questions of parties and witnesses at the hearing (including direct and cross-examination).
5. Notice that UND prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
6. The identity of the investigator(s).
7. A statement that retaliation is prohibited.
8. Instructions to the parties to preserve any potentially relevant evidence in any format.
9. Notice of the availability of supportive measures.
10. A copy of the Title IX and Sexual Violence Policy and these procedures.

If during the course of the grievance process, additional allegations are added to the investigation which were not included in the initial notice, UND will provide notice of the additional allegations to the parties.

## Advisors

The complainant and respondent will be allowed to select an advisor of their choice to assist them during the proceedings, including the hearing. The advisor may be any person, including an attorney. The parties may be

accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a formal complaint under these procedures. The advisor's role is to provide support, guidance and advice, and to ask questions on the party's behalf during the hearing.

Only the advisor is allowed to ask questions directed to the other party and any witnesses on behalf of their party during the hearing. If a party chooses not to participate in the hearing, their chosen advisor may be present and may ask questions on the party's behalf.

If a party does not choose an advisor or does not otherwise have an advisor present at the hearing, UND will provide the party with an advisor free of charge. The UND-appointed advisor's role is limited to asking questions at the hearing, as identified by the party, and if requested, reading opening and/or closing statements written by the party. A party who does not have a chosen advisor should notify the Title IX coordinator as soon as possible so that an advisor can be assigned. If neither the party nor their advisor is present at the hearing, UND will appoint an advisor who will ask any questions identified by the party.

Advisors are not expected or required to have particular training or experience. Advisors appointed by UND will be provided with access to appropriate training to understand the grievance process and their role in the hearing. When UND provides advisors to both parties, UND will endeavor to seek parity of advisors.

UND does not require that advisors be lawyers providing legal counsel. An advisor's questioning or cross-examination "on behalf of that party" is satisfied where the advisor poses questions on a party's behalf, which means the advisor will relay a party's own questions to the other party or witness according to these procedures.

## Emergency Removal of a Student

The University may remove a student respondent from the education program or activity on an emergency basis, provided that the institution determines, based on an individualized safety and risk analysis, that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. The respondent will be given notice and an opportunity to challenge the decision immediately following the removal. See the Code of Student Life for the emergency removal/suspension procedure.

Nothing in this section may be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

## Administrative Leave - Employees

A student or non-student employee respondent may be placed on paid or unpaid administrative leave while the grievance process is pending when the University has received information which indicates that the respondent's continued presence on campus or engagement in the workplace will likely have a serious effect on the physical, mental, or emotional health, safety, or well-being of another person; when physical safety is seriously threatened; when the ability of the University to carry out its operations is threatened or impaired; or where the Title IX coordinator concludes that other supportive measures (such as a temporary transfer) are not feasible to address any concerns. In these or other appropriate circumstances, a complainant may also be placed on paid or unpaid administrative leave. The decision to put a non-student employee on administrative leave may be made at any point in the grievance process.

Nothing in this section may be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

## Evidence

The grievance process does not utilize established federal or state court rules of evidence. However, the following provisions shall apply throughout the grievance process, including the investigation, any hearing, and a determination regarding responsibility.

- **Relevance.** Evidence is relevant if it tends to make a material fact more or less probable and assists the decision-maker in making a decision. During the investigative process, the investigator shall determine what offered



evidence is relevant. During the hearing and/or appeal process, the decision-maker shall determine what offered evidence is relevant. If a party disagrees with the investigator or decision-maker's decision(s) about relevance, the party may make that argument in the written response to the investigative report or to the decision-maker at any hearing held. Only relevant evidence will be considered by the decision-maker in determining if a policy violation occurred.

- **Confidential or Privileged Evidence.** UND will not access, consider, disclose, or otherwise use a party's medical records made or maintained in connection with the provision of treatment to the party, unless voluntary, written consent to do so is provided by the party.

UND will not require, allow, rely upon, or otherwise use evidence that constitutes, or questions that seek disclosure of, information protected under a legally-recognized privilege, unless that privilege is waived.

- **Prior Sexual History.** Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

## Investigation

UND is required to investigate every formal complaint unless the complaint is subject to dismissal, as described below under Dismissals. The Title IX coordinator may investigate, assist, advise, or designate one or more investigators to investigate any complaint of sexual harassment or sexual violence. Investigators may be University employees or external investigators. All investigators will receive annual training in accordance with UND's Title IX and Sexual Violence Policy.

The investigation is a neutral fact-gathering process. 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.

### Notice of Proceedings

A party whose participation is invited or expected to participate in an investigative interview, hearing, or other meeting will be given written notice of the date, time, location, participation, and purpose of the meeting, with sufficient time to prepare. The parties' chosen advisors may be present at all hearings, investigative interviews, or other meetings.

### Parties' Participation in Investigation

Neither party is required to participate in the investigation. The decision-maker will not draw any adverse inference from a decision by either of the parties not to participate in the investigation. If a party does not participate in the investigation but provides testimony or evidence at the hearing that includes new information, the hearing may be temporarily paused to allow the other party appropriate time to prepare to respond to the new information or to allow for additional investigation.

The parties will have the same ability to discuss the allegations or to gather or present relevant evidence. They also have the same opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. However, the parties may not discuss the allegations or gather evidence in a manner that constitutes retaliation, intimidation, harassment, or defamation.

### Coordination with Law Enforcement

If known, the investigator(s) or Title IX coordinator will contact any law enforcement agency that is conducting its own investigation to inform that agency that a University investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation. At the request of law enforcement, the Title IX coordinator may delay the University investigation temporarily so as not to interfere with the criminal investigation process.

## **Inspection of Evidence**

The investigator will provide to each party and the party's advisor, if any, all evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which UND does not intend to rely in reaching a determination regarding responsibility. This includes inculpatory and exculpatory evidence, whether obtained from a party or other source. The evidence will be sent in an electronic format or a hard copy. Due to the nature of certain evidence, the University may make that evidence available for viewing by the parties and their advisor at a mutually convenient time, rather than provide electronic or hard copies of the evidence.

The parties will have ten calendar days to review the evidence and submit a written response, if desired. The investigator will consider any written response prior to completing the investigative report. The investigator will then conduct any additional investigation deemed necessary by the investigator or Title IX coordinator. If additional investigation is conducted, any additional evidence gathered will be given to the parties and they will have an additional ten calendar days to review the evidence and provide a written response. This evidence will be available at any hearing and each party may refer to the evidence at the hearing, including for questioning parties and witnesses.

## **Investigative Report**

The investigator will create an investigative report that fairly summarizes the relevant evidence and, at least ten days prior to a hearing (if a hearing is held) or other time of determination regarding responsibility, send to each party and the party's chosen advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. If a party disagrees with the investigator's determination about relevance, the party can make that argument in the party's written response to the investigative report and to the decision-maker at any hearing held.

## **Dismissal**

### **Mandatory Dismissal**

If, after initial assessment of a formal complaint, it is determined that the conduct alleged would not constitute sexual harassment as defined by Title IX and this policy, even if proved, then the Title IX coordinator must dismiss the formal complaint for purposes of Title IX.

The Title IX coordinator will also dismiss the formal complaint for purposes of Title IX if the conduct alleged did not occur in UND's education program or activity or the conduct alleged did not occur against a person in the United States.

If a complainant's formal complaint is dismissed for any of the above-mentioned reasons, the complainant may appeal the dismissal decision. See the "Appeals" section contained below for more information.

Even if dismissed for purposes of Title IX, a complaint alleging sexual violence, as defined by this policy, that occurred outside of UND's education program or activity or against a person not in the United States, may continue to resolution under the Title IX and Sexual Violence Policy and these procedures.

Alleged conduct that is the subject of a formal complaint that is dismissed under the Title IX and Sexual Violence Policy may be addressed under other applicable university policies.

### **Permissive Dismissal**

The Title IX coordinator may dismiss a formal complaint under the Title IX and Sexual Violence Policy if, at any time during the investigation or hearing, the following occurs:

1. A complainant notifies the Title IX Coordinator, in writing, that the complainant would like to withdraw the formal complaint, or any allegations contained in the formal complaint.
2. The respondent is no longer enrolled or employed by UND; or
3. Specific circumstances prevent UND from gathering evidence sufficient to reach a determination as to the formal complaint or allegations in the formal complaint.

If a complainant's formal complaint is dismissed for any of the above-mentioned reasons, the complainant may appeal

the Title IX Coordinator's decision. See the "Appeals" section contained below for more information.

## **Notice of Dismissal**

Upon a dismissal pursuant to this section, UND will send written notice of the dismissal and reasons therefore to both parties simultaneously.

## **Hearing**

Unless the parties voluntarily agree to informal resolution, a live hearing will be conducted no sooner than ten days following the delivery of the investigative report to the parties. The live hearing will be held in front of a decision-maker chosen by UND. The decision-maker may be a UND employee or an external decision-maker but will not be the investigator or Title IX coordinator. UND will choose a decision-maker who has received training as described in the Title IX and Sexual Violence Policy and is free from conflicts or bias.

This section is a summary of the procedural rules for hearings. More detailed procedural rules and other helpful guidance will be provided to the parties prior to a hearing.

At the request of either party or at the discretion of the University, the hearing will be conducted with the parties, advisors, witnesses and decision-maker(s) participating virtually with technology enabling the decision-maker and parties to simultaneously see and hear the party or witness answering questions. At the discretion of the University, hearings may also be conducted with some, but not all, participants appearing virtually, so long as the parties, advisors, witnesses and decision-maker(s) are able to simultaneously see and hear each other.

All evidence obtained by the investigator as part of the investigative process will be made available to the parties and the decision-maker at the hearing. UND will create an audio or audiovisual recording, or transcript, of the hearing and make it available to the parties for inspection and review.

Hearings are attended by the parties, their advisors, the decision-maker(s), and witnesses as called by the parties and/or the decision-maker. Witnesses may be sequestered before and after their testimony. The University may allow additional attendees for safety and logistical purposes, University legal counsel, and/or for training purposes.

## **Witnesses**

Only witnesses who are included on the witness lists exchanged at or after the pre-hearing conference (see below) will be allowed to present testimony at the hearing. All witnesses who are included in the investigative report will be included on the witness list. At the pre-hearing conference, the parties may identify any witnesses they request to call who are not in the report. Witnesses who were suggested to the investigator but not interviewed or not included in the investigative report will be included on the witness list upon request. Additional investigation may be necessary prior to the hearing. In that case, an updated investigative report will be provided to the parties at least ten calendar days prior to the hearing.

Witnesses who were not identified during the investigation or who refused to be interviewed during the investigation will not be included on the witness list unless good cause is shown to the decision-maker to explain why the witness should be allowed. The decision-maker has discretion to determine what constitutes good cause. The decision to not disclose a witness until the pre-hearing conference, even though the party was or reasonably should have been aware that the witness had relevant information to share, shall not constitute good cause for a late disclosure. Additional investigation may be necessary before a newly disclosed witness is added to the witness list. In that case, an updated investigative report will be provided to the parties at least ten calendar days prior to the hearing.

## **Documentary Evidence**

Only documentary evidence (documents, texts, photos, videos, etc.) that was provided to the investigator during the investigation shall be presented at the hearing. If the parties become aware of newly discovered evidence between the conclusion of the investigation and the pre-hearing conference, they must present the evidence to the decision-maker at the pre-conference hearing. The decision-maker will allow the evidence to be presented at the hearing if good cause is shown to explain how the evidence was recently discovered. The decision-maker shall have discretion to determine

what constitutes good cause. Additional investigation may be necessary and the hearing may be delayed if newly discovered evidence is allowed. Both parties will receive copies of any allowed newly discovered evidence at least three calendar days prior to the hearing.

### **Pre-Hearing Conference**

A pre-hearing conference will be scheduled for the decision-maker and each party and their advisor at least five calendar days prior to the hearing. A joint pre-hearing conference will be held unless either party requests to hold separate conferences. The following topics will be discussed:

- Overview and purpose of the hearing;
- The witnesses each party intends to call;
- Whether there is good cause to allow any new or previously undisclosed witnesses to provide testimony at the hearing;
- Whether there is good cause to allow any new or previously undisclosed evidence to be presented at the hearing;
- Whether the hearing will be held virtually or in person;
- If the hearing will be held in person, whether either of the parties requests the hearing be held with the parties in separate rooms;
- The formal rules of process, procedure, decorum, and/or technical rules of evidence; and
- Whether the parties have a chosen advisor to be present at the hearing.

If a party requires an accommodation for a disability during the hearing, they may make that request to the decision-maker prior to or at the pre-hearing conference. The decision-maker will forward the request to the ADA Coordinator.

The parties will be encouraged to present their questions to the decision-maker prior to the hearing.

Each party must provide their witness list to the decision-maker prior to or at the conference. The decision-maker will exchange the parties' witness lists at the conference. If separate pre-hearing conferences are held, witness lists will be provided to the parties at least three calendar days before the hearing.

### **Advisors at Hearing**

Advisors must be present at the hearing whether or not the parties participate in the hearing. A party who decides not to participate in the hearing may still direct their advisor to conduct questioning on their behalf. If a party does not have an advisor at the hearing, UND will provide an advisor free of charge. The UND-appointed advisor's role will be to question the parties and witnesses, as directed by the party. If a party does not participate in the hearing and does not have a chosen advisor, the UND-appointed advisor will ask the party's predetermined questions at the hearing, if any questions have been provided.

A party's chosen advisor may prepare and present the party's opening and closing statements, if requested by the party. A UND-appointed advisor will read the party's prepared opening and/or closing statements, if requested by the party. A UND-appointed advisor will not prepare questions or opening and closing statements on behalf of the party.

### **Presentation of Witnesses and Evidence**

The purpose of the hearing is not to reintroduce or question each piece of relevant evidence gathered during the investigation. The hearing is an opportunity for the parties to clarify information, ask new questions, and probe credibility of the witnesses and the other party.

During a hearing, the parties may present relevant evidence to the decision-maker. The hearing begins with an opportunity for each party or their advisor to make an opening statement. The decision-maker and the parties' advisors will then ask questions of the parties and witnesses. The decision-maker will question each party or witness first, followed by the advisors. Each party's advisor may ask questions of the other party and any witnesses, including follow-up questions and questions challenging credibility. The questions must be conducted directly, orally, and in real time by the party's advisor and never by a party personally.

Only relevant questions may be asked of a party or witness. The decision-maker must determine the relevance of each

question before the party or witness may answer. If the decision-maker determines a question is not relevant, the decision-maker will explain why. The question will not be answered or, if it was already answered, the answer will not be considered by the decision-maker in reaching the determination of responsibility.

If new or surprising information is presented at the hearing, at the request of either party, the decision-maker will allow a pause in the hearing to allow the party to prepare to respond to the new information or to allow for additional investigation. The decision-maker has discretion to determine the length of the temporary pause.

The decision-maker is obligated to objectively evaluate all relevant evidence. The parties may make an argument to the decision-maker regarding what they believe to be relevant evidence and the persuasiveness of relevant evidence.

It is requested, but not required, that the questions each party intends to ask be submitted in advance to permit the decision-maker to rule on the relevance of questions.

If a party or witness does not submit to cross-examination by the opposing party's advisor at the hearing, the decision-maker will not rely on any statement of that party or witness in reaching a determination regarding responsibility. This includes statements made at any point in the grievance process. The same exclusion of statements does not apply to a party or witness's refusal to answer questions posed by the decision-maker. If a party or witness refuses to respond to a decision-maker's questions, the decision-maker is not precluded from relying on that party or witness's statements. The decision-maker will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer a question.

The investigator may be called as a witness by the parties' advisors or the decision-maker. Questions directed to the investigator are limited to information gathered and decisions made during the investigation.

The hearing will conclude with an opportunity for each party or their advisor to present a closing statement explaining their requested hearing determination and any sanctions, if appropriate.

## **Hearing Decorum**

Decision-makers may implement rules to ensure hearing decorum, such as requiring respectful treatment, specifying any objection process, governing timing of hearing and length of breaks, etc. The parties will receive copies of the procedural rules at the pre-hearing conference.

## **Determination Regarding Responsibility**

The decision-maker will issue a written determination regarding responsibility within 30 calendar days from the conclusion of the hearing. However, additional time will be allowed for good cause. The decision-maker will inform the parties in writing of the delay and the reason for the delay. The determination will apply the preponderance of evidence standard to the relevant facts gathered during the investigation and heard at the live hearing. The written determination must include:

1. Identification of the allegations potentially constituting sexual harassment or sexual violence as defined in this policy.
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notification to the parties, interviews with the parties, and witnesses, site visits, methods used to gather other evidence and hearings held;
3. Findings supporting the determination.
4. Conclusions regarding the application of the UND's policy or policies;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
6. Any disciplinary sanction the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the UND's education program or activity will be provided by the University to the complainant; and
7. UND's procedures and permissible bases for the complainant and respondent to appeal.

The written determination will be provided to the parties simultaneously. The determination regarding responsibility becomes final and any sanctions or remedies become effective:

1. if an appeal of the determination regarding responsibility (policy appeal) is filed, on the date that UND provides the parties with the written determination of the result of that appeal; or
2. if an appeal of the determination regarding responsibility (policy appeal) is not filed, on the day after the time for appeal expires.

Note that an additional appeal is available if a disciplinary sanction of suspension or expulsion of a student is imposed (state law appeal). This additional appeal does not extend the date upon which the determination regarding responsibility becomes final. (See Appeals, below, and Disciplinary Sanctions and Remedies, below, for more information.)

## **Disciplinary Sanctions and Remedies**

Any disciplinary sanctions or remedies become effective when the determination regarding responsibility is final. (See Determination Regarding Responsibility, above.) In cases where student suspension or expulsion is imposed, an additional appeal is available for one year. This additional appeal does not extend the date upon which the sanction becomes effective.

Remedies provided to the complainant after the conclusion of the grievance process on a finding of responsibility must be designed to restore or preserve the complainant's equal access to the education program or activity. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. Examples of remedies include continuation of supportive measures, no-contact directives, academic accommodations or academic support services, counseling services and residence accommodations. The Title IX coordinator or a deputy Title IX coordinator will be responsible to implement any remedies provided by the written determination.

### **Sanctions for Students**

Potential sanctions for students found in violation of the Title IX and Sexual Violence policy ranges from status sanctions (written reprimand, warning probation, and/or conduct probation), restriction of educational activities, restrictions on access to locations, required educational activities, suspension (fixed-term, indefinite, or permanent), and other sanctions as deemed appropriate based on the reported behavior. Multiple sanctions can be applied to a single violation. A student who is suspended from the University will be required to comply with reinstatement conditions prior to or upon returning to the University. For more details, refer to the Sanctions Section of the *Code of Student Life*.

### **Sanctions for Staff**

Potential sanctions for staff found in violation of the Title IX and Sexual Violence Policy may include verbal counseling, written warning/letter of reprimand, unpaid suspension, or dismissal from employment. Please note that the Title IX and Sexual Violence Policy shall prevail in the event of any conflict between that policy and any NDUS, SBHE, or UND policy governing staff disciplinary proceedings.

### **Sanctions for Faculty**

Potential sanctions for faculty found in violation of the Title IX and Sexual Violence Policy may include termination or dismissal; imposition of a sanction, which could include suspension, salary reduction or loss of salary, or restriction or loss of privileges imposed as a formal disciplinary measure; implementation of a performance improvement plan or other document placed in a personnel file. Please note that the Title IX and Sexual Violence Policy shall prevail in the event of any conflict between that policy and any NDUS, SBHE, or UND policy governing faculty disciplinary proceedings.

## **Appeals**

### **Appeal of Determination Regarding Responsibility (Policy Appeal)**

Either party may appeal the determination of responsibility only on the following bases:



1. Procedural irregularity that affected the outcome of the grievance process;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the grievance process; and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Dissatisfaction with the hearing outcome is not a valid basis for appeal.

The appeal must be submitted in writing to the Title IX coordinator within ten calendar days of the date UND provided the written determination of responsibility to the parties. The appeal shall consist of a plain, concise, and complete written statement outlining the ground(s) for appeal and all relevant information to substantiate the ground(s) for the appeal. The appeal should indicate the desired outcome of the appeal.

Upon receipt of the written appeal, the Title IX coordinator will assess the appeal to determine whether it is timely filed.

If an appeal is not timely filed, the determination of responsibility becomes final and any sanctions become effective. If the appeal is timely filed, the Title IX coordinator will provide the written appeal and any supporting information provided by the appealing party to the non-appealing party, who will have ten calendar days to review and submit a written response to the appeal.

The Title IX coordinator will then provide all evidence obtained in the investigation, the investigative report, recording of the hearing, determination regarding responsibility, and all appeal documents submitted by the parties to the appeal decision-maker. The decision-maker at the appeal stage will be free from bias and conflict of interest and will not be the investigator, Title IX coordinator, or the person who made a decision regarding responsibility at the hearing stage.

If the decision-maker finds that valid ground(s) for appeal were presented, the decision-maker may:

1. Modify the decision. The decision-maker may overturn all or some of the decisions regarding violations of the policy;
2. Request additional investigation or a new hearing. The decision-maker may void all or some of the decisions and call for additional investigation or a new hearing on all or some of the issues original considered; or
3. Uphold the decision.

The decision-maker on appeal will issue a written decision describing the result of the appeal and the rationale for the decision and will provide the written decision simultaneously to both parties.

The decision-maker shall have 30 calendar days to provide the determination to the parties. Except as described below, no other appeal is available through the University.

### **Appeals of Student Suspension or Expulsion (State Law Appeal)**

Pursuant to North Dakota law and SBHE policy, if the decision-maker imposed a disciplinary sanction of suspension or expulsion of a student, the parties may file an appeal in addition to the above appeal. The parties have one year from the date UND provided the written determination of responsibility to the parties, to file an appeal on the following bases:

1. New information;
2. Contradictory information, and
3. Information indicating that the student was not afforded due process.

Information that was available and not provided during the grievance process is not considered new or contradictory information. Bases for appeal that were raised and considered in a previous appeal cannot be raised in this appeal.

The appealing party must notify the Title IX coordinator of the appeal in writing. The reason and rationale for an appeal must be clearly stated within the appeal. The appeal should indicate the desired outcome of the appeal.

Upon notice of an appeal, the Title IX coordinator will provide the written appeal and any supporting information

provided by the appealing party to the non-appealing party, who will have ten calendar days to review and submit a written statement in response to the appeal. The Title IX coordinator will then provide all evidence obtained in the investigation, the investigative report, recording of the hearing, determination regarding responsibility, and all appeal documents provided by the parties to the appeal decision-maker. The decision-maker at the appeal stage will be free from bias and conflict of interest and will not be the investigator, Title IX coordinator, or the person who made a decision regarding responsibility at the hearing stage.

If the decision-maker finds that valid ground(s) for appeal were presented, the decision-maker may:

1. Modify the decision. The decision-maker may overturn all or some of the decisions regarding violations of the policy;
2. Request additional investigation or a new hearing. The decision-maker may void all or some of the decisions and call for additional investigation or a new hearing on all or some of the issues original considered; or
3. Uphold the decision.

The decision-maker on appeal will issue a written decision describing the result of the appeal and the rationale for the result and will provide the written decision simultaneously to both parties.

The decision-maker shall have 30 calendar days to provide the determination to the parties. This appeal completes the appeal process. No other appeal is available through the University.

### **Appeal of Mandatory or Permissive Dismissal**

Both parties have the opportunity to file an appeal of the Title IX coordinator's mandatory or permissive dismissal of a formal complaint or any allegations within the formal complaint. The appeal must be in writing and must set forth the reasons the Title IX coordinator's dismissal was incorrect. The appeal must be filed with the Title IX coordinator within ten calendar days of receiving the notice of dismissal.

Upon notice of the appeal, the Title IX coordinator will provide the written appeal and any supporting information provided by the appealing party to the non-appealing party, who will have ten calendar days to review and submit a written statement in support of or against the appeal. The Title IX coordinator will then provide the appeal documents to the appeal decision-maker. The appeal decision-maker will have ten calendar days to issue a determination. No other appeal is available through the University.

## **Informal Resolution**

At any time after a formal complaint is filed and prior to the hearing, the parties may agree to informal resolution of the complaint. The agreement for informal resolution must be voluntary by both parties and must be in writing. Informal resolution may be mediation or another process that does not involve a full investigation and adjudication.

If the parties agree to engage in an informal resolution process, UND will provide to the parties a written notice disclosing:

- The allegations;
- The right of any party to withdraw from the informal resolution process and resume the grievance process;
- The circumstances under which the parties are precluded from resuming a formal complaint arising from the same allegations;
- Any consequences resulting from participating in the informal resolution process;
- Any other requirements of informal resolution; and
- The records that will be maintained or could be shared.

Informal resolution may include supportive measures, remedies and/or disciplinary measures and is intended to provide finality to the complaint. Once the parties have signed a resolution agreement the University will consider the complaint resolved. Once resolved, the parties are prohibited from filing another complaint based on the same allegations.

Prior to signing a resolution agreement, either party can decide to withdraw from the informal resolution process. The

formal grievance process will then resume from the point at which it was halted to begin informal resolution. Any admission of responsibility made during informal resolution cannot be used in a formal grievance process.

Informal resolution is not allowed to resolve allegations that an employee harassed a student.

## 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 calendar 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.

## RELATED INFORMATION, RESOURCES and FORMS

<b>Anonymous Crime Report Form</b>	<a href="https://campus.UND.edu/safety/report-a-crime.html">https://campus.UND.edu/safety/report-a-crime.html</a>
<b>Incident Report Form</b>	<a href="https://campus.UND.edu/equal-opportunity/incident-report.html">https://campus.UND.edu/equal-opportunity/incident-report.html</a>
<b>UND Policy - Title IX and Sexual Violence</b>	<a href="https://UND.policystat.com/?lt=nEb9f5lPhIT42yu4MIKV8w&amp;next=%2Fpolicy%2F7908337%2Flatest%2F">https://UND.policystat.com/?lt=nEb9f5lPhIT42yu4MIKV8w&amp;next=%2Fpolicy%2F7908337%2Flatest%2F</a>
<b>Title IX Coordinator</b>	<a href="https://campus.UND.edu/equal-opportunity/staff.html">https://campus.UND.edu/equal-opportunity/staff.html</a>
<b>University Police</b>	<a href="https://campus.UND.edu/safety/police/index.html">https://campus.UND.edu/safety/police/index.html</a>

### Attachments

No Attachments

### Approval Signatures

Approver	Date
Jennifer Rogers: Policy Office	02/2021

**Approver**

**Date**

Donna Smith: Director Equal Opportunity/Title IX 02/2021

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