

UNIVERSITY OF NORTH DAKOTA

POLICY AND PROCEDURES FOR COMPLAINTS OF DISCRIMINATION OR HARASSMENT (excluding sexual and gender- based misconduct)

I. NOTICE OF NONDISCRIMINATION

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

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

The University's policies and procedures for complaints of discrimination or harassment are found at <http://UND.edu/affirmative-action/files/docs/discrimination-harassment-policy-procedures.pdf>, for complaints of sexual and gender-based misconduct are found at <https://und.policystat.com/policy/4748647/latest/>, and for student conduct are found in the University's *Code of Student Life* at <http://UND.edu/code/>.

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

II. DEFINITIONS

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

B. **Harassment:** Harassment is a specific form of discrimination. It is unwelcome and offensive conduct that is based upon an individual or group's membership in a protected class. Harassment is a violation of UND policy when it is objectively offensive and sufficiently severe, persistent or pervasive so as to interfere with or limit the ability of the individual or group to participate in or benefit from the University of North Dakota's programs or activities,

including employment and academic pursuits.

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

D. **Hostile Environment:** A hostile environment is created when harassment or discrimination is objectively offensive and sufficiently severe, persistent or pervasive so as to interfere with or limit the ability of a group or an individual to participate in or benefit from university-sponsored programs or activities, including employment and academic pursuits.

III. PROCEDURES FOR COMPLAINTS OF HARASSMENT OR DISCRIMINATION

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

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

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

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

Administrators, faculty, and staff may not dissuade an individual from informing them of a possible discriminatory or harassing situation. Administrators, faculty, and staff also are obligated to inform the individual of their required reporting obligations.

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

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

The Director of EEO/AA may investigate, assist, advise, or accept a lead role in investigating any complaint of discrimination or harassment. Other appropriate University personnel may

investigate or assist in the investigative process. Complaints will be investigated and resolved at the lowest possible level for most efficient resolution. The EEO/AA Office will work cooperatively with any office or administrator investigating a complaint.

At the completion of the fact-finding process, the Director of EEO/AA or designee will review the investigative information and, using a preponderance of the information standard, determine whether university policy has been violated. The parties will be notified of the determination in writing. If the accused person is a University employee, the accused person's supervisor will also be notified of the determination. The EEO/AA Office will issue its determination in a timely manner. The appropriate timeframe for investigating and making a determination will vary according to the circumstances of each complaint.

Any disciplinary action against a student or employee shall follow the established University procedures and due process requirements respective to the individual's status with the University. These procedures and due process requirements are found in the *UND Code of Student Life*, the *UND Faculty Handbook*, the *UND Staff Handbook*, the *North Dakota State Board of Higher Education Policies and Procedures*, and the *North Dakota University System Human Resources Manual*. Other institutional actions may include, but are not limited to, changing procedures, processes, aids, benefits, or services applicable to the circumstances.

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

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

An appeal to the Vice President completes the appeal process. No other appeal is available through the University.

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

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

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

Grievances filed through other processes may have as a component to the grievance an allegation of discrimination or harassment. The discrimination or harassment complaint shall be handled within that existing process and not as a distinct or separate process. The EEO/AA

Office will be available for consultation regarding the investigation of the harassment portion of the complaint. The findings of the grievance shall include any determinations of fact related to the discrimination or harassment charges. Any appeal of the findings shall be according to the process appropriate to the status of the grievant.

Note that a complaint of discrimination or harassment as part of an on-going grievance shall be forwarded to the EEO/AA Office as part of the University's record of discrimination complaints.

VI. NON-RETALIATION FOR FILING OR PARTICIPATING IN A DISCRIMINATION OR HARASSMENT COMPLAINT

No member of the University shall intimidate, threaten, coerce, or discriminate against any individual because he or she filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the jurisdiction of the University's Policy and Procedures for Complaints of Discrimination or Harassment. Any complaint of retaliation shall be investigated as a new and separate complaint as provided in the Policy and Procedures for Complaints of Discrimination or Harassment.