

# Non-Discrimination & Harassment Grievance Procedure for Students (C3d.v01)

While this policy has been developed for student use, NDCDE will consult legal counsel on the appropriate investigation and response process to be used when an employee brings forward a complaint of discrimination or harassment and will advise the employee on the process NDCDE will use to respond.

## **Prohibitions**

NDCDE prohibits discrimination and harassment of students based on all the protected classes outlined in its Non-Discrimination Policy (A9). More specifically, NDCDE prohibits:

- Discrimination based on sex and sexual harassment as defined below.
- Disability-based discrimination and harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the recipient's education programs and activities (i.e., creates a hostile environment).
- Racial or national origin discrimination and harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the recipient's education programs and activities (i.e., creates a hostile environment).
- Discrimination based on a student's age except when age is necessary to operate NDCDE programs and activities

## **Duty to Respond**

When NDCDE has actual knowledge of sexual harassment or knows or reasonably should have known other forms of harassment described above took place in any of its programs or activities, it shall respond promptly and supportively to persons alleged to be victimized, resolve allegations promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators, and effectively implement remedies for victims. If an investigation reveals that the harassment created a hostile environment, NDCDE will take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

NDCDE may have additional policies governing a discrimination or harassment complaint (e.g. Mandatory Reporting) that need to be referenced and enacted in response. Questions concerning the applicability of other policies should be referred to the state director.

## Definitions

- Actual knowledge: means notice of sexual harassment or allegations of sexual harassment to NDCDE's Title IX Coordinator or any NDCDE official who has authority to institute corrective measures on behalf of NDCDE, including any of its employees. This standard is not met when the only official with actual knowledge is the respondent.
- Complainant: An individual who is alleged to be the victim of conduct that could constitute sexual harassment
- Education program or activity includes locations, events, or circumstances over which NDCDE exercised substantial control over both the respondent and the context in which the sexual harassment occurred
- Discrimination on the basis of race, color, or national origin includes discrimination based on a person's actual or perceived race, color, national origin, ethnicity, or ancestry. This includes discrimination based on the country, world region, or place where a person or his or her ancestors come from; a person's limited English proficiency or English learner status; or a person's actual or perceived shared ancestry or ethnic characteristics, including membership in a religion that may be perceived to exhibit such characteristics (such as Hindu, Jewish, Muslim, and Sikh individuals).
- Document filed by a complainant means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by NDCDE) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- Formal complaint: a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that NDCDE investigate the allegation of sexual harassment
- Person with a disability means a person with a physical or mental impairment that substantially limits a major life activity; has a record of such an impairment; or is regarded as having such an impairment.
- Racial and national origin harassment is unwelcome conduct based on a student's actual or perceived race or national origin. Harassers can be students, school staff, or even someone visiting the school, such as a student or employee from another school. Racial and national origin harassment can take many forms, including slurs, taunts, stereotypes, or name-calling, as well as racially-motivated physical threats, attacks, or other hateful conduct. NDCDE will also investigate complaints that students were subjected to ethnic or ancestral slurs; harassed for how they look, dress, or speak in ways linked to ethnicity or ancestry (e.g. skin color, religious attire, language spoken); or stereotyped based on perceived shared ancestral or ethnic characteristics.

- Respondent: Individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- Title IX Coordinator: The employee designated by a recipient to coordinate its efforts to comply with Title IX responsibilities.
- Sexual Harassment: Any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect:
  - Any instance of quid pro quo harassment by a school's employee;
  - Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access;
  - Any instance of sexual assault (as defined in the Cleary Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).
- Supportive measures: individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment

### **Title IX & Non-Discrimination Coordinator Contact Information**

NDCDE's Title IX & Non-Discrimination Coordinator is:

Dr. Alyssa Martin (interim)

NDCDE State Director

[Alyssa.martin@k12.nd.us](mailto:Alyssa.martin@k12.nd.us)

701-630-1234

3435 56th St S #200, Fargo, ND 58104

NDCDE will notify students and employees, applicants for employment, parents or legal guardians of elementary and secondary school students, and all unions, of the name or title, office address, e-mail address, and telephone number of the Title IX Coordinator. NDCDE will also prominently display on its websites and in its handbooks the required contact information for the Title IX Coordinator.

The Title IX Coordinator is also responsible for responding to reports of all other forms of discrimination and harassment.

### **Dissemination of this Policy**

NDCDE will notify students and employees, applicants for employment, parents or legal guardians of elementary and secondary school students, and all unions, of this policy through publication of it on its website and inclusion of it in all its handbooks. Whenever possible, NDCDE will request confirmation of receipt of this policy to demonstrate compliance with policy dissemination responsibilities.

**Reporting, Grievance, and Investigation Procedures**

<b>Process</b>	<b>Sexual Harassment</b>	<b>Other Forms of Discrimination &amp; Harassment</b>
<b>Initial Response</b>	<p>Whenever NDCDE has actual knowledge of sexual harassment, it will treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process described below before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.</p> <p>The Title IX Coordinator will respect the complainant's wishes about whether or not a formal complaint will be filed unless the Title IX Coordinator determines that signing a formal</p>	<p>Any person who believes she or he has been subjected to discrimination on the basis of disability, age, or race ethnicity may file a grievance. NDCDE will also investigate discrimination when an employee, student, parent, or other stakeholder report indicators that a discriminatory hostile environment exists. NDCDE employees will receive training in knowing these signs and are required to report them.</p> <p>When NDCDE investigates indicators of a hostile environment, it will use an informal review process and put in measures to adequately to redress the hostile environment if found.</p>

	<p>complaint to initiate an investigation is necessary in light of the known circumstances given the severity of the accusations or the potential for the alleged behavior to persist and perpetuate to other NDCDE students or staff.</p>	
<p><b>Reporting Procedure</b></p>	<p>Any person may report sexual harassment, whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual harassment, in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address listed for the Title IX Coordinator.</p> <p>At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity at NDCDE.</p> <p>Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process and must comply with requirements for Title IX personnel to be free from conflicts and bias.</p>	<p>Grievances must be submitted to the Non-Discrimination Coordinator within 45 days of the date the person filing the grievance becomes aware of the alleged discriminatory action. A complaint must be in writing, containing the name and address of the person filing it. The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought.</p>

	<p>A complaint must be filed within 180 days of the last act of sexual harassment.</p> <p>The Title IX Coordinator will institute supportive measures if not already in place upon receipt of a formal complaint and will determine if emergency removal measures are necessary.</p> <p>The Title IX Coordinator determines if the formal complaint should be dismissed or investigated within 15 business days upon receipt. A complaint will be dismissed if not timely filed, if the allegations would not constitute sexual harassment as defined in <a href="#">§ 106.30</a> even if proved, did not occur in NDCDE's education program or activity, or did not occur against a person in the United States. The Title IX Coordinator will refer complaints that occurred in a local school's activities or programs to that school for processing. The Title IX Coordinator may refer dismissed complaints to the appropriate NDCDE administrator for review and action under other NDCDE policies.</p>	
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<p><b>Grievance Procedure: General Assurances</b></p>	<p>NDCDE will treat complainants equitably by providing remedies any time a respondent is found responsible and treat respondents equitably by not imposing disciplinary sanctions without following the grievance/investigation process.</p>
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NDCDE will review all evidence objectively and will not make credibility determinations based on a person's status as a complainant, respondent, or witness.

NDCDE will ensure the Title IX Coordinator, investigator, decision-maker, or any person designated by NDCDE to implement this policy, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

All these NDCDE employees responsible for implementing this policy will receive appropriate training to serve in these roles, including all training required by law. This material will be available for inspection upon request.

NDCDE assumes the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance/investigation process.

NDCDE will use the preponderance of evidence standard to determine responsibility when a complaint is filed.

NDCDE will not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The burden of gathering evidence and burden of proof will remain on NDCDE, not on the parties involved in the complaint investigation process.

NDCDE will not use a formal hearing to resolve complaints received under this policy.

NDCDE must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out the proceedings under this policy.

NDCDE provides equal opportunity for the parties to present fact and expert witnesses, and other inculpatory and exculpatory evidence.

	<p>NDCDE will not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”)</p>
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<p><b>Investigation Procedure</b></p>	<p>The Title IX Coordinator will appoint an investigator to review formal complaints that have not been dismissed within 10 business days.</p> <p>Within five business days of appointing the investigator, the Title IX Coordinator will send a written notice of the allegations and information on the investigation procedure, including investigator's contact information, the decision maker's contact information, and the roles and responsibilities of these individuals, to both parties.</p> <p>The investigator shall prepare an initial list of evidence to gather and witnesses to interview and send this information to both parties in writing. Within this notice, the investigator will specify that both parties have an equal opportunity to name witnesses, including fact and expert witnesses, and provide other inculpatory and exculpatory evidence. The investigator will interview both parties or request written statements from them based on questions prepared by the investigator. The parties are both entitled to use and have present an advisor of their choosing during this process.</p>	<p>The Non-Discrimination Coordinator (or her/his designee) shall conduct an investigation of the complaint. This investigation will be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint.</p> <p>The Non-Discrimination Coordinator will maintain the files and records of NDCDE relating to such grievances.</p> <p>The Non-Discrimination Coordinator will make appropriate arrangements to ensure that persons involved in the investigation are provided other accommodations, if needed, to participate. The Non-Discrimination Coordinator will be responsible for such arrangements.</p>
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Once the investigator has gathered all evidence and interviewed all parties, s/he will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which NDCDE does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

The investigator will then create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to referring the report to the decision maker, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

The full investigation process shall be completed within 60 business days unless

	<p>there is good cause for a delay, and the investigator sends written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.</p>	
<p><b>Decision Making</b></p>	<p>The investigator will refer his/her report to the decision maker. The decision maker shall be appointed by the Title IX Coordinator at the outset of the process. The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility.</p> <p>Upon receipt of the investigation report and within five business days, the decision-maker will notify each party in writing of the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. The notice will stipulate that questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the</p>	<p>The Non-Discrimination Coordinator will issue a written decision on the grievance no later than 30 days after its filing. The decision will be supported by all the evidence gathered and reviewed as part of the investigation process.</p>

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. This question-and-answer period will take place over 15 business days, with the first set of questions due to the decisionmaker by both parties within 3 business days. This 15-day deadline may be extended by the decision maker if s/he cannot get ahold of a witness, and the decision maker shall notify both parties of such an extension in writing. The decision-maker(s) will also explain to the party proposing the questions any decision to exclude a question as not relevant.

The decision maker will then issue a final determination, which shall include:

- Identification of the allegations potentially constituting sexual harassment as defined in [§ 106.30](#).
- A description of the procedural steps taken by NDCDE during the formal complaint process through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of NDCDE policies to the facts;

- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions NDCDE imposes on the respondent, and whether remedies designed to restore or preserve equal access to the NDCDE's education program or activity will be provided by NDCDE to the complainant; and
- The procedures and permissible bases for the complainant and respondent to appeal.

The decision maker will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The decision maker also provides his/her findings to the Title IX Coordinator who is then responsible for implementation of the decision when it takes effect.

**Reasons for dismissal:** The decision maker must dismiss allegations of conduct that do not meet the Title IX definition of sexual harassment or did not occur in a school education program or activity against a person in the U.S. Such

	<p>dismissal is only for Title IX purposes and does not preclude NDCDE from addressing the conduct in any manner the school deems appropriate.</p>	
<p><b>Appeals</b></p>	<p>NDCDE will offer both parties an appeal from a determination regarding responsibility, and from a school’s dismissal of a formal complaint or any allegations therein, on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter. This appeal will be filed with the NDCDE Human Resources Director (unless s/he has a conflict in which case the Title IX Coordinator will designate another NDCDE administrator to receive the appeal) within 10 days of the parties receiving notice of the outcome of the investigation.</p> <p>The NDCDE Human Resources Director upon receipt of an appeal will:</p> <ul style="list-style-type: none"> <li>• Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;</li> <li>• Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome within 10 days of receiving the notice of appeal;</li> </ul>	<p>The person filing the grievance may appeal the decision of the Section 504 Coordinator by writing to the NDCDE Human Resources Director within 15 days of receiving the Non-Discrimination Coordinator’s decision. The Human Resources Director shall issue a written decision in response to the appeal no later than 30 days after its filing.</p> <p>The availability and use of this grievance procedure does not prevent a person from filing a complaint of discrimination on the basis of disability with the U. S. Department of Health and Human Services, Office for Civil Rights.</p>

	<ul style="list-style-type: none"> <li>• Issue a written decision describing the result of the appeal and the rationale for the result; and</li> <li>• Provide the written decision simultaneously to both parties.</li> </ul>	
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### **Description of Supportive Measures**

These measures, instituted by the Title IX Coordinator at the outset of actual notice or a formal complaint of sexual harassment, are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent. These same measures may be instituted for discrimination and harassment complaints that do not allege sexual harassment. Such measures are designed to restore or preserve equal access to the NDCDE's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or NDCDE's educational environment, or deter harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of student and employee's online activity, and other similar measures. NDCDE must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of NDCDE to provide the supportive measures.

### **Retaliation Prohibited & Confidentiality Assurances**

- **Confidentiality:** NDCDE must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a proceedings under this policy .
- **Retaliation:** NDCDE prohibits any form of retaliation under this policy. Examples include intimidation, threats, coercion, or discrimination because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation under this policy. Complaints alleging retaliation may be filed using the procedures in this policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith under this policy does not

constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.

**Description of Disciplinary Responses**

Any disciplinary response recommended under this policy shall be commensurate with the findings of wrongdoing and with the disciplinary remedies available to NDCDE as outlined in the applicable policy: Student Discipline (C3ea) or Employee Discipline (B4k).

**End of policy**

**Adopted: 10/18/2024**

**Amended:**

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