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Sex/Gender Harassment, Discrimination, and Misconduct Policy



Title IX Compliance

This policy manual seeks to combine and implement the legal, regulatory, and policy requirements regarding sex/gender-based discrimination contained within:

- a. Titles IV and VII of the Civil Rights Act of 1964
- b. Title IX of the Education Amendments Act of 1972
- c. Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 (Clery Act)
- d. The Violence Against Women Act of 2013
- e. NDCC 15-10-56. Disciplinary Proceedings – Right to Counsel for Students and Organizations - Appeals
- f. NDCC 34-06.1-03. Prohibition of Discrimination
- g. NDCC 54-06-38. Harassment Policies
- h. ND SBHE Policies 514. Due Process Requirements (for students)
- i. ND SBHE 603.1. Harassment (for employees)
- j. ND SBHE 603.2. Equal Employment Opportunity
- k. ND SBHE 605.3. Nonrenewal, Termination or Dismissal of Faculty
- l. ND SBHE 605.4. Hearing and Appeals
- m. ND SBHE 605.5. Mediation
- n. ND SBHE 612. Faculty Grievances
- o. NDUS HR Policies 25. Job Discipline/Dismissal
- p. NDUS HR Policies 26. Termination Procedure
- q. NDUS HR Policies 27. Appeals Procedures

To simplify Minot State University's policy and procedures, the following index is provided to help the reader locate the specific topic of interest more easily. Some language from one section may be repeated in another section to assist the reader.

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PURPOSE

To establish Minot State University's policy prohibiting sex/gender-based discrimination, harassment, misconduct, relationship violence, and retaliation related to reports of such conduct. These procedures apply to complaints alleging all forms of sex/gender-based discrimination against employees, students, and third parties. These apply to all university programs and activities, including those conducted off-campus and in Minot State University's graduate schools.

POLICY STATEMENT/OVERVIEW

Minot State University strives to provide an educational environment where all members of the campus community are expected to conduct themselves in a manner that enhances the well-being of the community. Members of the university community, guests, and visitors have the right to be free from all forms of sex/gender based harassment, discrimination, and misconduct ("Prohibited Conduct"). This policy covers student, faculty, and staff-related matters of Prohibited Conduct, regardless of whether the alleged conduct occurred on or off campus, and regardless of whether the alleged Responding Party is a student, faculty member, staff member, or third party. Examples include acts of sex/gender-based violence (including sexual assault and rape), any harassment based on sex or gender, domestic violence, dating violence, and stalking.

Minot State University will not tolerate incidents of sex/gender-based harassment, discrimination, or misconduct occurring on or off campus, where relevant, whether there is a hostile environment on campus, or in an off-campus education program or activity.

If the off-campus misconduct did not occur within the context of a University program or activity, the University will consider the effects of off-campus conduct when evaluating whether there is a hostile environment on campus, or in an off-campus education program or activity.

When such an allegation is reported to an appropriate Minot State University official, protective and interim measures will be used. Such measures are to reasonably ensure such conduct ends, the conduct is not repeated, and the effects on the Reporting Party and community are remedied. Measures by the University may include serious sanctions (up to and including termination, suspension, or expulsion, if circumstances warrant) when a Responding Party is found to have violated this policy. Students and employees who retaliate against individuals who report Prohibited Conduct may be subject to disciplinary action.

Employees are required, and students and are strongly encouraged, to report any and all incidents of sex/gender-based discrimination, harassment, or misconduct to the Minot State University Office of Safety & Security, Title IX Coordinator, or any Deputy Title IX Coordinator. When an allegation of misconduct is brought to an appropriate University official, Minot State University will respond promptly, equitably, and thoroughly.

This policy manual is written to address the many issues and varying aspects of sex/gender-based discrimination. While there are many laws, regulations, policies, and other such sources written for the purpose of preventing or responding to sex/gender-based discrimination, the explanation that it takes to satisfy and comply with all of the standards and requirements is a somewhat difficult task. The amount of information in this manual may seem overwhelming, so we've attempted to organize it so the reader may easily find and understand the particular aspect that is relevant. If the answer sought does not seem readily available, or needs further clarification, please do not hesitate to contact the Title IX office.

DEFINITIONS

Campus Security Authority (CSA). Any University employee whose responsibilities fall under any of the following conditions:

- a. A campus security department of an institution
- b. Any individual or individuals who have responsibility for campus security but who do not constitute a campus security department
- c. Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses
- d. An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. An official is defined as any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution

CSAs are required by the Clery Act to report certain crimes for statistical purposes.

Coercion. Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be considered coercive.

Consent. Consent is an affirmative decision to engage in mutually acceptable sexual activity given by clear actions or words. (Further discussion of consent and North Dakota law is found in the section of "sex/gender-based misconduct/violence.")

Dating Violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship will be based on the length and type of relationship and the frequency of interaction with the persons involved in the relationship. It is important to recognize that emotional, verbal, and economic abuse are part of the web of dating violence and can exist without the presence of physical abuse.

Domestic Violence. Crimes of violence committed against a victim by: (i) a current or former spouse; (ii) a person with whom the victim shares a child; (iii) a person who is, or has, cohabitated with the victim as a spouse; (iv) a person similarly situated to a spouse of the victim; or (v) any other person against whom the victim is protected under domestic and family violence laws. It is important to recognize that emotional, verbal, and economic abuse are part of the web of domestic violence and can exist without the presence of physical abuse.

False Complaint. A false complaint is an allegation made maliciously, and/or with knowledge that the allegations are wholly or substantially untrue.

Force. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent. (Further discussion of force is found in the section of “sex/gender-based misconduct/violence.”)

Gender Based Harassment. Gender-based harassment is verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person’s ability to participate in or benefit from the University’s education or work programs or activities.

Preponderance of the Evidence. Preponderance of the Evidence is the standard by which a determination will be made regarding violations of this policy. It means the decision will be based on whether it is more likely than not that the discrimination occurred.

Regular Employee. A regular employee is a staff or faculty member who is appointed to a continuing position and receiving benefits.

Reporting Party. The Reporting Party is defined as a person who reports being the victim of sex/gender-based discrimination.

Responding Party. A Responding Party is defined as a person alleged to have committed sex/gender-based discrimination.

Responsible Employee. A responsible employee is obligated to report cases of sex/gender-based discrimination of which they become aware. All regular staff and faculty members are responsible employees.

Sexual Discrimination. Sexual discrimination includes any action or decision that would limit a person’s participation in an MSU program based on that person’s sex, gender, or gender orientation.

Stalking. Stalking is a course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and that serves no legitimate purpose. The course of conduct may be directed toward that person or a member of

that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment.

ADMISSIONS/FINANCIAL AID

No person shall be discriminated against because of sex, gender, or gender-orientation during the application and admissions processes, or the awarding of financial aid.

ATHLETICS

The MSU Athletic Department realizes that gender equity is a key component in a successful athletics program. Since the inception of Title IX, there is the misconception that gender equity is simply meeting one of the three prongs of the Three-Part Test:

1. Provide participation opportunities for women and men that are substantially proportionate to their respective rates of enrollment as full-time undergraduate students.
2. Demonstrate a history and continuing practice of program expansion for the underrepresented sex.
3. Fully and effectively accommodate the interests and abilities of the underrepresented sex.

Beyond these prongs, gender equity stretches through every program and every student-athlete. It is our goal to provide equitable opportunities for ALL student-athletes to succeed, through various avenues, such as participation, scholarships, and other benefits. These avenues include (but are not limited to) the following:

- provision of equipment and supplies;
- scheduling;
- travel;
- tutoring;
- coaching;
- locker rooms;
- facilities;
- medical and training facilities and services;
- publicity;
- recruiting; and
- support services.

Within the Athletics Department, the Gender Equity & Diversity Committee plans to evaluate the Gender Equity Plan on an ongoing basis to ensure progress is made and other issues that may surface are identified and addressed.

EMPLOYMENT

MSU prohibits discrimination on the basis of sex or gender when making decisions regarding employment unless a bona fide occupational qualification exists (BFOQ). This includes (but is not limited to) decisions for hiring, promotion, transfers, and salary administration. A BFOQ would exist if the duties of the position reasonably necessitate the choice of one sex or gender over the other.

All regular staff and faculty are considered Responsible Employees and are obligated to report cases of sex/gender-based discrimination of which they are aware. As an agent of the University, once an employee knows of the incident, then the University knows of the incident. Employees must report such cases to the Title IX office, and that office will coordinate the University's response. Employees outside of the Title IX office are not to investigate such cases.

CONSENSUAL RELATIONSHIPS

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. Each of the parties, particularly in retrospect, may also view the relationship in different ways. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. The university does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the university. For the personal protection of members of this community, relationships in which power differentials are inherent (such as faculty-student, staff-student, and administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to either remove the employee from the supervisory or evaluative responsibilities, or shift the other party out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes resident advisors and students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

SEX/GENDER-BASED MISCONDUCT/VIOLENCE

Sex/gender-based misconduct, whether involving violence or not, is a form of discrimination that is prohibited by this policy. Misconduct offenses include, but are not limited to, the following:

1. Sexual Harassment,
2. Non-Consensual Sexual Contact (or attempts to commit same),
3. Non-Consensual Sexual Intercourse (or attempts to commit same),
4. Sexual Exploitation, and
5. Other offenses when based on sex, gender, or gender-orientation.

1. SEXUAL HARASSMENT is:

- a. unwelcome, gender-based verbal or physical conduct that is,
- b. sufficiently severe, persistent or pervasive that it,
- c. unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the university's educational program and/or activities, and is
- d. based on power differentials (*quid pro quo*), the creation of a hostile environment, or retaliation.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sex/gender-based violence; intimate partner violence, stalking; gender-based bullying.

2. NON-CONSENSUAL SEXUAL CONTACT is:

- a. any intentional sexual touching,
- b. however slight,
- c. with any object,
- d. by a man or a woman upon a man or a woman,
- e. that is without consent and/or by force.

Examples include: intentional contact with the breasts, buttock, mouth, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.

3. NON-CONSENSUAL SEXUAL INTERCOURSE is:

- a. any sexual intercourse
- b. however slight,
- c. with any object,
- d. by a man or a woman upon a man or a woman,
- e. that is without consent and/or by force.

Intercourse includes vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

4. SEXUAL EXPLOITATION occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- a. Invasion of sexual privacy;
- b. Prostituting another student;
- c. Non-consensual digital, video or audio-recording of nudity or sexual activity;
- d. Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- e. Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- f. Engaging in voyeurism;
- g. Knowingly transmitting an STD or HIV to another person;
- h. Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals.

5. OTHER MISCONDUCT OFFENSES include:

- a. Sex/gender-based threatening or intimidation, causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- b. Sex/gender-based discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;
- c. Sex/gender-based hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
- d. Sex/gender-based bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally.
- e. Sex/gender-based violence between those in an intimate relationship with each other;

- f. Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community or the safety of any of the immediate family of members of the community.

* Misconduct offenses that are not sex/gender-based, therefore not falling under Title IX policy, will be referred to the Student Conduct Policy (for student) or Faculty Handbook (for faculty). The complete handbooks are available at www.minotstateu.edu/student_handbook.pdf and <https://www.minotstateu.edu/senate/faculty-handbook.shtml>.

To better understand these examples of misconduct, the following points/discussions of consent and force are provided:

1. Consent is an informed decision made freely and actively by all parties. Relying solely upon nonverbal communication can lead to miscommunication. It is important not to make assumptions; if confusion or ambiguity on the issue of consent arises anytime during a sexual interaction, it is essential that each participant stops and clarifies, verbally, willingness to continue.

Individuals should understand that consent may not be inferred from silence, passivity, or lack of active resistance alone. Furthermore, a current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity.

Conduct will be considered "without consent" if no clear consent, verbal or nonverbal, is given. The perspective of a reasonable person will be the basis for determining whether a Responding Party knew, or reasonably should have known, whether consent was given. However, being intoxicated or incapacitated does not diminish one's responsibility to obtain consent and will not be an excuse for sex/gender-based misconduct.

In some situations, an individual may not be able to freely consent. Examples include, but are not limited to, when an individual is incapacitated due to alcohol or other drugs, scared, physically forced, passed out, asleep, unconscious, intimidated, coerced, mentally or physically impaired, beaten, threatened, isolated, or confined. The perspective of a reasonable person will be the basis for determining whether a Responding Party knew, or reasonably should have known, whether a Reporting Party was capable of providing consent.

2. In order to give effective consent, one must be of legal age. According to the North Dakota Century Code:
 - a. The "age of consent" is 18 years old in North Dakota.
 - b. A person under the age of 15 cannot legally consent to sexual activity under any circumstances.

- c. A person between the ages of 15–17 is legally able to consent to sexual activity if the partner is less than three years older. For example, a 16-year-old can legally consent to engage in sexual activity with a partner who is 18 years old, but not a partner who is 19 years old.
 - d. For more detailed information, please see Chapter 12. 1 – 20 of the North Dakota Century Code: <http://www.legis.nd.gov/cencode/t12-1c20.pdf?20130924091431>
3. **Force** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent. (“Have sex with me or I’ll hit you.” “Okay, don’t hit me. I’ll do what you want.”).

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Seductive behavior might occur when the matter of consent or boundaries is unclear; it is an issue of persuasion. However, one must be very careful when attempting to persuade the other party to participate in sexual activity. The mere fact that one must be persuaded may indicate that some degree of non-consent is present.

There is no requirement that a party resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

REPORTING SEXUAL DISCRIMINATION

The Office of Civil Rights (OCR) requires that certain employees on campus be deemed Responsible Employees. All regular university employees (faculty, staff, and administrators) have an obligation to report actual or suspected discrimination or harassment to the Title IX Office, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality, meaning they are not required to report actual or suspected discrimination or harassment to appropriate university officials, thereby offering options and advice without any obligation to inform an outside agency or individual unless you have requested information to be shared. Other resources exist for a Reporting Party to report crimes and policy violations and these resources will take action when the Reporting Party reports victimization to them. The following describes the two reporting options at university:

Confidential Resources and Reporting

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality, meaning they are not required to report actual or suspected Prohibited Conduct to other University officials, thereby offering options and advice without any obligation to inform an outside agency or individual unless a Reporting Party has requested information to be shared. The following describes the confidential reporting options:

- Campus professional counselors assigned to the Student Development Center,
- Campus health service providers,
- Off campus:
 - Licensed Professional Counselors
 - Domestic Violence Crisis Center counselors,
- The Village Family Services (for employees as our Employee Assistance Program provider)
- On or off-campus members of the clergy/chaplains

The University will seek to balance a complainant's request for anonymity or not to participate in an investigation with its broader obligation to campus safety. **In cases indicating pattern, predation, threats, weapons, and/or violence, Minot State University may be unable to honor a request for confidentiality.** If the complainant asks that their name not be disclosed to the Responding Party, or that no investigation be pursued, it may limit the scope of the University's response.

Other factors may include the seriousness of the alleged conduct, the age of the individual, whether there have been other complaints or reports against the alleged, and the rights of the accused individual to receive information about the accuser and the allegations if sanctions resulted. If a report of an alleged violation of this policy is made to a resource other than the confidential resources listed above, action must be taken and confidentiality cannot be guaranteed.

Reporting

The University's primary concern is the safety of its students, faculty and staff, and to encourage reporting of Prohibited Conduct. All University employees have a duty to report actual or suspected Prohibited Conduct to appropriate officials, though there are some limited exceptions for those that fall under "confidential reporting." A Reporting Party may want to consider carefully whether they share personally identifiable details with employees who have a duty to report, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy Title IX Coordinator(s). To be clear, employees with a duty to report must share all details of the reports they receive.

Failure of a non-confidential employee, as described in this section, to report an incident of sex/gender-based discrimination of which they become aware, is a violation of university policy and is subject to disciplinary action ranging from a warning up to and including termination of employment.

1. Reporting Party may request confidentiality.

If a Reporting Party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the Reporting Party may make such request to the Title IX Coordinator and/or Deputy Title IX Coordinator(s), who will evaluate that request in order to ensure the safety of the campus, in compliance with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the University may be unable to honor a request for confidentiality. In cases where a Reporting Party requests confidentiality and the circumstances allow the University to honor that request, the University will offer interim support and measures to a Reporting Party and the community, but will not otherwise pursue formal action.

2. Reporting Party will have their complaints promptly and thoroughly investigated.

A Reporting Party has the right and can expect to have complaints taken seriously by the University when reported, and to have those incidents investigated thoroughly and properly resolved through the procedures set forth below. The University will promptly act on any complaint or notice of violation of this Policy when received by Minot Police Department, MSU Campus Safety & Security, Title IX Coordinator or any Deputy Title IX Coordinator, subject to Reporting Party's request for confidentiality. The University will not discipline a student who makes a good faith report of Prohibited Conduct. Nevertheless, MSU will respond to each report of potential violations of this policy. MSU never assumes a violation of this policy has occurred based solely on an allegation. MSU will respond with the necessary inquiry and or investigation to determine whether the alleged violation has occurred. MSU's response will take into account the totality of all evidence available from all relevant sources. The outcome of an allegation will be determined based on the preponderance of the evidence. This means that violations of this policy will be based on whether it is more likely than not that the discrimination occurred.

3. Minot State University will conduct an investigation that will be separate from a criminal investigation; though communication with law enforcement will be maintained.

In campus disciplinary proceedings, legal terms like "guilt, "innocence" and "burdens of proof" are not applicable. MSU's responsibility to enforce this policy is not part of the criminal judicial system. A provision notifying complainants that they may pursue a complaint with the University and the

police simultaneously; that the University may need to briefly suspend the fact-finding aspect of a Title IX investigation at the request of law enforcement while the law enforcement agency is in the process of gathering evidence; that the University will maintain regular contact with law enforcement to determine when it may begin its investigation; that the University will promptly resume its investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process, or sooner if the University determines that the evidence gathering process will be lengthy or delayed; and the University will not delay its investigation until the ultimate outcome of the criminal investigation. However, the University reserves the right to implement appropriate interim measures during any law enforcement agency's investigative period when the University has temporarily deferred its investigation, to assist and protect the safety of the complainant(s) and the campus community and to prevent retaliation.

MSU's response to a report will be more effective if the report is made soon after the incident. In cases where the alleged perpetrator (Responding Party) is no longer affiliated with the MSU campus, MSU will provide support for the Reporting Party, and will attempt to investigate for the purpose of sanctioning the Responding Party. However, the more time passes after the incident, the more difficult it may be for MSU to respond.

All reports of sex/gender-based discrimination are formal reports regardless of the method used. Reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told. Information will be shared as necessary with investigator(s), witnesses, and the Responding Party. The circle of people with this knowledge will be kept as tight as possible to preserve both the Reporting Party's and Responding Party's rights and privacy.

Anonymous reports can be made by Reporting Party and/or third parties using the online reporting form posted at <http://www.minotstateu.edu/title9/incident-reporting.shtml>. Note that these anonymous reports may prompt a need for the institution to investigate.

Reports to the Title IX Coordinator and/or Deputy Title IX Coordinators can be made via email, phone, or in person at the contact information below:

Lisa Dooley
Title IX Coordinator
Title IX Office
Memorial Hall, 4th Floor, Room 412
701-858-3447
titleix@minotstateu.edu

Kevin Harmon
Deputy Title IX Coordinator for Students
Vice President, Student Affairs
Administration Bldg., 1st Floor
701-858-3410
kevin.harmon@minotstateu.edu

Steven Swenson, J.D.
Deputy Title IX Coordinator for Athletics
Associate Athletic Director for Compliance
Dome, 2nd Floor East, Room 236C
701-858-3040
steven.j.swenson@minotstateu.edu

Gary Orluck
Deputy Title IX Coordinator for Security
Director, Campus Safety and Security
Plant Services
701-858-4016
gary.orluck@minotstateu.edu

Marc Wachtfogel, Ph.D.
Deputy Title IX Coordinator for Human Resources
Director of Human Resources
Administration Bldg., 2nd Floor
701-858-4610
marc.wachtfogel@minotstateu.edu

Amnesty

The health and safety of students, faculty and staff is of primary concern at Minot State University. As such, individuals who feel they have been the victim of, who may have witnessed, or who have information regarding conduct prohibited under this policy are encouraged to report the matter despite the potential involvement of prohibited drugs and/or alcohol. The Title IX Office will not pursue any disciplinary matters related to prohibited substances, and will instead focus the potential investigation on the prohibited sex/gender-based harassment, discrimination, and/or misconduct.

Any student can also seek assistance from campus security in times of need for themselves or others who may be intoxicated or drug-impaired. While neither the student who is impaired nor the student(s) assisting the impaired student are fully exempt from facing disciplinary action under the Minot State University Code of Student Conduct, all efforts made by students to positively impact the health and

safety of others will be taken into consideration and may lessen possible disciplinary outcomes.

RESPONDING TO REPORTS

Initial Remedies/Interim Measures

The University will take prompt and effective steps to end the sex/gender-based harassment, assault and violence; eliminate any hostile environment; prevent its recurrence; and remedy the discriminatory effects on the victims and others as appropriate. The university reserves the right to take whatever measures it deems necessary in response to an allegation of sex/gender-based discrimination in order to protect a person's rights and personal safety. When warranted by the circumstances surrounding a complaint of sex/gender-based misconduct, the University may implement protective measures until its investigation is concluded. Violation of these interim measures may be considered grounds for additional complaints of sex/gender-based misconduct or as retaliation for the ongoing investigation of the misconduct. Requests can be made by the Reporting Party for such interim measures to minimize any potential burdens. Possible interim measures include, but are not limited to:

- a. Providing an escort to the Reporting Party so they may move safely on campus;
- b. Providing counseling services;
- c. Providing academic support services;
- d. Issuing a no-contact order to the parties, which prohibits any contact between them;
- e. Moving the Reporting Party and/or Responding Party to different on-campus housing;
- f. Altering the class schedule of the parties so they do not attend the same classes or administratively removing involved parties from course(s) upon request without penalty;
- g. Interim suspension from campus for the Responding Party pending a case resolution;
- h. Reporting the matter to the local law enforcement.

Mediation is prohibited in cases of sex/gender-based assault, and in cases involving a student complaining of sex/gender-based harassment against an employee in a position of authority over the student. Mediation is a negotiated resolution between two parties; therefore, placing a Reporting Party and Responding Party in the same space to address the situation can put the Reporting Party at risk for future abuse. However, mediation may be used only if the parties voluntarily agree to do so. The Reporting Party will not be required to resolve the problem directly with the Responding Party. Either party may choose to end the mediation process anytime.

Sex/gender-based discrimination may occur a number of different ways, so MSU's response may not always be the same for each case. Upon receipt of a report of sex/gender-based discrimination, the Title IX Coordinator (or designee) will:

- a. Interview the Reporting Party to clarify the details of the report;
- b. Determine whether the issue is addressed by the Sex/Gender Harassment, Discrimination and Misconduct policy;
- c. Provide information regarding support services to the Reporting Party;
- d. Coordinate initial remedies/protective measures appropriate to the case;
- e. Conduct an inquiry to address the issue by communicating with interested parties to resolve an issue not requiring disciplinary sanctions;
- f. Assign an investigator(s) in cases where an individual or a group of individuals are alleged to have violated this policy and potential disciplinary sanctions will be considered;
- g. Provide notices to the Reporting Party(s) and the Responding Party(s) of the allegation and pending investigation;
- h. Follow-up with all investigations and ensure timely compliance with procedures outlined below.

Investigations

Investigations will be prompt, equitable, and thorough. Investigations will be conducted fairly and impartially ensuring that both the Reporting Party(s) and Responding Party(s) have an equal opportunity to present all relevant information, documentation, evidence, and witnesses to the incident. The University will not allow conflicts of interest (real or reasonably perceived) by those investigating or adjudicating complaints.

Both the Reporting Party and Responding Party have the right to decline to participate in an investigation and in appeals. During the investigation, the Reporting Party, the Responding Party, and all other witnesses have the equal right to legal representation, though such representation is not required, nor will it be provided by the University. Any restrictions on the lawyers'/representatives' ability to speak or otherwise participate will be applied equally to both parties. Participants not choosing legal representation may have a support person be with them during the interview, however this support person may not be a person who is likely to be interviewed as part of the investigation. Involved parties will have similar and time access to information being considered in the process.

After considering and analyzing all relevant facts and information, the investigator(s) will decide whether a violation of this policy occurred and will provide a report to the Title IX Coordinator. In deciding whether a violation occurred, the investigator(s) will use the "preponderance of the evidence" standard. At a minimum, the report will contain:

- a. The allegation(s) and the applicable portion of policy implicated.
- b. Any relevant background or history.
- c. A summary of the facts and analysis.
- d. Conclusion/finding.

The Title IX Coordinator will review the report. In cases where a violation was found by the investigator, the matter will be forwarded to either the Vice President of Student Affairs or the Director of Human Resources for consideration of possible discipline or sanction.

Once the matter is resolved (meaning that remedies and/or sanctions have been determined), the Title IX Coordinator will provide notices of the outcome to the Reporting and Responding Party(s). The Reporting and Responding Party(s) are afforded regular updates regarding the case status throughout the investigation.

False Complaint

Minot State University will discipline any person who knowingly makes a false complaint or otherwise knowingly provides false information in connection with a Title IX investigation. This does not apply to complaints or statements made in good faith that were ultimately found unsubstantiated or for which there merely was a non-fault finding in the investigation. Rather, this applies to allegations made maliciously, and/or with knowledge that the allegations are wholly or substantially untrue. Such matters will be forwarded to the appropriate office for sanctioning.

Title IX Process

*While each case is different, it is the intent of the University to complete the Title IX matter from the initial complaint to the outcome determination within sixty (60) calendar days of the complaint filed. Some cases may require an extension due to investigative processes. The discretion will be that of the Title IX Coordinator. Per federal guidelines, there are no set timelines for stages in a Title IX case, except being designated by the institution and conducted in a prompt, equitable and thorough manner to all involved parties.

Notice of Allegation to Title IX coordinator. Reports should be received by the Title IX office as soon as possible following an incident to ensure the best possible opportunity for the University to have access to accurate information. Reports received a year or more after an incident will not be investigated unless both the Reporting Party and Responding Party are still part of the MSU community.

Title IX Eligibility Determined. Once a report is received, the Title IX Coordinator or designee will contact the Reporting Party to schedule a time to clarify issues pertaining to the report. Depending upon the Reporting Party's desire and availability, the Title IX Coordinator (or designee) will then meet with the Reporting Party.

Initial Remedies. When warranted by the circumstances surrounding a complaint of sex/gender-based misconduct, the University may implement interim protective measures until its investigation is concluded.

Notification of Investigation. The Title IX coordinator or designee will issue letters notifying the Reporting Party and the Responding Party of the University's intention to investigate the case. The Notification of Investigation letter will identify the following: a procedure for promptly and effectively notifying both Reporting Party and Responding Party of the initiation of an investigation; the potential policy violation(s) at issue; the right to participate in the investigation; the timeframe for responding; and that the investigation may proceed without the participating of either party.

Assignment to Investigation Team. If the decision is made to commence an investigation, the Title IX coordinator will appoint an investigator(s) to conduct the investigation (typically utilizing a team of two investigators).

Investigations. Investigations will be conducted fairly and impartially ensuring that both the Reporting Party(s) and Responding Party(s) have an equal opportunity to present all relevant information, documentation, evidence, and witnesses to the incident.

Notice of Outcome. The Title IX Coordinator or designee will issue letters notifying the Reporting Party and the Responding Party of the investigation's determination.

Notice of Implementation of Remedies/Sanctions. Once a sanction or responsive actions are determined it will be effective immediately.

APPEAL PROCESS

Notice of Appeal. Appeals must be in writing and sent to the Title IX Coordinator's office within four (4) business days when the sanction does not involve student suspension, expulsion, or dismissal from student, faculty, or staff employment.

Additional specified timelines include the following:

- a. Within twenty (20) calendar days for faculty when the sanction is dismissal from employment. (SBHE 605.4)
- b. Within five (5) working days for staff when the sanction is dismissal from employment. (NDUS HR Policy 27.2)
- c. Within one (1) year for students when the sanction includes suspension or expulsion. (SBHE 514)

All involved parties are allowed to participate equally in the appeal process. Appeal timelines are based on the date of the Notification of Outcome letter. Appeals of the outcome may be made by either the Reporting Party(s) or Responding Party(s).

Appeals are not intended to be full investigations of the original complaint or an opportunity for an appellate body to substitute their judgement for that of the assigned investigators. Instead, appeals may be requested to the Title IX coordinator in the following circumstances:

- a. Procedural error that significantly impacted the case outcome;
- b. New evidence that was not available during the investigation that would likely change the outcome; or
- c. Sanction that is substantially disproportionate to the severity of the violation.

When the appeal is based on new evidence, the Title IX coordinator will return the case to the original assigned investigator(s) for reconsideration. The investigator(s) will supplement the previous investigation, which may include recalling witnesses, and issue a revised report. The Title IX coordinator, Deputy Title IX coordinators, and/or Title IX investigators not directly involved in the case will review the revised report to determine if the original finding should stand or be reversed.

When the appeal is based on a procedural error or a sanction substantially disproportionate to the severity of the violation, the Title IX coordinator, Deputy Title IX coordinators and/or Title IX investigators not directly involved in the case will review the appeal to determine if the original finding should stand, be modified, or be reversed.

The appeals process shall be deferential to the original decision-making body, reversing the case finding only when there is clear error and modifying the sanction only when it is found to be substantially disproportionate to the severity of the violation. The original decision and sanction are presumed to have been determined reasonably and appropriately. Therefore, the burden is on the appealing party to show clear reasoning for a reversal of finding or modification of sanction.

At the discretion of the Title IX coordinator and Deputy Title IX coordinators, implementation of sanctions may be stayed pending review of an appeal.

Notice of Final Determination. Once the final result of an appeal is determined, notices of the appeal outcome will be sent to the Reporting Party and the Responding Party. This will be the final decision on the matter.

RETALIATION

It is a violation of University policy and state law to retaliate against any person reporting or filing a complaint of sex/gender-based harassment, discrimination, or misconduct. Such conduct is inconsistent with University policy and may be prohibited by law.

“Retaliation” is defined as any adverse action taken against a person making a complaint of prohibited conduct or against any person involved or participating in the investigation of any such allegation. Report alleged acts of retaliation to the Title IX coordinator, and Deputy Title IX coordinator(s).

DISCIPLINE/SANCTIONS

Not all forms of sex/gender-based discrimination will be deemed to be equally serious offenses, and the university reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The university will consider the concerns and rights of both the Reporting Party and the Responding Party.

The following lists of sanctions may be imposed upon current members of the campus community found to have violated this policy.

Sanctions for current students may include, but are not limited to:

1. **Verbal Warning:** Responding Party may be verbally warned that such conduct is not acceptable under university standards and that similar future conduct will result in further, more severe sanctions.
2. **Educational Intervention:** Requiring the Responding Party to participate in online and/or physical classes addressing issues such as intimate partner violence, stalking, and sex/gender-based violence. This may include facilitating a program, creating educational posters regarding institutional policies and student conduct, and writing a paper.
3. **Referral for Assessment or Counseling:** Requiring the Responding Party to meet with a staff member of the Minot State University Counseling Services to have an assessment of their mental health and lifestyle choices. The Minot State University Counseling Services may also recommend further evaluation and participation in counseling services. May be on or off campus health/counseling center.
4. **Community Restitution:** Requiring the Responding Party to perform a certain number of service hours either on campus or in the community. It is not appropriate to send the Responding Party to an office that regularly works with victim/survivors such as a counseling center, women's center, student health, or domestic violence/sexual assault office.
5. **Probation:** A status that indicates either serious misconduct not warranting suspension, expulsion, or removal of institutional privileges, or repetition of misconduct after a warning has been imposed.
6. **Residential Reassignment:** Removes the Responding Party from current residence and reassigns to a new residence. Specific restrictions on access to one's previous residence may be imposed.
7. **Changes in Academic Schedule:** Requiring the Responding Party to make changes in class schedule to ensure that no classes are shared with the victim(s)/survivor(s).
8. **Removal of University Privileges:** Restrictions on the Responding Party's access to certain locations, functions, organizations, teams, and/or activities; does not preclude the student from continuing their academic program.
9. **Termination of Residency:** Loss of on-campus housing, without refund, and/or dining privileges, permanently or for a specified period of time.

10. **Restitution/Fines:** The Responding Party may be fined for violations of the policies and procedures outlined by the institution. The individual may be required to make a payment to the institution and/or another person or group for damages incurred as a result of the violation.
11. **Removal or Non-Renewal of Scholarships:** Institutionally-administered scholarships may be cancelled or not renewed to students that have violated the student code of conduct.
12. **Withholding of Degree:** The institution maintains the right to withhold the awarding of a degree otherwise earned until the completion of any imposed sanctions.
13. **Suspension:** A temporary separation from the institution that involves denial of all student privileges, including entrance to campus premises, and may include conditions for reinstatement, such as successful completion of a counseling or treatment program. A suspension may be imposed if counseling or treatment is not successfully completed.
14. **Expulsion:** A permanent separation from institution that involves denial of all student privileges, including entrance to the institution premises and matriculation.

Sanctions for current university employees include:

1. **Warning (Written or Verbal)**
2. **Performance Improvement Plan**
3. **Required Counseling**
4. **Required Training or Education**
5. **Demotion**
6. **Reduction in Pay**
7. **Loss of intended pay increase**
8. **Suspension with pay**
9. **Suspension without pay**
10. **Termination**

Sanction Considerations

- A. Any person found responsible for non-consensual or forced sexual contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion (student) or a written warning to termination (employee), depending on the severity of the incident, and taking into account any previous disciplinary violations.
- B. Any person found responsible for non-consensual or forced sex/gender-based intercourse will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).
- C. Any person found responsible for sex/gender-based exploitation or sex/gender-based harassment will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.

- D. Anyone not a student or an employee found responsible for non-consensual or forced sex/gender-based contact, intercourse, exploitation, or harassment can expect a sanction proportional to the findings/conclusions of the University, including temporary or permanent prohibition from campus and Minot State University events. Minot State University also reserves the right to report a non-student or non-employee to law enforcement for conduct that violates the North Dakota Century Code.
- E. In cases where sex/gender-based harassment, assault, or violence is found to have occurred, the University will determine appropriate, enforceable sanctions reasonably calculated to stop the harassment and prevent its recurrence; and the University will not negotiate a settlement with the employee or student for lesser actions that would not be reasonably calculated to end the sex/gender-based harassment, assault and violence; eliminate the hostile environment; prevent its recurrence; and remedy the discriminatory effects on the complainant and others as appropriate.

*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior.

RESOURCES

The following are many of the resources available on campus and in the community. While some support options are confidential as noted below, others have a responsibility to reports to the University as Responsible Employees.

Minot Police Department:

- **911** for emergencies.
- 701-852-0111 (non-emergency)

Campus Safety & Security: 701-500-2423

Domestic Violence Crisis Center: 701-857-2200*

MSU Student Health Center: 701-858-3371

Trinity Hospital: 701-857-5000

MSU Counseling Services: 701-858-3371*

MSU Campus Ministry: 701-690-4034*

Title IX Coordinator: 701-858-3447

*Confidential support services

PREVENTION, EDUCATION, & TRAINING

Minot State University is committed to the prevention of sex/gender-based misconduct, intimate partner abuse, and stalking through educational and awareness programs. Prevention and education programs include an overview of the university's policy and procedures; relevant definitions, including prohibited conduct; the impact of alcohol and illegal drug use; effective consent; safe and

positive options for bystander intervention; and information about risk reduction, resources, and reporting options.

Incoming first-year students and new employees will receive primary prevention and awareness programming as part of their orientation. Returning students and employees will receive ongoing training on a periodic basis.

VENDORS/CONTRACTORS ON THE MSU CAMPUS

Minot State University recognizes that anyone working on our campus is protected by our policy on sex/gender-based discrimination. MSU respects the efforts of other employers to prevent and remedy sex/gender-based discrimination. When an incident occurs that involves parties from MSU and other employers working on the MSU campus, MSU will work in collaboration with the other employer to resolve the matter. In this section the terms Reporting Party and Responding Party refer to individuals who are not employed by MSU and do not have any connection to the campus except for their employment with a vendor or contractor working on the campus.

When the Reporting Party is employed by a vendor/contractor, and the Responding Party is part of the MSU community, MSU's Office of Title IX Compliance will serve as the liaison for the interaction between the vendor/contractor and MSU. If an investigation is necessary, MSU will conduct the investigation independent of the vendor/contractor's procedures; however, MSU will seek to collaborate and work with the vendor/contractor.

When the Responding Party is employed by a vendor/contractor, and the Reporting Party is part of the MSU community, MSU will contact the vendor/contractor to provide a report of the incident. MSU will investigate the incident and provide the final report to the vendor/contractor for appropriate disciplinary action. If the vendor/contractor intends to conduct an investigation as well, MSU will seek to conduct the investigation jointly, though MSU's final report/conclusion will be independent of that of the vendor/contractor.

When the Reporting Party and the Responding Party are both employed by the same vendor/contractor, the vendor/contractors will address the issue using their own policies and procedures; however, they will communicate with the Title IX Coordinator for informational purposes.

When the Reporting Party and the Responding Party are employed by different vendors/contractors, the vendors/contractors will work together to resolve the issue; however, they will communicate with the Title IX Coordinator for informational purposes.

COORDINATING WITH OTHER CAMPUSES

MSU recognizes that visitors to our campus are protected by our policy on sex/gender-based discrimination. Minot State University respects the efforts of other educational institutions to prevent and remedy sex/gender-based discrimination. When an incident occurs that involves parties from MSU and other campuses, MSU will work in collaboration with the other campus to resolve the matter.

When the Reporting Party is from another campus, and the Responding Party is part of the MSU community, MSU's Title IX office will serve as the liaison for the interaction between the two campuses. If an investigation is necessary, MSU will conduct its investigation independent of the other institution's procedures, however, MSU will seek to collaborate and work with the other institution.

When the Responding Party is from another campus, and the Reporting Party is part of the MSU community, MSU will contact the Title IX office or other appropriate administrative office to provide a report of the incident. MSU does not intend to investigate responding parties who are not associated with MSU, but will support the other campus in its efforts to investigate the incident.

When the Reporting Party and the Responding Party are both from another campus, but the incident occurred on the MSU campus, MSU will contact the Title IX office or other appropriate administrative office to provide a report of the incident. MSU will support the other campus in its efforts to investigate the incident.

CLERY ACT REPORTING

Certain campus officials have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"). All personally identifiable information can be kept confidential, but statistical information must be reported to Campus Security regarding the type of incident and its general location (e.g., on or off campus, but no addresses are given or reported) for publication in the University's Annual Security and Fire Safety Report. This report helps to provide the community with a clear picture of the extent and nature of campus crimes in order to ensure greater community safety.

Mandated federal reporters, also known as Campus Security Authorities (CSA), may include (but are not limited to) the following: student affairs staff, campus safety & security, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, time, location of the incident, and the incident details. This reporting allows for anonymous reporting if the Reporting Party wishes to remain anonymous.

FEDERAL TIMELY WARNING REPORTING OBLIGATIONS

Victims of sex/gender-based misconduct should be aware that University officials must issue timely warnings for incidents reported to them that pose a serious or ongoing threat to students and employees. The University will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the threat/danger.