



NDSU NORTH DAKOTA
STATE UNIVERSITY

**RESOURCE GUIDE FOR
EMPLOYEES ON SEXUAL
AND GENDER-BASED
HARASSMENT AND
SEXUAL MISCONDUCT**

North Dakota State University is committed to providing a safe, healthy and nondiscriminatory learning, living and working environment for all members of its university community that is free from sex and/or gender discrimination of any kind.

There are many resources available to provide support and information, both on campus and in the community. This document serves as a written guide about the rights, resources and reporting options for employees available both at NDSU and in the Fargo-Moorhead community.

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YOU ARE NOT ALONE

What to do if you believe that you or someone you know has experienced sexual misconduct.

You are not alone.

Please know that it is not the fault of the survivor. Everyone deserves safety and to be treated with dignity and respect. An individual's response to sexual assault or relationship violence varies widely from person to person. There is no 'right' or 'wrong' way to react to a traumatic event. Additionally, there is no 'right' or 'wrong' time to disclose sexual misconduct.

RESOURCES

ON-CAMPUS RESOURCES

CONFIDENTIAL

Office of the Ombuds

NDSU Main Library, Room 20C (Lower Level)

701-231-5114

ndsuh.edu/ombud

The Office of the NDSU Ombuds is a confidential resource, providing individual appointments in person and online to assist with making decisions and finding resources for individual situations. The ombuds offers neutrality and works informally on campus to resolve issues at the lowest level. The ombuds offers individualized coaching and mediation services for small groups of two or more. The ombuds also facilitates talking circles to assist with resolving conflict, building community and finding common ground. The office also supports faculty and staff.

NONCONFIDENTIAL

Equal Opportunity and Title IX Compliance Office

Old Main 201

701-231-7708

ndsuh.edu/equity

The Equal Opportunity and Title IX Compliance Office is responsible for receiving and resolving discrimination/harassment/retaliation/sexual misconduct reports and complaints; reviewing and developing NDSU policy related to equal opportunity, affirmative action and non-discrimination; creating and providing training regarding equal opportunity and Title IX; maintaining NDSU's affirmative action plan; and acting as an institutional resource for questions or concerns regarding equal opportunity, affirmative action and non-discrimination at NDSU.



NONCONFIDENTIAL

University Police and Safety Office

701-231-8998

ndsu.edu/police_safety

The NDSU Police Department is the official law enforcement authority for the university. The department's enforcement authority is authorized by North Dakota Century Code 15-10-17.2 and the State Board of Higher Education (SBHE Policy 916). The NDSU police staff of sworn officers complies with all standards established by the North Dakota Peace Officers Standards and Training Board, and as such are armed, licensed police officers with full arrest power. In addition to enforcing local, state and federal laws, university police officers also enforce university policy.



OFF-CAMPUS RESOURCES

Abuse Adult Resource Center (AARC)

701-222-8370

218 W Broadway, Bismarck

Bismarck Police Department

701-223-1212

700 S 9th Street, Bismarck

CAWS North Dakota

888-255-6240

521 E Main Avenue Suite 320, Bismarck

Essentia Emergency Center

701-364-8000

3000 32nd Avenue S, Fargo

F-M Rape and Abuse Crisis Center

701-293-7273

317 8th Street N, Fargo

Fargo Area Law Enforcement (RRRDC)

701-451-7660

300 NP Avenue Suite 206, Fargo

Fargo Cass Public Health

701-241-1360

1240 25th Street S, Fargo

FirstLink

701-235-7335

4357 13th Avenue S Suite 107L, Fargo

Legal Services of North Dakota

800-634-5263

112 N University Suite 220, Fargo

ND Human Trafficking Task Force

888-373-7888

Sanford Emergency Center

701-417-2100

5225 23rd Avenue S, Fargo

Southeast Human Services

701-298-4500

2624 9th Avenue S, Fargo

YWCA Cass Clay

701-232-3449

3000 S. University Drive, Fargo



DEFINITIONS

Confidential Resource: A person you can speak with that is not required to report the information to university officials unless you give them permission to do so. Confidential resources at NDSU for employees are the following: Office of the Ombuds.

Consent: Mutually understandable words or actions, actively communicated both knowingly and voluntarily, that clearly convey permission for a specific activity. Consent must be all of the following:

- 1) **knowing:** Consent must demonstrate that all individuals understand, are aware of, and agree to the “who” (same partners), “what” (same acts), “where” (same location), “when” (same time), and “how” (the same way and under the same conditions) of the sexual activity.
- 2) **active:** Consent must take the form of “clearly understandable words or actions” that reveal one’s expectations and agreement to engage in specific sexual activity. This means that silence, passivity, submission, or the lack of verbal or physical resistance (including the lack of a “no”) should not – in and of themselves – be understood as consent. Consent cannot be inferred by an individual’s manner of dress, the giving or acceptance of gifts, the extension or acceptance of an invitation to go to a private room or location, or going on a date.
- 3) **voluntary:** Consent must be freely given and cannot be the result of force (violence, physical restraint, or the presence of a weapon), threats (indications of intent to harm, whether direct or indirect), intimidation (extortion, menacing behavior, bullying), coercion (undue pressure) or fraud (misrepresentation or material omission about oneself or the present situation in order to gain permission for sexual or intimate activity).
- 4) **present and ongoing:** Consent must exist at the time of the sexual activity. Consent to previous sexual activity does not imply consent to later sexual acts; similarly, consent to one type of sexual activity does not imply consent

to other sexual acts. Consent may also be withdrawn at any time – provided the person withdrawing consent makes that known in clearly understandable words or actions. Consent is not present when an individual does not have the capacity to give consent, voluntarily or involuntarily, due to age, physical condition, or disability that impairs the individual's ability to give consent. Reasons why one could lack capacity to give consent due to a physical condition include, but are not limited to, incapacitation due to consumption of drugs or alcohol (voluntarily or involuntarily) or being in a state of unconsciousness, sleep, or other state in which the person is unaware that sexual activity is occurring. Consent is not effective if it results from: (a) the use of physical violence, (b) threats, (c) intimidation, (d) coercion, (e) incapacitation, or (f) any other factor that would eliminate an individual's ability to exercise their own free will to choose whether or not to engage in sexual activity. When determining whether consent was present, the University will consider whether a reasonable person in the same position should have known whether the other party could or could not consent to the sexual activity.

Incapacitation: A state of being that prevents an individual from having the capacity to give consent. Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity. A person who is incapacitated is unable, temporarily or permanently, to give consent because of mental or physical helplessness, sleep, unconsciousness or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition. Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.

Intimate Partner Violence: Any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic or other intimate relationship. Intimate Partner Violence is an offense that meets the definition of domestic violence or dating violence.

Domestic Violence: Abuse or violence committed by a current or former spouse or intimate partner of the reporting party, by a person with whom the reporting

party shares a child in common or by a person with whom the reporting party is cohabiting (or has cohabited) with a spouse or intimate partner.

Dating Violence: Abuse or violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the reporting party. The existence of such a relationship will be determined based on the reporting party's statement and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship. This definition does not include acts covered under domestic violence. Please visit ndsuhighlights.com/ndsuhighlights.com/police_safety/universitypolice/annualsecurityreport for additional information, including Clery definitions.

No Contact Order (NCO): Order issued by NDSU to all involved individuals that prohibits any form of contact (physical, verbal or written) with other parties.

No Trespass Order: Order issued by University Police restricting access to university facilities and grounds.

Protective Order: Order issued by a court, not NDSU, to protect a party from another party due to alleged intimate partner violence, harassment or sexual misconduct. There may be a cost associated with obtaining a protective order.

Retaliation: Any adverse action taken against a person for making a good faith report of prohibited conduct, assisting someone making such a report, or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of "no responsibility" on the allegations of Prohibited Conduct. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct.

Sexual Assault: Any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Sexual assault includes nonconsensual sexual contact and nonconsensual sexual intercourse.

Nonconsensual Sexual Contact: Any intentional sexual touching, however slight, with any object or body part without consent. Sexual contact includes: 1) Intentional contact with the breasts, buttock, groin or genitals whether clothed or unclothed; 2) Touching another with any of these body parts; 3) Making another touch you or themselves with or on any of these body parts; or 4) Any other intentional bodily contact in a sexual manner.

Nonconsensual Sexual Intercourse: Any sexual penetration or intercourse, however slight, with any object or body part, by a person upon another person that is without consent and/or is effectuated by force. Sexual intercourse includes 1) Vaginal or anal penetration by a penis, tongue, finger or object; or 2) Any contact, no matter how slight between the mouth of one person and the genitalia of another person.

The following offenses are examples of sexual assault: rape, incest, fondling and statutory rape.

1) Rape – The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the reporting party. 2) Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. 3) Fondling – The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the reporting party, including instances where the reporting party is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity. 4) Statutory rape – Non-forcible sexual intercourse with a person who is under the statutory age of consent.

Sexual violence, including rape, sexual assault and domestic and dating violence, is a form of sexual harassment.

Sex Discrimination: An act that deprives a member of the university community of their rights of access to campuses and facilities and of participation in education, services, programs, operations, employment, benefits, or opportunities with the university on the basis of the person's sex (including pregnancy, sexual orientation, and gender identity/ expression) or having a policy or practice that has a disproportionately adverse impact on protected class members.

Sexual Exploitation: Taking non-consensual or abusive sexual advantage of another for the benefit

of oneself or a third party, and that behavior does not otherwise fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Nonconsensual Sexual Contact. Sexual Exploitation includes, but is not limited to: 1) Recording, distribution, or dissemination of sexual or intimate images or recordings of another person without that person's consent; 2) Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images); 3) Engaging in voyeurism (watching private sexual activity without the consent of the participants or viewing another person's intimate parts, including genitalia, groin, breasts or buttocks, in a place where that person would have a reasonable expectation of privacy); 4) Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity; 5) Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals or private areas; 6) Prostituting or trafficking another person; or 7) Exposing another person to a sexually transmitted disease (STD), infection (STI), or virus (HIV) without the other's knowledge.

Sexual Harassment: Unwelcome sexual advances, requests for sexual favors or other unwanted conduct of a sexual nature, whether verbal, written, graphic, physical or otherwise, when: 1) Submission to such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs and/or activities or is used as the basis for University decisions affecting the individual (quid pro quo harassment); or 2) Such conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the University's education or employment programs and/or activities (hostile environment).

Quid pro quo sexual harassment can occur whether a person resists and suffers the threatened harm, or the person submits and avoids the threatened harm. Both situations could constitute sexual harassment.

A hostile environment can be created by persistent or pervasive conduct or by a single severe episode. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment. A single incident of Sexual Assault, for example, may be sufficiently severe to constitute a



hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

Sexual Misconduct: A broad term encompassing all forms of gender-based harassment or discrimination and unwelcome behavior of a sexual nature. The term includes sexual harassment, gender-based harassment, non-consensual sexual contact, non-consensual sexual intercourse, sexual assault, sexual exploitation, stalking, public indecency, intimate partner violence, sexual violence, and other misconduct based on sex.

Stalking: A course of unwelcome conduct directed at a specific person that would cause a reasonable person to fear for their own safety or the safety of others or would cause that person to suffer substantial emotional distress. Course of conduct means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property. Reasonable person means a reasonable person under similar circumstances and similarly situated to the reporting party. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Title IX: A federal law that prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance.

Amnesty for Drug and Alcohol Use: NDSU strongly encourages all university community members to report instances of sexual harassment, gender-based harassment or sexual misconduct as soon as possible. The university recognizes that an individual who has been drinking or using drugs at the time of the incident may be hesitant to report due to potential policy violations. To minimize hesitancy, an individual who reports sexual harassment, gender-based harassment or sexual misconduct, either as an involved party or as a witness, will not be subject to disciplinary action for any violation of NDSU's Policy 155 against alcohol and other drugs in connection with the reported incident. (Please see NDSU Policy 162, Section 2.8 ndsuhighered.org/fileadmin/policy/162.pdf.)

Additional definitions are available in the Annual Security Report (ndsuhighered.org/police_safety/universitypolice/annualsecurityreport/) and also in Policy 162: Sexual and Gender-Based Harassment and Sexual Misconduct (ndsuhighered.org/fileadmin/policy/162.pdf).





REPORTING OPTIONS

If you experience sexual misconduct, you have a wide range of options available.

You are highly encouraged, but not required, to report the misconduct to NDSU.

**Equal Opportunity and Title IX
Compliance Office:**
701-231-7708

University Police:
701-231-8998

You also can visit ndsuhigheredu.edu/equity/filing-a-report-or-complaint to file a report.

NDSU prohibits sexual misconduct. NDSU staff members are trained and ready to support employees who have experienced sexual misconduct. Employees can reach out to anyone listed above to obtain information about their rights, about available resources, and about how to pursue a resolution process.

WHAT IF A PERSON DOES NOT WANT NDSU TO INVESTIGATE OR WANTS TO REMAIN ANONYMOUS?

In cases where an individual reporting sexual misconduct requests anonymity or does not wish to proceed with an investigation, the university will attempt to honor that request. In some cases, the university may determine the need to proceed with an investigation based on concern for the safety or well-being of the broader university community (e.g., risk of future acts of sexual violence or a pattern of sexual misconduct). NDSU reserves the right to take appropriate action in such circumstances, including cases when the individual reporting the misconduct chooses not to proceed; however, the university will not compel an individual to participate.

Complaint: It happened to you. If you experience discrimination, harassment, retaliation, or sexual misconduct you are encouraged, but not required, to file a complaint.

Report: It happened to someone else. If you observe or receive information about someone else experiencing discrimination, harassment, retaliation, or sexual misconduct AND you are working in the capacity as an employee when you are made aware of the information, you must file a report as a Mandatory Reporter (meaning you are not confidential). For more information on mandatory reporting, please visit ndsuhumanresources.com/equity/filing-a-report-or-complaint/reporting-responsibilities-for-mandatory-reporters.

PRIVACY AND CONFIDENTIALITY

NDSU will keep sexual misconduct reports confidential to the extent that it is possible without compromising NDSU's commitment and obligation to protect the university community. Information related to a report or complaint will be shared with a limited circle of NDSU employees who "need to know" in order to assist in the resolution of the report.

NDSU POLICIES

NDSU Policy 100: Equal Opportunity and Non-Discrimination

ndsuhumanresources.com/fileadmin/policy/100.pdf

Policy 100 prohibits discrimination and harassment against any individual on the basis of age, color, gender expression/identity, genetic information, marital status, national origin, physical or mental disability, pregnancy, public assistance status, race, religion, sex, sexual orientation, status as a U.S. veteran or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer.

NDSU Policy 156: Discrimination, Harassment and Retaliation Complaint Procedures

ndsuhumanresources.com/fileadmin/policy/156.pdf

Policy 156 outlines the process and procedures to resolve discrimination, harassment, retaliation, and non-Title IX complaints. A central purpose of these complaint procedures is to provide a system at NDSU to conduct adequate, reliable, and impartial investigations of complaints. NDSU's primary concern is to enact and implement complaint procedures that encourage reporting and to ensure the rights of NDSU students, employees and all other participants in its educational programs and activities are protected.

NDSU Policy 156.1: Title IX Complaint Procedures

ndsuhumanresources.com/fileadmin/policy/156_1.pdf

Policy 156.1 outlines the process and procedures to resolve Title IX complaints. A central purpose of these complaint procedures is to provide a system at NDSU to conduct adequate, reliable, and impartial investigations of complaints regarding Title IX. NDSU's primary concern is to enact and implement complaint procedures that encourage reporting and to ensure the rights of NDSU students, employees and all other participants in its educational programs and activities are protected.

NDSU Policy 162: Sexual and Gender-Based Harassment and Sexual Misconduct

ndsuhumanresources.com/fileadmin/policy/162.pdf

Policy 162 prohibits all forms of sexual harassment, gender-based harassment, and sexual misconduct, including but not limited to: intimate partner violence, sexual assault, sexual exploitation, stalking, complicity in the commission of any act prohibited by this policy, and retaliation against a person for the good faith reporting of any forms of misconduct or participation in any investigation or proceeding under this policy.

RESOLUTION OPTIONS

INFORMAL RESOLUTION

Complaints of sexual misconduct may be resolved utilizing an informal resolution. Informal resolution is a process in which the parties attempt to agree upon the resolution of a complaint without a comprehensive investigatory and determination process. Unless there are extenuating circumstances, the entire informal resolution process will be completed within 30 calendar days of its initiation.

Informal resolution may involve the Ombuds, Equal Opportunity and Title IX Compliance Office, HR, administrators, supervisors, and/or external moderators working with the parties to arrive at an appropriate and mutually agreeable resolution of the complaint. The informal resolution process will not require that the parties meet face-to-face to resolve the complaint but may allow it, depending on the nature of the complaint and the power differential between the parties.

Additional information about informal resolution processes may be found by visiting Office of the Ombuds (ndsuhumanresources.com/ombuds) or Alternative Conflict Resolution Options (ndsuhumanresources.com/restorativepracticesnetwork).

FORMAL RESOLUTION

A properly trained investigator will conduct a comprehensive investigation under the formal resolution process in an adequate, reliable, and impartial manner. A comprehensive investigation will include the following steps, as relevant and available:

An interview with each of the parties; interviews with witnesses identified by the parties or determined otherwise; a review of evidence provided by the parties or collected otherwise; and an opportunity for the parties to submit questions of each other and/or the witnesses. Upon receipt of any such questions, the investigator will determine which questions,



if any, are relevant and present them to the intended recipient for a response.

Equal opportunity will be given to the parties to access and present evidence during the investigation. The parties will be provided with periodic status updates throughout the course of the investigation. The formal resolution process will be carried out using reasonably prompt time frames and without deliberate indifference.

After the investigator has finished the comprehensive investigation of the complaint, the investigator will draft a Preliminary Investigative Report.

For complaints involving an alleged violation by an employee, the report shall include the findings of the investigation along with a determination whether the individual (or group) against whom the discrimination complaint was filed is responsible for discrimination, including harassment or retaliation. The report will be forwarded to a Review Committee. Upon completion of any feedback provided by a Review Committee, the preliminary investigation report will become the final investigative report. The final investigative report for employees will include recommended disciplinary action, if any, in addition to a finding as to whether, discriminatory conduct, including harassment or retaliation, occurred.

FILING A COMPLAINT

A sexual misconduct complaint is initiated by contacting the Equal Opportunity and Title IX Compliance Office via email, phone, personal contact, or by completing an NDSU discrimination/harassment/retaliation/sexual misconduct complaint form. The complaint form is available at ndsuhumanresources.com/equity/filing-a-report-or-complaint/ or by contacting the Equal Opportunity and Title IX Compliance Office in Old Main, Suite 201, NDSU Main Campus,

701-231-7708, ndsuhumanresources@ndsuhumanresources.com. The Equal Opportunity and Title IX Compliance Office is available to assist with completing the complaint form as needed.

NDSU encourages those who believe they have experienced sexual misconduct to file a complaint as soon as possible.

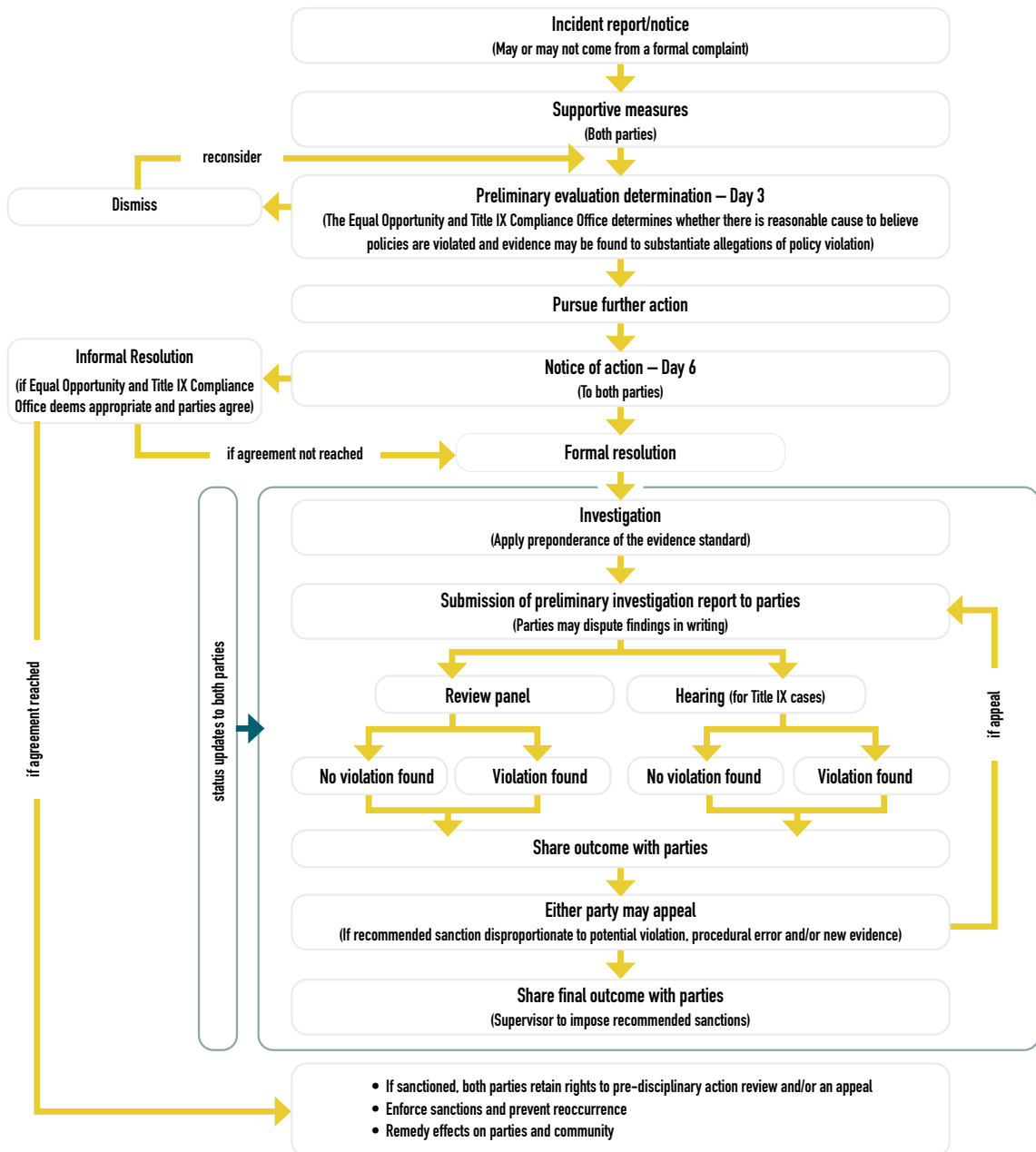
INVESTIGATIONS

The Equal Opportunity and Title IX Compliance Office will review all complaints alleging sexual harassment, gender-based harassment, and sexual misconduct and will evaluate the allegations and determine if further action can be pursued. A preliminary evaluation determination will be completed within three business days of receipt of the complaint and the decision will be provided in writing to the individual (or group) who filed the complaint. If the Equal Opportunity and Title IX Compliance Office determines that further action is warranted, the Equal Opportunity and Title IX Compliance Office will provide written notice to the individual (or group) who filed the complaint and the individual (or group) against whom the complaint was filed (collectively, the parties) within three business days of the preliminary evaluation determination. Investigations may be pursued through an informal or formal resolution process for cases alleging sexual misconduct.

Equal Opportunity and Title IX Compliance Office

Old Main 201
701-231-7708
ndsuhumanresources.com/equity

NDSU Policy 156 and Policy 156.1 EO/Title IX Investigation Process Chart for Employees Cases (modeled after ATIXA)



The formal resolution process shall be carried out using reasonable prompt time frames, including time frames for filing and resolving appeals, and for informal resolution processes if offered.

[Policy 156: Discrimination, Harassment, and Retaliation Complaint Procedures](#)
[Policy 156.1 Title IX Complaint Procedures](#)

In all cases, the applicable standard of proof for determining responsibility for an alleged violation is “preponderance of the evidence” meaning, in order for someone to be held responsible it must be determined that it is more likely than not that the person violated these procedures.



NDSU NORTH DAKOTA
STATE UNIVERSITY

NDSU does not discriminate in its programs and activities on the basis of age, color, gender expression/identity, genetic information, marital status, national origin, participation in lawful off-campus activity, physical or mental disability, pregnancy, public assistance status, race, religion, sex, sexual orientation, spousal relationship to current employee, or veteran status, as applicable. Direct inquiries to: Vice Provost, Title IX/ADA Coordinator, Old Main 201, 701-231-7708, nds.eaaa@ndsu.edu.
10/23