

# **AAC AR2 Title IX Sexual Harassment Grievance Procedure**

(Taken from NDSD Policy Manual, June 2024)

The following procedure is designed to resolve sexual harassment and retaliation grievances by and against staff, students, parents, and third parties, as described in administrative policy, in a prompt and equitable manner. In accordance with Title IX of the Education Amendments Act of 1972, the District prohibits discrimination on the basis of sex, including sexual harassment, in any education program or activity. The District shall respond when sexual harassment occurs in the education or residential program or activity against a person in the United States. The procedure contained in this regulation supersedes the district's policies regarding complaints about personnel and bullying.

## **Definitions**

- Actual knowledge means notice of sexual harassment is given to the Title IX Coordinator, an official with authority to institute corrective measures, or any NDSD/RC employee. When the District has actual knowledge of alleged sexual harassment in an education or residential program or activity, Title IX requires the District to respond in a manner that is not clearly unreasonable in light of the known circumstances.
- Complainant is an individual who is alleged to be the victim of conduct that could constitute sex harassment.
- Document filed by a complainant is a document or electronic submission (such as by email or through an online portal provided for this purpose by the District) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
  - Education or residential program or activity includes locations, events, or circumstances over which the District exercises control over both the respondent and the context over which the sexual harassment occurred. This includes locations or events that occur on or off school property, and may include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the District.
- Exculpatory evidence means evidence tending to exonerate a respondent or helps establish their innocence of the conduct alleged.
  - Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school or agency investigate the allegation of sexual harassment.
  - Inculpatory evidence means evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish guilt of the conduct alleged.
- Respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
  - School property is defined in NDCC 15.1-19-10(6)(b) as all land within the perimeter of the school site and all school buildings, structures, facilities, and school vehicles, whether owned or leased by a school district, and the site of any school-sponsored event or activity.
- Sexual harassment is a form of harassment based on sex. It is defined as unwelcome sexual advances, requests for sexual favors, and/or other verbal, written, or physical conduct or communication of a sexual nature, that:
  - o Constitutes quid pro quo harassment, meaning

submission to such conduct or communication is made a term or condition, either explicitly or implicitly, of the basis for employment decisions or educational decisions or benefits for students (e.g., receiving a grade); o Is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to education or residential program or activity; or o Constitutes sexual assault, dating violence, domestic violence, or stalking as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f) and the Violence Against Women Act, 34 U.S.C. § 12291(a).

- Sexual harassment examples include, but are not limited to, the following: o Sexual or "dirty" jokes; o Sexual advances; o Pressure for sexual favors; o Unwelcome touching, such as patting, pinching, or constant brushing against another's body; o Displaying or distributing of sexually explicit drawings, pictures, and written materials; o Graffiti of a sexual nature; o Sexual gestures; o Touching oneself sexually or talking about one's sexual activity in front of others; o Spreading rumors about or rating other's sexual activity or performance; o Remarks about an individual's sexual orientation; and o Sexual violence, including rape, sexual battery, sexual abuse, and sexual coercion.

- Supportive Measures are individualized services reasonably available that are nonpunitive or non-disciplinary in nature, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. Examples of possible supportive measures include, but are not necessarily limited to, counseling, extensions of deadlines or course-related adjustments, modifications of work or class schedules, a safety plan, school escort services, mutual contact restrictions, changes in work locations, leaves of absence, increased security and monitoring of certain areas on school property, and other similar measures.

### **Retaliation Prohibited**

NDS/RC prohibits any person from intimidating, threatening, coercing, or discriminating against any individual, including complainants, respondents, and witnesses, for the purpose of interfering with any right or privilege secured by Title IX including but not limited to making a report or formal complaint of sexual harassment or participating (or refusing to participate) in a sexual harassment complaint investigation. This includes instances when a complaint is not substantiated. The consequences for violating this prohibition are delineated in administrative policy AAC, Nondiscrimination and Anti-Harassment. Complaints of retaliation shall be processed under Administrative Rule AAC-AR1, Discrimination and Harassment Grievance Procedure.

### **Reports of Sexual Harassment**

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. A report may be filed in person, by mail, by telephone, by e-mail, or by any additional method provided by the District using the contact information for the Title IX Coordinator as set forth in policy AAC. 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. A report should be filed as soon as possible after the alleged harassment or retaliation allegedly occurred. Delays in filing a report may cause difficulties in the investigation. Anonymous reports are permitted; however, NDS/RC's ability to offer supportive measures to a complainant, or to consider whether to initiate a grievance process against the respondent, will be affected by whether the report of sexual harassment disclosed the identity of the complainant or respondent.

## **With Whom Reports of Sexual Harassment May be Filed**

A report of sexual harassment may be filed with the Title IX Coordinator or with any employee. Employees are required to report any discrimination or harassment to the Title IX Coordinator when they knew (e.g., received a report, directly observed it) or should have known it was occurring (e.g., overheard students talking about an incident, witnessed discriminatory or harassing conduct on school property or at a school activity). Failure by a district employee to report under this regulation may result in disciplinary action.

**Third-Party Assistance** The Title IX Coordinator or other school official responsible for conducting or overseeing sexual harassment investigations is authorized to receive assistance from the Department of Public Instruction's (DPI) or the Office of Management and Budget (OMB) Human Resources legal counsel throughout the process.

## **Responding to Reports of Sexual Harassment**

After receiving a sexual harassment report or having actual knowledge of potentially harassing conduct, the Title IX Coordinator or designee shall 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. If supportive measures are not provided to or as requested by complainant, the Title IX Coordinator shall document why supportive measures were not provided and why the lack of supportive measures is not clearly unreasonable in light of the known circumstances. The Title IX Coordinator shall also promptly contact the respondent, who must also be offered supportive measures.

Supportive measures must be designed to preserve the complainant's and respondent's access to education and residential programs or activities without unreasonably burdening the other party. Supportive measures must be coordinated by the Title IX Coordinator and kept confidential to the extent reasonably possible. Supportive measures should be equitably offered to both the complainant and the respondent and should be reasonably available before or after the filing of a formal complaint or where no formal complaint has been filed.

Disciplinary sanctions or other actions that are not supportive measures shall not be taken against the respondent unless a formal complaint is filed and an investigation is conducted in accordance with the process set forth herein.

## **Emergency Removal of the Respondent**

In the event a situation arises from the allegations of sexual harassment and the respondent poses an immediate threat to the physical health or safety of any student or other individual, the Title IX Coordinator may remove the respondent from the education and residential program or activity, or place the respondent on administrative leave on an emergency basis, with or without a grievance process pending. The decision whether to remove the respondent on an emergency basis may be made at any time during the grievance process, but must only be made after an individualized, fact-based, safety and risk analysis. An emergency removal decision may not be based on general assumptions about sex, or research that purports to profile characteristics of sex offense perpetrators, or statistical data about the frequency or infrequency of false or unfounded sexual misconduct allegations. Emergency removal decisions must comply with applicable state and federal law and agency policies regarding removal of students with disabilities.

The Title IX Coordinator shall promptly provide notice of the emergency removal decision to the respondent explaining the reasons for the removal decision. The respondent shall have the opportunity to challenge the removal decision of the Title IX Coordinator to the Superintendent or other designated decision-maker, whose decision regarding removal shall be final.

### **Administrative Leave for the Respondent Employee**

In the event the respondent is an employee (teacher, administrator, or ancillary staff), the Superintendent is authorized to place the respondent on administrative leave during the pendency of the grievance procedure, and the Superintendent identifies a need to temporarily remove the employee from their duties and/or job placement to protect agency property, school operations, students and/or other employees. If the respondent is the Superintendent, the Superintendent of Public Instruction at DPI is authorized to place the Superintendent on administrative leave.

The duration of administrative leave shall be until the investigation is complete and the Superintendent determines that the employee's potential threat or disruption to district property, school operations, students and/or other employees has passed.

Prior to placing an employee on administrative leave, the Superintendent may consider if a transfer or reassignment of the employee would be an appropriate alternative to administrative. A decision to transfer or reassign an employee shall not violate the terms of the employee's contract or negotiated agreement, if applicable.

For certified or contract employees, administrative leave shall be with pay, and the employee shall not be required to take any applicable paid leave benefits as part of the administrative leave. For ancillary staff, administrative leave may be without pay and the employee may be permitted to take paid leave if available under the applicable leave policies.

### **Filing of Formal Complaint**

A formal complaint regarding sexual harassment may be filed by the complainant with the Title IX Coordinator in person, by mail, by e-mail, or by any online submission system provided by NDSD/RC. A formal complaint may also be initiated and signed by the Title IX Coordinator. A formal complaint may not be filed anonymously by a complainant. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in an education or residential program or activity of NDSD/RC. NDSD/RC must respect the complainant's wishes with respect to whether the Title IX Coordinator initiates a formal complaint and investigation unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances. The Title IX Coordinator is authorized to exercise discretion to consolidate formal complaints when allegations of sexual harassment arise out of the same facts or circumstances.

### **Written Notice of Allegations**

Upon receipt or signing of a formal sexual harassment complaint, the Title IX Coordinator must provide written notice of the allegations to the complainant and to the respondent. The written notice must:

1. Advise the parties of NDSD/RC's grievance process;
2. Identify by name the known parties involved in the alleged misconduct, including the complainant and the respondent;

3. Include known details of the misconduct that potentially constitutes sexual harassment alleged against the respondent, including the date(s) and location(s) of the alleged conduct;
4. Advise the parties of the presumption of non-responsibility on the part of the respondent as to the allegations of sexual harassment until a determination of responsibility is made at the conclusion of the grievance process;
5. Advise the parties of the right of each to an adult advisor of their choice, including an attorney, throughout the grievance process;
6. Advise the parties of the prohibition against knowingly making a materially false statement or providing materially false information in connection with the allegations of sexual harassment set forth in the report or formal complaint and of any potential disciplinary actions that may result if false statements or false information are knowingly provided;
7. Advise the parties of the informal resolution procedure, including the circumstances under which such procedure is available, and the right of either party to end the informal process at any time and begin the formal resolution procedure;
8. Advise the parties of NDSD/RC's obligation to conduct a formal investigation;
9. Advise the parties of their right to advance written notice of the date, time, location, participants, and purpose of all investigative interviews;
10. Advise the parties of their right to review all evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint and their right to submit a written response to the evidence prior to the conclusion of the investigation;
11. Advise the parties of their rights to submit, to the designated decision-maker, written, relevant questions that a party wants asked of any party or witness, be provided the answers, and have opportunity for additional, limited follow-up questions.
12. Describe or list the range of remedies and disciplinary actions NDSD/RC may impose following a determination of responsibility;
13. Inform the parties of the standard of evidence applied by NDSD/RC to all complaints of sexual harassment under Title IX;
14. Describe the range of supportive measures available to both parties;
15. Explain the appeal procedures; and
16. Advise the parties not to discuss or disseminate the allegations in a manner that constitutes retaliation or unlawful tortious conduct.

Written notice of allegations must be provided with sufficient time for the parties to prepare for an initial interview and so that both parties understand the scope of the investigation and can prepare to meaningfully participate by advancing the party's own interests in the outcome of the matter. The Title IX Coordinator may use age-appropriate measures in choosing how to convey the information required to be included in the written notice. In the event allegations in the formal complaint change or additional potential violations are discovered, the Title IX Coordinator must promptly provide written notice of the changes or additional potential violations to the complainant and the respondent.

## **Informal and Formal Resolution Timeframes**

NDS/RC is required to follow the formal resolution procedure when a formal complaint containing allegations of sexual harassment is filed. Before proceeding with the formal resolution process, NDS/RC may offer the informal resolution procedure to the complainant and the respondent when deemed appropriate and only when both parties voluntarily agree to attempt the informal resolution procedure. The informal resolution procedure may not be offered to resolve allegations that an employee sexually harassed a student. The informal resolution procedure must be completed within 30 school days of the receipt or signing of a formal complaint by the Title IX Coordinator, unless the Title IX Coordinator documents good cause for a temporary or limited delay and communicates the cause for the delay to the complainant and the respondent.

The formal resolution procedure, including any appeal process, must be completed within 60 school days of the receipt or signing of a formal complaint by the Title IX Coordinator or a complainant or a respondent terminating the informal resolution procedure, unless the Title IX Coordinator documents good cause for a temporary or limited delay and communicates the cause for the delay to the complainant and the respondent.

NDS/RC recognizes that conduct that constitutes sexual harassment may also constitute child abuse, sexual abuse, or other crimes resulting in law enforcement investigations. In such situations and when good cause exists, the Title IX resolution procedures may be temporarily delayed in order to coordinate or cooperate with a concurrent law enforcement investigation. The existence of a concurrent law enforcement investigation does not relieve NDS/RC of its obligation to respond to reports or complaints of sexual harassment as provided by Title IX and applicable regulations.

## **Prohibition on Meeting with the Respondent**

At no time during the informal or formal resolution process shall the complainant be required to meet in person, be confronted by, or speak directly with the respondent.

## **Informal Resolution Procedure**

This procedure may only be used when a formal complaint is filed containing allegations of sexual harassment, when the Title IX Coordinator deems it appropriate under the circumstances, and the complainant and respondent voluntarily consent in writing to participate in the informal resolution procedure. This procedure may not be used when the complainant is a student and the respondent is an employee. Participation in the informal resolution procedure may not be a condition of enrollment or employment, or enjoyment of any other right. The informal resolution procedure may be facilitated at any time prior to reaching a determination regarding responsibility under the formal resolution procedure. The formal resolution procedure must be used whenever the informal procedure is not permitted or deemed appropriate.

Prior to commencing the informal resolution process, the Title IX Coordinator or other designated facilitator shall inform the parties of the informal resolution parameters, the potential consequences of participation in the process (e.g., no formal investigation undertaken, no admission of responsibility), and any confidentiality implications. Upon commencement of the informal resolution process, the Title IX Coordinator or other designated facilitator shall gather information necessary to understand the allegations set forth in the formal complaint and to facilitate the informal resolution process. Based on this information gathering process, the Title IX Coordinator or other designated facilitator shall propose to the parties an informal resolution process, which may include, but is not limited to:

1. Participation by the parties in mediation or other alternative dispute resolution procedure facilitated by the Title IX Coordinator, other designated facilitator, or third-party mutually agreed upon by the parties
2. Holding a meeting (or series of meetings) with the parties and their advisors (provided all parties consent to participation) to discuss a potential resolution;
3. Development by Title IX Coordinator or other designated facilitator of written behavior expectations of the respondent to redirect conduct; or
4. Arranging a documented meeting with the respondent that involves a discussion of the sex discrimination and sexual harassment policies and requirements for compliance.

The informal resolution process may result in agreements made between the parties, facilitated by the Title IX Coordinator or other designated facilitator, that result in the provision or continuation of supportive measures, as well as disciplinary or punitive measures. These agreements may contain confidentiality requirements. Disciplinary or punitive measures may include, but are not limited to:

1. Requiring the respondent to undergo training on harassment;
2. Requiring the respondent to undergo counseling;
3. Recommend alternative placement or transfer of the respondent to different class(es), building, or campus;
4. Instituting protection mechanisms for the complainant (e.g., no-contact order, security escort, safety plan);
5. Creation of behavioral adjustment plan for the respondent;
6. In-school or out-of-school suspension for the respondent student;
7. Expulsion of the respondent for a period not to exceed the remainder of the current school year provided the respondent and the respondent's parent(s)/legal guardian(s) consent and waive any applicable due process rights in writing.
8. Written reprimand placed in a respondent employee's personnel file; or
9. Separation of employment for a respondent under an at-will (non-contract) employment relationship; or separation of employment for a respondent holding a contract position with the agency, provided the respondent employee consents and waives any applicable due process or continuing contract rights in writing.

The Title IX Coordinator shall monitor the implementation and effectiveness of the informal resolution and initiate the formal resolution procedure if the alleged harassment persists.

Both the complainant and the respondent have the right to terminate or withdraw from the informal resolution procedure and resume the formal resolution procedure at any time prior to agreeing to a resolution.

### **Formal Resolution Procedure**

This procedure must be used whenever the informal resolution procedure is not used or is terminated before resolution. The investigator or other designated investigator shall conduct a fair and impartial investigation of the allegations of sexual harassment set forth in a formal complaint.

If the investigator or other designated investigator is the respondent or has a conflict or is biased in such a manner that may prevent a fair and impartial investigation, the Superintendent and/or Business Manager shall designate another appropriate person to conduct the investigation.

The fact-gathering portion of the investigation must be carried out or overseen by the Title IX Coordinator or other designated investigator and may consist of interviews with the complainant, the respondent, and any others who may have witnessed or otherwise have knowledge of the circumstances giving rise to the allegations in the complaint and may involve gathering and review of other information relevant to the complaint. Questions and evidence about the complainant's sexual behavior or predisposition must be deemed irrelevant, unless offered to prove someone other than the respondent committed the alleged conduct, 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. The Title IX Coordinator or other designated investigator will investigate formal complaints in a manner that:

1. Keeps the burden of proof and burden of gathering evidence on NDSD/RC while protecting every party's right to consent to the use of the party's own medical, psychological, and similar treatment records;
2. Provides the parties equal opportunity to present facts and expert witnesses and other inculpatory and exculpatory evidence before any determination regarding responsibility is made;
3. Does not restrict the parties from discussing the allegations or gathering evidence (e.g., gag orders) except as specifically provided herein or as required by applicable law;
4. Gives the parties equal opportunity to select an advisor of the party's choice (who may be, but does not need to be, an attorney). The investigator may establish restrictions regarding the extent to which the parties and/or their advisor(s) may participate in the grievance proceedings, as long as the restrictions apply equally to both parties;
5. Prohibits the gathering of information protected by a legally recognized privilege (e.g., doctor-patient, attorney-client) without the appropriate party's voluntary, written waiver;
6. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of the investigative interviews or meetings, with sufficient time for the party to prepare to participate; and
7. Provides both parties and their advisors an equal opportunity to review and respond to the evidence gathered during the investigation when such evidence is directly related to the allegations set forth in the formal complaint. The parties must be provided at least 10 school days to review and submit a written response to the evidence gathered, which the investigator will consider prior to the completion of the investigative report.

The investigator or other designated investigator must recognize a presumption of non-responsibility on the part of the respondent until conclusion of the investigation. The investigation must be completed as soon as reasonably practical and in line with the deadlines for completion of the formal resolution procedure as set forth herein.

### **Investigation Report**

After the investigation process is complete, the investigator or other designated investigator shall complete a written report summarizing the relevant evidence and provide a copy of the completed report to the complainant and the respondent, and their advisor(s), if any. The investigator shall provide a copy of the investigation report to the designated decision-maker.

## **Submission of Questions and Responses to Report**

Within five (5) school days of the parties' simultaneous receipt of the investigation report, the parties may submit initial relevant written questions to the decision-maker for the other parties and/or witnesses to answer before a determination regarding responsibility is reached. At no time will the complainant be required to answer questions or provide evidence regarding the complainant's sexual behavior or predisposition unless offered to prove someone other than the respondent committed the alleged conduct, 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 to sexual contact.

Upon receipt of written questions from a party, the decision-maker will pass on appropriate and relevant questions to the party or witness for response. Written responses shall be promptly submitted to the decision-maker, who will then provide the written responses to both parties. The parties may submit additional relevant, limited follow-up questions to the decision-maker for answer by the other party or a witness in the same manner as initial written questions. Initial written questions must be received by the decision-maker within five (5) school days of the parties' receipt of the investigation report as outlined in this policy. Written responses may be received by the decision-maker and provided to the respective parties and limited follow-up written questions/answers may be received by the decision-maker and provided to the respective parties beyond five (5) school days, but within a reasonable time period that allows the decisionmaker to reach a determination regarding responsibility within the time limits set forth in this policy.

The decision-maker or other designated decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.

Within ten (10) school days of receipt of the investigation report, the parties may submit a written response to the report to the investigator. The deadline to submit a written response to the investigation report may not be delayed by the submission or pendency of written questions.

## **Standard of Evidence**

NDSD/RC designates the preponderance of the evidence standard for use in all formal complaints of sexual harassment, including formal complaints against students and formal complaints against employees. To meet this standard, the decision-maker must determine that conduct constituting sexual harassment in violation of Title IX 'more likely than not' occurred.

## **Determination of Responsibility by Decision-Maker**

Following the receipt of the investigation report and any accompanying inculpatory and exculpatory evidence, receipt of any responses to the investigation report by complainant and respondent, and receipt of responses to any written questions, the decision-maker shall reach a determination regarding responsibility by applying the preponderance of the evidence standard.

In reaching a determination on responsibility, the decision-maker must objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence. In doing so, the decisionmaker may make credibility judgments based on, for example, factors of plausibility and consistency in party and witness statements. Creditability determinations may not be based on a person's status as a complainant, respondent, or witness. Corroborating evidence is not required to reach a determination of responsibility on the part of the respondent.

If the decision-maker determines the respondent engaged in sexual harassment in violation of Title IX, the decision-maker must determine whether disciplinary or punitive sanctions against the

respondent are warranted, and if so, what those sanctions should be. Disciplinary or punitive measures may include, but are not limited to:

1. Requiring the respondent to undergo training on harassment;
2. Requiring the respondent to undergo counseling;
3. Recommend alternative placement or transfer of the respondent to different class(es), building, or campus;
4. Instituting protection mechanisms for the complainant (e.g., no-contact order, security escort, safety plan);
5. Creation of behavioral adjustment plan for the respondent;
6. In-school or out-of-school suspension for the respondent student;
7. Recommendation of expulsion of the respondent student in accordance with **FFK policy**;
8. Written reprimand placed in a respondent employee's personnel file; or
9. Termination of employment for a respondent employee in accordance with administrative policy, law, and when applicable, the negotiated agreement.

In making a decision regarding disciplinary or punitive measures, the decision-maker may consider the following criteria:

1. Ages of the parties involved;
2. Relationship between the parties involved;
3. Severity of the conduct;
4. How often the conduct occurred, if applicable; and
5. How the District resolved similar complaints, if any, in the past.

Upon making a determination of responsibility, the decision-maker must also determine any appropriate remedies to be offered to the complainant to restore or preserve the complainant's equal access to NDS/RC's education and residential programs or activities. Such remedies may include supportive measures and need not be non-disciplinary or non-punitive in nature and need not avoid burdening the respondent.

### **Notice of Determination of Responsibility**

The decision-maker shall provide written notice of the determination of responsibility to the complainant and the respondent simultaneously. The notice of determination must identify:

1. The allegations alleged to constitute sexual harassment;
2. The procedural steps taken from the receipt of the formal complaint through the determination of responsibility, including notification to parties, interviews of parties and witnesses, site visits, and other methods used to gather evidence;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of NDS/RC's code of conduct to the facts of the conduct allegedly constituting Title IX sexual harassment;

5. A determination regarding responsibility for each allegation and the decision-maker's rationale for the result;
6. Any disciplinary sanctions NDSD/RC will impose on the respondent and whether NDSD/RC will provide remedies to the complainant; and
7. Information regarding the appeals process and NDSD/RC's procedures and permissible bases for the complainant and the respondent to appeal.

The notice of determination must not describe the individualized remedies to be provided to the complainant. The Title IX Coordinator shall communicate such remedies separately to the complainant to discuss what remedies are appropriately designed to preserve or restore the complainant's equal access to NDSD/RC's education and residential programs or activities. The Title IX Coordinator shall create a monitoring plan to evaluate the effectiveness of the disciplinary sanctions, remedies and/or supportive measures identified in the determination of responsibility to help prevent recurrence.

### **Appeal Procedure**

The complainant or the respondent may appeal the determination of responsibility, including the severity or proportionality of any disciplinary sanction instituted as a result of the determination of responsibility. The complainant and the respondent may also appeal any dismissal, whether discretionary or mandatory, of a formal complaint or allegation contained in a formal complaint. An appeal must be based on the existence of one or more of the following:

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

An appeal must be submitted in writing to the Superintendent within seven (7) school days after receipt of the notice of determination or dismissal, and must identify the basis on which the appeal is being filed. Upon receipt of an appeal, the Superintendent shall promptly provide notice of the appeal to both parties and inform them of their right to submit written statements supporting or challenging the outcome and the deadline by which such statements must be submitted.

In considering the appeal, the Superintendent must review all relevant evidence submitted to the investigator during the investigation responses to any written questions, responses to the investigation report by the complainant or respondent, the decision-makers written determination, and any written statements filed by the complainant or respondent following initiation of appeal to determine if the determination of responsibility or dismissal decision was appropriate. The Superintendent shall provide written notice of the appeal decision and the rationale of that decision to the complainant and the respondent simultaneously.

The determination of responsibility or dismissal decision becomes final after the time period to file an appeal has expired, or if a party does file an appeal, after notice of the appeal decision has been sent to the parties. Until the determination of responsibility is final, NDSD/RC must refrain from acting on the determination of responsibility while maintaining the status quo through supportive measures designed to ensure equal access to NDSD/RC's education and residential programs or activities.

The complainant need not file an appeal to challenge the selection of remedies resulting from a determination of responsibility. The Title IX Coordinator is responsible for effective implementation of remedies and the complainant may work with the Title IX Coordinator to select and effectively implement remedies designed to restore or preserve the complainant's equal access to NDSD/RC's education and residential programs or activities.

Nothing herein shall prevent the parties from seeking available judicial redress through a court of competent jurisdiction or through any applicable state or federal complaint procedures.

### **Discretionary and Mandatory Dismissals**

NDSD/RC may dismiss a formal complaint or allegations therein when:

1. A complainant requests the dismissal in writing to the Title IX Coordinator;
2. The respondent is no longer enrolled with or employed by NDSD/RC; or
3. Specific circumstances prevent NDSD/RC from gathering evidence sufficient to reach a determination regarding responsibility.

NDSD/RC must dismiss a formal complaint or allegations therein when:

1. The allegations set forth therein do not meet the definition of sexual harassment, even if proven;
2. The alleged sexual harassment did not occur against a person in the United States; or
3. The alleged sexual harassment did not occur in an NDSD/RC education or residential program or activity.

The Title IX Coordinator must provide written notice of any dismissal decision to the complainant and the respondent simultaneously. The dismissal notice must state the reasons for dismissal and explain the parties' right to appeal the decision in accordance with the procedure set forth herein.

If the allegations in a formal complaint do not meet the definition of sexual harassment, or did not occur in an NDSD/RC education or residential program or activity against a person in the United States, NDSD/RC must dismiss such allegations for purposes of Title IX but may still address the allegations in any manner NDSD/RC deems appropriate under NDSD/RC's policies relating to code of conduct.

### **Training Requirements**

The Title IX Coordinator, investigator, decision-makers, and persons who facilitate the informal resolution procedure, shall receive training. This training must include:

1. The definition of sexual harassment contained in Title IX and associated regulations;
2. How to identify conduct that may constitute sexual harassment;
3. The scope of NDSD/RC's education and residential program or activity so that NDSD/RC may accurately identify situations that require a response under Title IX;
4. How to conduct an investigation and grievance process including appeals and informal resolution processes, as applicable;
5. How to make relevancy determinations, as applicable; and

6. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

NDSD/RC shall publish on its website all current, up-to-date materials used to train Title IX personnel. If NDSD/RC does not maintain a website, such materials shall be made available for public inspection upon request.

### **Records Retention**

NDSD/RC shall maintain all records of each sexual harassment report or complaint, regardless of later dismissal or other resolution of the allegation(s), for no less than seven (7) years from the date of the record's creation. This includes records relating to investigations, disciplinary sanctions, remedies, appeals, and informal resolutions. Such records include, but are not necessarily limited to, formal complaints, notes, notices, statements, reports, and audio or audiovisual recordings or transcripts, as well as training materials used to train Title IX personnel as required by Title IX.

### **End of NDSD/RC Policy AAC**

#### **References:**

NDSD/RC original policy-Protection of Students and Staff: Sexual Harassment Student-  
NDSD/RC original policy-Protection of Students and Staff: Sexual Harassment-Employee  
AAC-AR1, Discrimination and Harassment Grievance Procedure  
AAC-AR2, Title IX Sexual Harassment Grievance Procedure  
ABBB, Non-Curricular Use of District Property  
DE, Staff Ethics and Conduct  
FGDB, Student Handbooks