



## 520.0 - Sexual Harassment and Title IX Compliance

### **Purpose:**

The purpose of this procedure is to operationalize BSC Policy 520.0 Sexual Harassment and Title IX Compliance.

### **Procedure:**

Bismarck State College's (BSC) prohibits of sex/gender-based discrimination, sexual harassment, 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 BSC programs and activities.

### **Jurisdiction:**

This procedure govern the conduct of: BSC students; faculty; staff; and third parties (i.e., non-members of the College community, such as vendors, alumni, visitors, or local residents). This procedure applies to conduct that occurs on BSC property (i.e., on campus) and to conduct that occurs off College property, in the United States, when educational programs or activities include locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred. Jurisdiction will depend on the facts.

### **Grievances:**

### **Reporting:**

Any person may report sex discrimination, including sexual harassment (whether or not the person making the report is the victim of the alleged sexual harassment or sex discrimination). Such report may be made in person, by mail, by telephone, or by email, using the Title IX Coordinator's contact information or any other means which results in the Title IX Coordinator receiving the report, regardless of the time of day.

BSC does not limit the timeframe for reporting; however, depending on the status of the relationship between BSC and the respondent, the College may not have the jurisdiction to investigate or impose sanctions. Students who have left, or graduated, or employees who are no longer employed at BSC are beyond our jurisdiction. In cases where BSC no longer has jurisdiction over a respondent, BSC will seek to meet its Title IX obligation by evaluating the reported conduct, assisting the Complainant in identifying external reporting options and potentially taking action to address the reported conduct. In all cases, regardless of jurisdiction or time frame, BSC will provide the supportive measures.



An individual who experiences any form of sexual assault or intimate partner violence is encouraged to seek immediate medical care to treat injuries, obtain preventive treatment for sexually transmitted infections or diseases, and preserve evidence.

**Formal Complaint:**

A document filed by a complainant (which either contains the complainant's signature or indicates that the complainant is the one filing the complaint) or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the institution investigate.

**Anonymous Reports:**

Anonymous reports will be accepted by the College. BSC's ability to investigate and resolve anonymous reports without actual knowledge will be limited if the information contained in the anonymous reports cannot be verified by independent facts.

**False Reports:**

Knowingly submitting a false report of sexual harassment is prohibited. Anyone submitting a false report is subject to disciplinary action.

A report can be filed with the Title IX Coordinator or Deputy Coordinator:

Kaylyn Bondy  
Vice President for Student Affairs/Title IX Coordinator  
National Energy Center of Excellence, Room 331C  
Bismarck, ND 58501  
Phone: 701-224-5638  
Email: [kaylyn.bondy@bismarckstate.edu](mailto:kaylyn.bondy@bismarckstate.edu)

Nicole Mikkelsen  
Chief Human Resources Officer/Deputy Title IX Coordinator  
Meadowlark Building  
PO Box 5587 | 1700 Schafer St.  
Bismarck, ND 58506-5587  
Phone: 701-224-5531 | 800-366-6888 (TTY Relay ND)  
Email: [nicole.mikkelsen@bismarckstate.edu](mailto:nicole.mikkelsen@bismarckstate.edu)

The guiding principle in accepting reports of sexual harassment is to avoid re-victimizing the complainant of the behavior by forcing them into any plan of action. BSC will make every attempt to safeguard the privacy of the complainant and/or recipient of the behavior; however, it is important that the complainant recognize that BSC cannot ensure confidentiality in all cases. BSC must weigh the request for confidentiality against its obligation to protect the safety and security of the entire campus. Depending on the circumstances of the offense (the severity



of the offense, the number of victims involved, involvement of a minor, etc.), BSC may be required to respond to an incident, even if confidentiality has been requested. Therefore, BSC employees cannot guarantee absolute confidentiality. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. BSC will observe state and federal privacy laws, including North Dakota Century Code § 44-04-18.28

**Actual Knowledge.** Actual knowledge means notice of sexual harassment or allegations of sexual harassment to BSC's Title IX Coordinator, Deputy Coordinator or any BSC official who has authority to institute corrective measures on behalf of BSC. The actual knowledge standard is not met when only an official of BSC with actual knowledge is the respondent. Actual knowledge of sexual harassment in a BSC education program or activity against a person in the United States, requires BSC to respond promptly in a manner that is not deliberately indifferent. BSC is deliberately indifferent only if BSC's response to sexual harassment is clearly unreasonable in light of the known circumstances.

Once BSC has actual knowledge of sexual harassment, the Title IX Coordinator or Deputy Coordinator must contact the complainant and:

- a. Provide a copy of the BSC Sexual Harassment policy;
- b. Discuss the availability of supportive measures;
- c. Consider the complainant's wishes regarding supportive measures;
- d. Inform the complainant that supportive measures may be available with or without filing a formal complaint;
- e. Explain the BSC Title IX formal complaint process;
- f. Explain the process of making a complaint with law enforcement.

**Timing.** Process will be carried out using reasonably prompt time frames, including time frames for filing and resolving appeals, and for informal resolution processes if offered. Temporary delays or extensions of the time frames must be offered for good cause, with written notice to the parties setting forth the cause for the action. Typically, investigation/resolution of the grievance will occur within 60 calendar days from the time the case is assigned to investigators. If it is anticipated that the investigation/resolution process will take longer than 60 calendar days, the Title IX Coordinator or Deputy Coordinator will notify all parties citing good cause.

**Good Cause.** Good cause is defined as a reason to delay or extend reporting or investigation time frame which may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for accommodations for language or disability.

**Confidentiality.** BSC will maintain confidentiality with respect to supportive measures unless disclosure is required to implement the supportive measures. The Title IX Coordinator or



Deputy Coordinator shall coordinate the effective implementation of supportive measures. Supportive measures may not restrict any party's rights under the United States Constitution.

BSC may require parties and advisors to refrain from disseminating the evidence by requiring parties and advisors to sign a non-disclosure agreement that permits review and use of the evidence only for the purpose of the Title IX grievance process.

**Permissible Supportive Measures.** BSC will coordinate supportive measures with respect to the parties' situations. Questions regarding or requests for supportive measures can be made to BSC's Title IX Coordinator or Deputy Coordinator. Violation of these supportive measures may be considered grounds for additional reports of sexual harassment or as retaliation for the ongoing investigation of sexual harassment. BSC will treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. Some possible supportive measures include, but are not limited to:

- a. Counseling;
- b. Extensions of deadlines or other course-related adjustments;
- c. Modifications of work or class schedules;
- d. Campus escort services;
- e. Mutual restrictions on contact between the parties;
- f. Changes in on-campus work or housing locations;
- g. Leaves of absence;
- h. Increased security or monitoring of certain areas of campus;
- i. Law enforcement resource assistance.

**Emergency Removal.** BSC may remove a respondent from educational programs or activities on an emergency basis. The Title IX Coordinator or Deputy Coordinator will conduct an individualized safety and risk analysis. If determined that an immediate threat to the physical health or safety of any individual arises from the allegations of sexual harassment, an Emergency Removal may be justified.

- During the initial report or at any time during the investigation, the Title IX Coordinator or Deputy Coordinator may convene a Title IX Hearing Panel for review of the initial evidence for the determination of an emergency removal.
- BSC will provide the respondent with notice and the opportunity to appeal the emergency removal decision immediately following the removal.
- The respondent must submit their appeal concerning the Emergency Removal to the Title IX Coordinator or Deputy Coordinator within ten (10) calendar days from the date of the Emergency Removal notice. The Title IX Coordinator or Deputy Coordinator will submit the Emergency Removal Appeal to a Title IX Appeal Officer.



- Unless successfully appealed, the emergency removal will remain in place until sanctions are determined for the case.

**Administrative Leave.** BSC may place a non-student employee respondent on administrative leave during the investigation.

- During the initial report or at any time during the investigation, the Title IX Coordinator or Deputy Coordinator may convene a Title IX Hearing Panel for review of the initial evidence for the determination of Administrative Leave.
- BSC will provide the respondent with notice and the opportunity to appeal the Administrative Leave decision immediately following the decision.
- The respondent must submit their appeal concerning the Administrative Leave to the Title IX Coordinator or Deputy Coordinator within ten (10) calendar days from the date of the Administrative Leave notice. The Title IX Coordinator or Deputy Coordinator will submit the Administrative Leave Appeal to a Title IX Appeal Officer.
- Unless successfully appealed, the Administrative Leave will remain in place until sanctions are determined for the case.

**Dismissal.** In certain circumstances, BSC is either required or permitted to dismiss a complaint under Title IX:

1. Required Dismissal of Complaint
  - Conduct would not constitute sexual harassment even if proved.
  - Conduct did not occur in BSC's education program or activity.
  - Conduct did not occur against a person in the United States.
2. Permissive Dismissal of Complaint
  - The complainant makes written notice to the Title IX Coordinator or Deputy Coordinator that they would like to withdraw the formal complaint or any allegations.
  - The respondent is no longer enrolled or employed by BSC.
  - Specific circumstances prevent BSC from gathering evidence sufficient to reach a determination.

During the preliminary review of the report or during the investigation process, if the alleged conduct does not meet the definition of sexual harassment regarding Title IX, the Title IX complaint will be dismissed by the Title IX Coordinator or Deputy Coordinator. The parties have the right to appeal the Title IX dismissal. Either party can submit an appeal in writing regarding the dismissal within ten (10) calendar days from the date of dismissal to the Title IX Coordinator or Deputy Coordinator. Dismissal of a formal complaint does not preclude BSC from addressing the alleged sexual harassment under its own code of conduct. BSC may review the code of



conduct with its legal counsel prior to taking action under another provision of its code of conduct to avoid taking actions constituting retaliation.

**Informal/Formal Resolution Process.** BSC offers both informal and formal resolution of sexual harassment reports involving BSC students, faculty or staff. An informal or formal resolution process may not be offered unless a formal complaint is filed. Independent of the path chosen by the complainant, BSC will conduct an impartial, fair, and prompt investigation into the allegations, and ensure that actions will be taken to prevent similar actions in the future. All parties have a responsibility to provide truthful information during the process. Parties will be notified in writing indicating the reason(s) for good cause by the Title IX Coordinator or Deputy Coordinator. Investigation/resolution (whether it is an informal or formal resolution) of the allegations shall include the following:

1. The complainant and the respondent have equal opportunities to present relevant witnesses and other evidence;
2. Providing both sides with similar and timely access to any information that will be used during the process;
3. Equal opportunity to have an advisor, and equal opportunity for advisors to participate;
4. The right of the complainant and the respondent to be informed of the outcome of the investigation/resolution, and the right of either party to appeal; and
5. The right of the complainant and the respondent to receive periodic status updates throughout the investigation/resolution process.

All sexual harassment cases shall use a “preponderance of the evidence” standard; meaning that in order for the accused to be held responsible, the evidence must show that it is more likely than not that the sexual harassment occurred.

**Notice of Alleged Violation.** For both an informal and formal resolution process, the respondent will be contacted with the Notice of Alleged Violation through BSC email or certified mail. The notice of alleged violation will include, when known:

- Nature of the alleged violation;
- Date, time, and place of the alleged violation;
- Source of information;
- Maximum sanction applicable if found in violation of the Title IX Policy;
- The right to choose an advisor of choice or have one appointed by BSC;
- Notice that a decision may be made in their absence based on the information currently available;
- The complainant’s desire for an informal or formal resolution.

**Informal Resolution:**



The informal process provides the complainant and respondent with a forum to address the behavior, to express how the alleged behavior has impacted them and those close to them, and to communicate to the parties involved and BSC how this behavior will be addressed so that the behavior will not reoccur. The informal resolution process is entirely voluntary, and the complainant or respondent may end the informal resolution process at any time and enter the formal resolution process. The complainant and respondent should never attempt to resolve the complaint on their own or directly with the other party.

Except in cases between a student and a BSC employee which always require a formal resolution, the complainant may choose to pursue informal resolution of their complaint. To proceed with informal resolution process, BSC must obtain the parties' voluntary, written consent to the informal resolution process. BSC must provide the parties with written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The Title IX Coordinator or Deputy Coordinator shall assign a Title IX Hearing Chair to oversee the informal resolution process.

The Title IX Hearing Chair may propose a sanction warranted by the information gathered during the informal resolution and any supporting information known to the College. If the sanction is agreeable to the parties, the informal resolution is complete, and the sanction is imposed. The Title IX Hearing Chair will prepare a document for the parties to sign indicating their agreement with the proposed resolution. In cases where the parties are not in agreement with the informal resolution, they could then enter the formal process.

#### **Formal Resolution:**

**Investigation:** Investigation means to gather the facts, details and circumstances associated with a complaint. The investigation may include interviewing witnesses, review of documents or other steps to assist the Title IX Investigator to gather facts regarding the allegation(s).

**Formal written notice of investigation to complainant and respondent.** Written notice shall be given to known parties that includes:

- Notice of the grievance process, including any informal resolution process.
- Notice of the allegations of sexual harassment, including; sufficient details known at the time and with sufficient time to prepare a response, including, but not limited to, the names of the parties, the conduct allegedly constituting sexual harassment, and the date and location of the alleged conduct.



- BSC conducts the grievance process under the presumption that the respondent is not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- Both parties may have an advisor of their choice, who may be an attorney, and may inspect and review evidence. If a party does not have an advisor of their choice, BSC will appoint an advisor to assist with cross-examination for the live hearing free of charge.
- Notice that knowingly submitting a false report of sexual harassment is prohibited. Anyone knowingly submitting a false report is subject to disciplinary action.
- If during the course of the grievance process, additional allegations are added to the investigation which were not included in the initial notice, BSC shall provide written notice of the additional allegations to the parties.

BSC will send the parties their Notice of Investigation at least ten (10) calendar days prior to a scheduled meeting with an investigator.

**Investigation:**

- BSC is required to investigate every filed formal complaint unless the complaint is subject to dismissal or if the parties mutually agree to an informal resolution process.
- The burden of proof and the gathering of evidence is BSC's responsibility, not the responsibility of either party.
- At all times BSC shall observe a presumption the respondent is not responsible for the alleged conduct until and unless there is a determination of responsibility at the conclusion of the grievance process.
- BSC shall not require, allow, rely upon, or otherwise use evidence that constitutes, or questions that seek disclosure of, information protected under a legally recognized privilege, unless that privilege is waived.
- BSC will provide both parties equal opportunity to present facts and expert witnesses and other inculpatory or exculpatory evidence.
- BSC will not restrict the ability of parties to discuss the allegation or gather evidence (e.g., no "gag orders").
- BSC will provide written notice of the date, time, location, participation, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the parties to prepare.
- BSC will perform an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
- BSC will provide both parties and their advisors evidence directly related to the allegations, in electronic format or hard copy, at least ten (10) days prior to the preparation of the investigative report for the parties to inspect, review, and respond to the evidence.





- BSC will send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, at least ten (10) days prior to the hearing for the parties to respond.
- BSC has the discretion to consolidate formal complaints where the allegations arise out of the same facts.

#### **Advisors:**

- At the beginning of the grievance proceeding, complainants and respondents may select the advisor of their choice to assist with the grievance proceeding, as well as during the live hearing.
- If a party does not choose an advisor, BSC shall provide the party with an advisor free of charge. At minimum, BSC shall provide an advisor to conduct the party's cross-examination at the hearing. If needed, the Title IX Coordinator or Deputy Coordinator will assist parties in choosing a BSC advisor. However, nothing in this procedure or the Title IX regulations should be read to prohibit BSC from providing an advisor for the full duration of the grievance process, provided that the parties are treated equally as to timing as BSC appoints advisors for both parties.
- BSC is not required to provide attorneys to parties to act as advisors, but appointed advisors shall be provided with access to appropriate training to ensure an understanding of the grievance process, though the same training provided to Title IX Coordinators, decision-makers, and investigators is not required.
- BSC is not required to attempt to create equality of advisors between the parties, particularly where one party selects an outside advisor, but should seek equality of advisors where BSC provides advisors to both parties.
- BSC provided advisors do not act as attorneys, advocates, provide personal support or offer counseling services. Parties seeking supportive measures or resources may contact the Title IX Coordinator.
- BSC provided advisors assist parties with questions regarding policy and procedure, and conduct cross-examination. BSC provided advisors are not bound by attorney-client privilege. No expectation of confidentiality exists between BSC provided advisors and parties.
- BSC provided advisors are required to disclose any previously unknown relevant case information to the Title IX Coordinator.

#### **Hearings:**



BSC will provide the parties written notification of the hearing at least ten (10) calendar days prior to the hearing date. The parties may mutually consent to a shorter notice period.

The Title IX Coordinator or Deputy Title IX Coordinator will offer to schedule a pre-hearing meeting at least three (3) days prior to the hearing with each of the parties and their advisers to explain the hearing protocol.

- All formal complaints are required to have a virtual live hearing.
- The hearing will be presided over by a Title IX Hearing Chair and two additional trained Title IX Hearing Panel Members who will not be the investigator, the Title IX Appeal Officer, the Title IX Coordinator, or Deputy Coordinator.
- The hearing will provide each party with opportunity for each party's advisor to conduct cross examination of the other party and witnesses.
  - i. The cross examination will not be conducted personally by a party.
  - ii. The cross examination will be conducted directly, orally and in real time by the party's advisor.
  - iii. The advisors may ask the other party or witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Parties are required to submit their list of witnesses in writing to the Title IX Hearing Chair three (3) calendar days before the hearing.
- Parties and witness must be able to see and hear each other during the virtual live hearing.
- Prior to a party or witness answering a cross examination or other question, the Title IX Hearing Chair will first determine whether the question is relevant. The Title IX Hearing Chair will explain to the party's advisor asking the cross examination question any decision to exclude a question as not relevant.
  - i. In order to expediate the hearing, the Title IX Hearing Chair request the submission of questions to be asked live during the hearing in advance to determine relevancy.
  - ii. The prior submission of questions does not limit either party's advisor to asking additional questions that were not included in the submitted question.
- If a party does not have an advisor present at the live hearing, BSC will provide, without fee or charge, an advisor of BSC's choice who may be, but is not required to be an attorney to conduct cross examination on behalf of that party.
- Title IX Hearing Panel may enforce rules to ensure hearing decorum, such as requiring respectful treatment, specifying any objection process, governing timing of hearing and length of breaks, etc.
- The Title IX Hearing Panel may call the Investigator as first witness.
- BSC will record the hearing by audiovisual means. BSC will create an audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.



- BSC provides rape shield protection for complainants, deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.

#### **Determination Regarding Responsibility:**

- BSC uses the preponderance of the evidence as the standard for determining responsibility in all Title IX grievances.
- BSC will perform an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
- The Title IX Hearing Chair will issue a written determination on behalf of the Title IX Hearing Panel regarding responsibility with the following:
  - i. Identification of the allegations potentially constituting sexual harassment;
  - ii. Description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
  - iii. Findings of fact supporting the determination;
  - iv. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the respondent, and whether remedies will be provided to the complainant;
  - v. The procedures, timelines, and permissible bases for the complainant and respondent to appeal findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.
- The written determination will be sent simultaneously to both parties. Information on how to file an appeal will be included with the determination.
- The determination regarding responsibility becomes final;
  - either on the date that notice of the result of any appeal is provided to the parties, if an appeal is filed,
  - or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

#### **Remedies:**

Remedies offered after the conclusion of the grievance process on a finding of responsibility must be designed to restore or preserve equal access to the educational programs or activities. Such remedies may include the same individualized services described as supportive measures; however, remedies need not be non-disciplinary or non-punitive, and need not avoid burdening the respondent.



### Sanctions:

A sanction is a consequence placed upon a Respondent for a violation(s) of BSC policies. Sanctions help define the individual's relationship with BSC in the context of current and potential future behavior, including a notice that further violations may lead to more severe behavioral sanctions.

### Factors Considered in Determining Sanctions:

Although not binding or definitive, the following factors may be considered in determining what sanctions are appropriate in a particular case:

1. The nature and severity of the violation(s);
2. Prior violations and disciplinary history;
3. The Respondent's motive or purpose for engaging in the behavior;
4. Sanctions which have been imposed in similar cases in the past;
5. The developmental and educational impact on the Complainant and Respondent;
6. The level of accountability taken and cooperation by the Respondent;
7. The level of risk and/or harm of the Respondent to the Complainant and the campus community;
8. Any other aggravating, mitigating, or relevant factors surrounding the violation.

Individuals who are found in violation of BSC's policy may be subject to one or more of the sanctions below.

### Student Sanctions:

- **Discretionary Sanctions** – Work assignments, service to the College, educational projects, alcohol and drug testing and/or screening, participation in a specific program.
- **Expulsion from the College** – A written notification that the student is permanently denied the privilege of enrollment at the College. This is a matter of permanent record. Students expelled from BSC through this process will be administratively withdrawn from all classes and will be subject to SBHE Policy 830.2 and NDUS Procedure 830.0 Refunds.
- **Eviction** – The formal removal of a student from College housing.
- **Fine** – The imposition of a monetary penalty.
- **Loss of Privileges** – Denial of specified privileges for a designated period of time. Loss of privileges may include but are not limited to participating in or attending an event, receiving guests in residence halls, using network services, representing the College, and receiving financial aid.
- **Probation** – A written notification for violation of College policy. Probation indicates that continued enrollment is conditional upon review and observation in which the student demonstrates the ability to comply with College policies and any terms or conditions that have been imposed during a specified period. It is a matter of temporary record.



- **Restitution** – Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.
- **Revocation of Admissions and/or Degree** – Admission to or a degree awarded from the College may be revoked for serious violations committed by a student prior to graduation.
- **Suspension for Conduct** – A written notification of denial of the privilege of enrollment in the College for a specific period. Conditions for re-enrollment may be specified. This is a matter of permanent record.
- **Suspension from Class** – The immediate revocation of the privilege of attending a class, using a laboratory, or participating in a shop.
- **Warning** – A verbal or written notice to the student that the student is violating or has violated College regulations.
- **Withholding Transcript (Grades) or Degree** – Refusal by the College to provide transcripts or the degree to the student, to other institutions, to employers, and to other agencies until the completion of the process set forth in student conduct, including the completion of all sanctions imposed, if any.

#### **Employee Sanctions:**

- Warning (written or verbal)
- Performance Improvement Plan
- Required Counseling
- Required Training or Education
- Demotion
- Reduction in Pay
- Loss of intended pay increase
- Suspension with pay
- Suspension without pay
- Termination

#### **Appeal Process:**

Regardless of the outcome, one appeal of the outcome may be made by either the complainant or the respondent. Appeals must be submitted in writing to the Title IX Coordinator within ten (10) calendar days of the Hearing Panel's Notice of Responsibility. However, in any case involving a student suspension and expulsion, an appeal from either party can be made in writing within one (1) year following the date of the sanction and/ or decision.

The written appeal must contain the reason for the appeal. Appeals must meet one of the following criteria:



- i. BSC's failure to follow its own process and procedures that affected the outcome of the grievance process;
- ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could have affected the outcome of the matter; or
- iii. The Title IX Coordinator or Deputy Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or for or against the individual complainant or respondent, that affected the outcome of the grievance process.
- iv. The severity of the sanction was not consistent with the severity of the offense.

BSC will notify the non-appealing party in writing when an appeal is filed and equally implement appeal procedures for both parties.

BSC will assign a Title IX Appeal Officer to review and decide a Title IX appeal. BSC will ensure that the Appeal Officer was not on the Title IX Hearing Panel that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator, or Deputy Coordinator.

BSC will give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

The Appeal Officer will issue a written decision describing the result of the appeal and the rationale for the result; and provide the written decision simultaneously to both parties.

A complainant may appeal on the ground that the remedies are not designed to restore or preserve the complainant's access to BSC's education program or activity.

#### **Resolving Prior Reports/Complaints:**

This procedure applies to reports and complaints of behavior that occurred on August 14, 2020 or after. For incidents that occurred prior to August 14, 2020, BSC will utilize the policy that was in place at the time the harassment was reported to have occurred. If the report or complaint meets the jurisdictional requirements under Title IX as found in this procedure, then it will be resolved using these procedures. If the report or complaint does not meet the jurisdictional requirements found for the complaint to proceed under Title IX, it will be remanded to the appropriate office and will be addressed using other College procedures as appropriate.

#### **Procedure Conflicts:**

Any conflicts between this procedure and any existing BSC policy or procedure, student or employee handbook shall be resolved in favor of this procedure.

#### **Shared Services and Cooperation between Institutions:**



BSC may work collaboratively with other NDUS institutions, the NDUS System Office, and other resources and seek uniformity in processes and procedures to the greatest extent possible. BSC may enter into agreements with other NDUS institutions or the NDUS System Office to arrange for the availability of trained investigators, advisors, hearing panelists, appeal officers, and individuals to facilitate a grievance process. Such agreements must include arrangements to share the costs of utilizing shared personnel, potential issues posed by FERPA and the confidentiality requirements of this procedure.

**Prevention:**

BSC fosters a safe living, learning, and working environment for all members of the campus community. BSC develops programming that addresses all aspects regarding sexual harassment for the purpose of prevention and awareness. Various departments including, but not limited to, BSC Safety and Security, BSC Student & Residence Life, The Mystic Advising & Counseling Center provide input and resources for such programming. For additional information about campus programming concerning sexual harassment, contact BSC's Title IX Coordinator or Deputy Coordinator.

First year students are required to participate in a Title IX and Violence Against Women Act (VAWA) education program that combines sexual harassment and substance abuse prevention in a comprehensive online training program. This training program provides students with a comprehensive foundation in four areas: alcohol awareness, drug awareness, sexual harassment awareness, and intimate partner violence.

BSC Safety & Security and BSC Student & Residence Life regularly monitor the campus grounds and facilities for the purpose of sexual harassment and crime prevention. Campus grounds and facilities are modified when considered to be a possible threat. A representative from BSC Administration, BSC Campus Safety & Security, BSC Student & Residence Life and the BSC Student Government Association (SGA) tour campus on an annual basis to determine any safety concerns. They assess campus signs, lighting, grounds, and locking procedures. For further safety information, contact BSC's Campus Safety & Security Department [bsc.safety@bimarckstate.edu](mailto:bsc.safety@bismarckstate.edu).

Additionally, BSC publishes and disseminates annual crime statistics including incidents of sexual harassment as required by the Clery Act. The annual Clery Act Report is available online at:

<https://bismarckstate.edu/students/resources/HealthandSafety/CampusSafety/CampusSecurity/>

**Intervention:**

BSC actively supports individuals who experience sexual harassment through a coordinated response system that attends to their physical and emotional well-being. BSC disciplinary efforts respect the personal rights of all parties. All reports/notices of sexual harassment are



handled in a manner designed to respect the privacy of the involved individuals, to the extent permitted by law. Specific report details may be shared with appropriate departments and agencies to address environmental safety concerns and investigative needs.

**Recordkeeping:**

BSC will create and maintain for seven years, records of any actions, including records of supportive measures, taken in response to a report or formal complaint of sexual harassment.

1. Each sexual harassment investigation, including any determination regarding responsibility; any audio or audiovisual recording or transcript; any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant.
2. Any appeal and the result;
3. Any informal resolution and the result;
4. All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, which the institution must make available on its website.

BSC will maintain records involving expulsion indefinitely. In each instance, the institution must document the basis for its response was not deliberately indifferent, and document that it took supportive measures, or, if supportive measures were not provided, an explanation of why such a response was not clearly unreasonable in light of the known circumstances.

**BSC Title IX Training Procedure :**

**Employees:**

At BSC, all employees are required to take annual Title IX compliance training. Employees who do not complete mandatory training face disciplinary action up to and including termination. Employees with questions regarding training options should contact BSC Human Resources.

**Students:**

All BSC students receive BSC's Title IX and Sexual Misconduct Policies as well as additional resource information via their BSC email on the 10<sup>th</sup> day of every semester. All degree-seeking freshmen and degree-seeking transfer students are provided a Title IX and VAWA education program in their first semester at BSC. Students who do not complete training within 60 days will be provided comprehensive Title IX resources via their BSC email. Students with questions regarding training options should contact BSC's Mystic Advising & Counseling Center.

**Title IX Team:**

1. All persons involved in the grievance process, including, but not necessarily limited to, Title IX Coordinators, Investigators, Hearing Panelists, Appeal Officers, must receive training on the following areas:
  - a. The definition of sexual harassment;
  - b. The scope of the education program or activity;





- c. How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable;
  - d. How to serve impartially, including by avoiding prejudgment of the facts at issue; conflicts of interest, and bias.
2. Additionally, Hearing Panelists and Appeal Officers must receive training on the following areas:
  - a. Any technology to be used at a live hearing;
  - b. Issues of relevance of questions and evidence, including when questions about the complainant's sexual predisposition or prior sexual behavior are not relevant;
3. Investigators must also be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
4. All training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints.
5. All training materials must be made available to the public by posting on BSC's website.

**Retaliation:**

1. BSC or any other person shall not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this procedure, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.
2. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.
3. The exercise of rights protected under the First Amendment does not constitute retaliation.
4. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, although a determination regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.
5. Complaints alleging retaliation may be filed pursuant to the grievance procedures for sex discrimination under Title IX.

**Resources:**

BSC will provide written notification to students and employees about existing resources available for victims within the institution/community regarding, but not limited to:

- counseling,



- health,
- mental health,
- victim advocacy,
- legal assistance,
- visa & immigration assistance,
- student financial aid,
- and other services available for victims

The following resources are available to assist individuals involved with the Title IX grievance process.

### **BSC Resources**

BSC Mystic Advising and Counseling Center (MACC)  
701-224-5752  
Students Only  
Personal Counselor  
Student Union, Lower Level (1425 Schafer Street)  
[bsc.counseling@bismarckstate.edu](mailto:bsc.counseling@bismarckstate.edu)

BSC Campus Safety and Security  
701-224-2700  
Shafer Hall, 135C (1500 Edwards Avenue)  
[bsc.safety@bismarckstate.edu](mailto:bsc.safety@bismarckstate.edu)

BSC Student Accessibility  
701-224-2496  
Student Union, Lower Level (1425 Schafer Street)  
[bsc.accessibility@bismarckstate.edu](mailto:bsc.accessibility@bismarckstate.edu)

### **Community Resources**

CHI St. Alexius Health Employee Assistance Program (EAP)  
Employees Only  
1310 East Main Avenue Bismarck, ND 58501  
701-530-7195 or 1-800-327-7195  
<https://www.chistalexiushealth.org/bismarck/facilities/employee-assistance-program>

CHI St. Alexius Medical Center  
[st.alexius.org](http://st.alexius.org)  
900 E. Broadway, Bismarck



Emergency Room.....530-7001  
 Archway Mental Health.....530-7333  
 Information.....530-7000

Sanford Health

bismarck.sanfordhealth.org

300 N. 7th Street, Bismarck

Emergency Room.....323-6150  
 Sanford Behavioral Health.....323-6543  
 Information.....323-6000  
 Walk in Clinic Appointments (*North*).....323-8300  
 Walk in Clinic Appointments (*Downtown*) .....323-5740

West Central Human Services

[nd.gov/dhs/locations/regionalhsc/westcentral/](http://nd.gov/dhs/locations/regionalhsc/westcentral/)

1237 W Divide Ave #5, Bismarck

Information ..... 328-8888  
 Crisis Line.....328-8899  
 Toll-free.....1-888-328-2112

EMERGENCY.....911

Bismarck Police Department

[bismarcknd.gov/](http://bismarcknd.gov/)

700 South 9<sup>th</sup> Street, Bismarck

Phone .....223-1212

Mandan Police Department

[mandanpd.com/](http://mandanpd.com/)

205 1<sup>st</sup> Ave NW, Mandan

Phone .....667-3455

Abused Adult Resource Center (Abuse, Neglect & Rape)

*If a medical emergency or a crime is in progress call 911*

[abusedadultresourcecenter.com/](http://abusedadultresourcecenter.com/)

218 W. Broadway Ave., Bismarck

Phone..... 222-8370  
 Toll-free (after hours).....1-866-341-7009

**For More Information on Sexual Harassment and Title IX:**

[www.bismarckstate.edu/titleix](http://www.bismarckstate.edu/titleix)



Or contact:

Kaylyn Bondy

Vice President for Student Affairs/Title IX Coordinator

National Energy Center of Excellence, Room 331C

Bismarck, ND 58501

Phone: 701-224-5638

Email: [kaylyn.bondy@bismarckstate.edu](mailto:kaylyn.bondy@bismarckstate.edu)

Nicole Mikkelsen

Chief Human Resources Officer/Deputy Title IX Coordinator

Meadowlark Building

PO Box 5587 | 1700 Schafer St.

Bismarck, ND 58506-5587

Phone: 701-224-5531 | 800-366-6888 (TTY Relay ND)

Email: [nicole.mikkelsen@bismarckstate.edu](mailto:nicole.mikkelsen@bismarckstate.edu)

**This procedure seeks to combine and implement the legal, regulatory, and policy requirements regarding sexual harassment and discrimination contained within:**

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



### **Equal Opportunity and Non-Discrimination Statement**

Bismarck State College is an equal opportunity institution that does not discriminate on the basis of race, color, sex, gender, gender identity, national origin, age, religion, sexual orientation, information protected by the Genetic Information Nondiscrimination Act (GINA), marital status, disability, veteran's status or any other status protected by law in its admissions, student aid, employment practices, education programs or other related activities.

Inquiries regarding student non-discrimination policies and 504/ADA policies at BSC should be directed to:

Vice President for Student Affairs  
1200 Schafer Street  
Bismarck, ND 58501  
Phone: 701-224-5638  
kaylyn.bondy@bismarckstate.edu

For Title IX inquiries, contact:

Dr. Kaylyn Bondy, Vice President for Student Affairs/Title IX Coordinator  
National Energy Center of Excellence, Room #331C  
1200 Schafer Street  
Bismarck, ND 58501  
Phone: 701-224-5638  
kaylyn.bondy@bismarckstate.edu

Office for Civil Rights  
Chicago Office (Local OCR office for North Dakota)  
U.S. Department of Education  
John C. Kluczynski Federal Building  
230 S. Dearborn Street, 37th Floor  
Chicago, IL 60604  
Telephone: 312-730-1560  
FAX: 312-730-1576; TDD: 800-877-8339  
Email: OCR.Chicago@ed.gov  
Website: <http://www.ed.gov/ocr/>

Inquiries regarding employee non-discrimination policies and 504/ADA policies at BSC should be directed to:

Chief Human Resources Officer  
Meadowlark Building  
1700 Schafer Street  
Bismarck, ND 58501



Phone: 701-224-5427

nicole.mikkelsen@bismarckstate.edu

**References:**

[Code of Federal Regulations 34 C.F.R. Part 106 Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#)

[North Dakota State Board of Higher Education Policy: 520 - Title IX – Sexual Harassment](#)

[North Dakota State Board of Higher Education Policy: 503.1 - Student Free Speech and Expression](#)

**History of This Procedure:**

First policy: May 19, 1995.

Revisions - May 31, 1996; June 7, 1996; May 27, 1998; November 9, 2001; April 21, 2008; August 23, 2010; reviewed by the Operations Council on February 23, 2011 and approved by the Executive Council on March 8, 2011; September 19, 2012; the Sexual Assault student policy was incorporated into this policy – reviewed by the Operations Council on September 10, 2014 and approved by the Executive Council on September 16, 2014; reviewed by the Operations Council on August 12, 2015 and approved by the Executive Council on August 13, 2015; September 18, 2015; December 21, 2015; June 30, 2016; December 8, 2016; August 3, 2017; reviewed by the Operations Council on September 27, 2017 and approved by the Executive Council on September 28, 2017, July 16, 2018; August 7, 2018; reviewed by the Operations Council on July 24, 2019 and approved by the Executive Council on July 26, 2019; reviewed by the Operations Council on August 12, 2020 and approved by the Executive Council on August 12, 2020; reviewed by the Campus Council on November 25, 2020 and approved by the Executive Council on December 3, 2020; reviewed by the Campus Council on July 28, 2021 and approved by the Executive Council on July 29, 2021; reviewed by the Campus Council on December 8, 2021 and approved by the Executive Council on December 17, 2021; reviewed by the Campus Council on April 27, 2022 and approved by the Executive Council on April 29, 2022; reviewed by Campus Council on August 31<sup>st</sup>, 2022 and reviewed by the Executive Council on September 23<sup>rd</sup>, 2022 and approved by the President on January 4<sup>th</sup>, 2023.