

520.0 - Sexual Harassment and Title IX Compliance

Purpose:

The purpose of this policy is to comply with 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 and the North Dakota State Board of Higher Education Policy: 520 Title IX – Sexual Harassment.

Policy:

BSC does not discriminate on the basis of sex in its education program or activity; BSC is required by Title IX, 34 C.F.R. 106 the North Dakota State Board of Higher Education (SBHE) Policy 520 Title IX Policy, and North Dakota SBHE Policy 503.1 Student Free Speech and Expression, to not discriminate on the basis of sex; this requirement to not discriminate extends to admission and employment; inquiries about the application of Title IX, 34 C.F.R. 106 and SBHE Policy 520 Title IX Policy, at BSC may be referred to the Title IX Coordinator, Kaylyn Bondy, the Department of Education's Assistant Secretary for Civil Rights, or both.

BSC is committed to a positive learning, working and living environment. BSC will not tolerate acts of sexual harassment or related retaliation against or by any employee or student. In working to achieve this intent, BSC commits to: (1) taking action to stop sexual harassment; (2) taking action to remedy its effects by providing advocacy, support and appropriate referral services for complainants; (3) taking action to prevent recurrence; (4) educating individuals and promoting discussions on interpersonal abuse and violence; and (5) conducting impartial investigation of all reports/notices of sexual harassment through fair, equitable and prompt procedures. Investigations will be independent of and separate from law enforcement investigations of criminal activity.

This policy is required by federal law and implementation of this policy is guided by the U.S. Department of Education, Office of Civil Rights.

Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of BSC conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to BSC's educational program or activities; or
3. "Sexual assault as defined in 20 U.S.C. ch. 1092(f)(6)(A)(v). 'dating violence' as defined in 34 U.S.C. S 12291(a)(10), domestic violence" as defined in 34 U.S.C. ch. 12291(a)(8), or "stalking" as defined in 34 U.S.C. ch. 12291(a)(30).

Definitions:

Actual Knowledge - Actual knowledge means notice of sexual harassment or allegations of sexual harassment to BSC's Title IX 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.

Advisor - An individual of a party's choosing who serves as their advisor throughout the investigation process. An advisor may be an attorney. Each party has the right to one advisor.

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

Complainant - An individual who is alleged to be the victim of conduct which could, after investigation, constitute sexual harassment.

Consent - Consent is a clear, voluntary, mutual, affirmative verbal and physical agreement to engage in sexual activity;

- Someone who is incapacitated cannot consent; ▪ Incapacitation can be due to the use of drugs or alcohol, when a person is asleep or unconscious, or because of an intellectual or other disability that prevents the individual from having the capacity to give consent
- Past consent does not imply future consent;
- Silence, passivity, or an absence of resistance does not imply consent;
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;
- Consent may not be inferred from a current or previous dating or sexual relationship;
- Consent can be withdrawn at any time; and
- Coercion, force, or threat of either invalidates consent.

NOTE: It is important to obtain explicit consent from any sexual partner and not to make assumptions. If confusion or ambiguity on the issue of consent arises anytime during the sexual interaction, it is essential that each participant stops and clarifies, verbally, willingness to continue. Consent to one form of sexual act does not imply consent to other forms of sexual act(s).

"Age of Consent" – North Dakota –

According to North Dakota Century Code § 12.1-20-01:

The "age of consent" is 18 years old in North Dakota; A person under the age of 15 cannot legally consent to sexual activity under any circumstances; A person between the ages of 15 – 17 is legally able to consent to sexual activity if the partner is less than three years older. For example, a 16-

year-old can legally consent to engage in sexual activity with a partner who is 18 years old, but not a partner who is 19 years old.

Dating Violence - Violence committed by the respondent:

1. Who is or has been in a social relationship of a romantic or intimate nature with the complainant; and
2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship
 - iii. The frequency of interactions between the complainant and respondent.

Deliberate Indifference - When an institution's response to sexual harassment is clearly unreasonable in light of the information known to the institution at the time.

Domestic Violence - Violence committed by the respondent, who is:

1. a current or former spouse or intimate partner of the complainant;
2. a person with whom the complainant shares a child in common;
3. cohabiting with or has cohabited with the victim as a spouse or intimate partner;
4. similarly situated to a spouse of the complainant; or
5. any person against whose acts the complainant is protected by N.D.C.C. ch. 14-07.1.

Educational programs or activities - Includes locations, events, or circumstances over which BSC exercises substantial control over both the respondent and the context in which the sexual harassment occurs, as well as in any building owned or controlled by a student organization that is officially recognized by BSC.

Equitable Treatment - At all times, BSC will treat complainants and respondents equitably by following a grievance process which complies with this Policy before the imposition of disciplinary sanctions, and by providing remedies to a complainant if a respondent is found to be responsible for sexual harassment.

Exculpatory Evidence - Evidence that shows a person's innocence or clears from guilt or blame.

Fondling - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

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, in which the complainant requests that the institution investigate.

Grievance process - The process designed to provide prompt and equitable methods of investigation and resolution to concerns regarding sexual harassment, remedy any harm, and prevent its recurrence.

Incapacitation - A state in which an individual cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).

Incest - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Inculpatory Evidence - Evidence that shows a person's involvement in an act, or evidence that can establish guilt.

Intimidation - Implied threats or acts that cause an unreasonable fear of harm in another.

Mandated Reporter - BSC has designated all employees as mandated reporters excluding those serving in a mental health counseling capacity. A mandated reporter is required to report sexual harassment to the Title IX Coordinator, however not every mandated reporter is a Responsible Employee.

Preponderance of the evidence - An evidentiary standard meaning that it is more likely than not that the sexual harassment occurred. BSC applies the same standard of evidence for formal complaints against students and employees.

Program or Activity - Education program or activity includes locations, events, or circumstances over which BSC exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

Rape - Penetration, no matter how slight, of the vagina or anus of the complainant with any body part or object by the respondent, or oral penetration of the complainant by a sex organ of the respondent, without the consent of the complainant.

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.

Responsible employees -

1. Those with authority to address and remedy sex and gender-based discrimination and harassment;
2. Those with responsibility to report sexual harassment to a supervisor; and/or
3. Those who a student would reasonably believe have such authority or obligation.

Respondent - An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Retaliation -

- a. BSC or any person may 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 part, 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.
- b. 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.
- c. The exercise of rights protected under the First Amendment does not constitute retaliation.
- d. 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.
- e. Complaints alleging retaliation may be filed pursuant to the grievance procedures for sex discrimination under Title IX.

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 the College in the context of current and potential future behavior. Once sanctions are awarded, further violations may lead to more severe behavioral sanctions.

Sexual Assault - Rape, fondling, incest, statutory rape, or any of the sexual offenses listed in N.D.C.C. ch. 12.1-20 or by the FBI's Uniform Crime Reporting system.

Stalking - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.

Statutory Rape - Sexual intercourse with a person who is under the statutory age of consent.

Supportive Measures - Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the BSC's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or BSC's educational environment, or deter sexual harassment.

Title IX Hearing Chair - The Title IX Hearing Chair is one of three Hearing Panelist that comprise a Title IX Hearing Panel. The Hearing Chair serves as the decision maker responsible for conducting a Title IX hearing. The Title IX Hearing Chair treats all parties with respect, while ensuring decorum and professionalism. A Title IX Hearing Chair can also oversee an Informal Resolution process.

Title IX Hearing Panel - A team of three trained decision makers responsible for deciding a Title IX Emergency Removal or a Formal Investigation.

Title IX Hearing Panel Member - A decision maker responsible for participating as a member of a Title IX Hearing Panel. Title IX Hearing Panel Member treats all parties with respect, while ensuring decorum and professionalism.

Title IX Appeal Officer - The decision maker responsible for reviewing and deciding a Title IX appeal.

Title IX Coordinator - The Title IX Coordinator oversees BSC's compliance with Title IX; ensures appropriate education and training; coordinates the investigation, response, and resolution of all reports under this policy; and ensures appropriate actions to eliminate prohibited conduct, prevent its recurrence, and remedy its effects.

References:

[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 Policy:

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 31st, 2022 and reviewed by the Executive Council on September 23rd, 2022 and approved by the President on January 4th, 2023.