

## ***General/Student Policy - Sexual Misconduct and Title IX Compliance***

### **Policy:**

Bismarck State College is committed to a positive learning, working and living environment. BSC will not tolerate acts of sexual misconduct 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 misconduct; (2) taking action to remedy its effects by providing advocacy, support and appropriate referral services for recipients of the behavior; (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 misconduct 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.

- a) Sexual misconduct is prohibited in all forms, regardless of intent to harm. Sexual assault, sexual exploitation, coercion and sexual harassment are examples of sexual misconduct, and all are prohibited.
- b) Also prohibited under Title IX is any rule violated on the basis of the recipient of the behavior's sex/gender which is severe enough to cause a discriminatory effect. (Examples of this may include but are not limited to bullying, cyber-bullying, relationship violence and stalking.)

### **Coverage/Jurisdiction:**

This policy governs 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 policy applies to conduct that occurs on BSC property (i.e., on campus) and to conduct that occurs off College property when the conduct is associated with a BSC sponsored program or activity, such as travel, research, or internship programs or when such conduct may have a continuing adverse impact or could create a hostile environment. Coverage/jurisdiction will depend on the facts of each incident.

### **Definitions:**

For the purpose of this policy, the following definitions apply:

- a) **Consent:**

1. Words or actions showing a clear, knowing and voluntary agreement to engage in mutually agreed upon sexual act; or
2. An affirmative decision given by clear actions or words.
3. Consent may not be inferred from:
  - i. Silence, passivity, or lack of active resistance alone.
  - ii. A current or previous dating or sexual relationship.

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 \(12.1 – 20\)](#):

- 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;
- b) **Coercion**: is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- c) **Incapacitation**: is a state where someone 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).
- d) **Intimidation**: is implied threats or acts that cause an unreasonable fear of harm in another.
- e) **Responsible employees** (as defined in Title IX law):
1. Those with authority to address and remedy sex and gender-based discrimination and harassment;
  2. Those with responsibility to report sexual misconduct to a supervisor; and/or
  3. Those who a student would reasonably believe have such authority or obligation.

**BSC has designated all employees as responsible employees.**

- f) **Retaliation:** Any adverse action taken against a person because of their participation in a protected activity. Retaliation against an individual for alleging sexual misconduct, supporting a reporting party or for assisting in providing information relevant to a claim of sexual misconduct will be treated as another possible instance of harassment or discrimination. Any acts of alleged retaliation should be reported immediately to the Title IX Coordinator or a Title IX Deputy and will be promptly investigated. BSC is prepared to take appropriate steps to protect individuals who fear that they may have been subjected to retaliation.
- g) **Sexual Acts** include, but are not limited to the following actions:
1. Sexual intercourse;
  2. Sodomy (oral and/or anal);
  3. Sexual penetration with any object;
  4. Sexual touching of a person's intimate parts (genitalia, groin, breasts, buttocks, mouth or other bodily orifice or the clothing covering them); or
  5. Compelling a person to touch his or her own or another person's intimate parts.
- h) **Sexual Assault:** Any sexual act between two or more people to which one person does not or cannot consent. This includes sexual acts or contacts with others that can involve:
1. Compelling a person to submit to sexual acts or contacts by force, threat of force, or intimidation;
  2. Use of intoxicants to substantially impair the person's power to give consent; or
  3. Engaging in such acts when the person suffers from a mental state that renders him or her incapable of understanding the nature of the contact. This includes, but is not limited to, situations when an individual is intoxicated, "high", scared, physically or psychologically pressured or forced, passed out, unconscious, intimidated, coerced, mentally or physically impaired, beaten, isolated, or confined.
- i) **Sexual Exploitation:** Taking sexual advantage of another person without consent. Examples include, but are not limited to:
1. Causing the incapacitation of another in order to take sexual advantage of the person;
  2. Distributing or publishing sexual information;
  3. Engaging in indecent exposure;
  4. Engaging in voyeurism (the viewing of another for sexual gratification);
  5. Invasion of sexual privacy;

6. Knowingly exposing another to an STD or HIV;
  7. Prostituting another person; or
  8. Recording, photographing, or relaying sexual sounds or images.
- j) **Sexual Harassment:** Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic achievement;
  2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions (granting leave, promotion, favorable performance evaluation, etc.) or academic decisions (grades, etc.) affecting such individual; or
  3. Such conduct has the effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive environment.
- k) **Sexual Misconduct:** Any non-consensual behavior of a sexual nature that is committed by force, intimidation, or is otherwise unwelcome that is sufficiently severe, persistent, or pervasive so as to limit a student's/employee's ability to participate in or benefit from a BSC program or activity. Depending on the circumstances, a single incident of sexual misconduct may be sufficient to limit a student's/employee's ability to participate in or benefit from a BSC program or activity.
- l) **Stalking:** A pattern of behavior that makes you feel afraid, nervous, harassed or in danger. It is when someone repeatedly contacts you, sends you things, talks to you when you don't want them to, or threatens you. You can be stalked by someone you know casually, a current boyfriend or girlfriend, someone you dated in the past or a stranger. Stalking is a crime and can be dangerous.

“Stalking” – North Dakota – According to [North Dakota Century Code \(12.1–17-07.1.\)](#)

### **Reporting/Confidentiality:**

Students/employees are encouraged to report incidents or information related to sexual misconduct as soon as possible. If criminal activity is involved, students/employees are encouraged to contact the BSC Campus Safety and Security Department or local law enforcement. BSC employees who become aware of a complaint or violation of this policy must report the complaint or violation either to the Title IX Coordinator or a Title IX Deputy:

#### **Coordinator**

**Rita Lindgren, Chief Human Resources Officer**  
 Meadowlark Building (1700 Schafer Street)  
 Phone: 701-224-5427; email: [rita.lindgren@bismarckstate.edu](mailto:rita.lindgren@bismarckstate.edu)

#### **Deputies**

**Jay Meier, Dean of Students**

Jack Science Center (1420 Schafer Street)

Phone: 701-224-2701, email: [jay.meier@bismarckstate.edu](mailto:jay.meier@bismarckstate.edu)

**Matt Giddings, Campus Safety & Security Manager**

Meadowlark Building (1700 Schafer Street)

Phone: 701-224-5789, email: [matthew.giddings@bismarckstate.edu](mailto:matthew.giddings@bismarckstate.edu)

**Carla Hixson, Dean of Current & Emerging Technologies**

Tech Center (1200 College Drive)

Phone: 701-224-5580, email: [carla.hixson@bismarckstate.edu](mailto:carla.hixson@bismarckstate.edu)

**Angie Friez, Human Resources Manager**

Meadowlark Building (1700 Schafer Street)

Phone: 701-224-2414; email: [angie.friez@bismarckstate.edu](mailto:angie.friez@bismarckstate.edu)

**Free Confidential Reporting**

**BSC Mystic Advising and Counseling Center (MACC)**

**Personal Counselor**

Student Union (1425 Schafer Street)

Phone: 701-224-5752, email: [mandi.talbacka@bismarckstate.edu](mailto:mandi.talbacka@bismarckstate.edu)

The guiding principle in accepting reports of sexual misconduct is to avoid re-victimizing the recipient of the behavior by forcing them into any plan of action. BSC will make every attempt to safeguard the privacy of the reporting party and/or recipient of the behavior; however, it is important that the reporting party 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. [North Dakota Century Code \(44-04-18.28\)](#)

**Resources:**

The following are individuals and agencies that can assist victims of sexual assault and other sexual offenses:

BSC Resources

- **BSC Campus Safety and Security** 224-2700  
Meadowlark Building
- **BSC Mystic Advising and Counseling Center (MACC)** 224-2449  
Student Union, Lower Level

Community Resources

- **Bismarck & Mandan Emergency Response** 911
- **CHI St. Alexius Health (hospital-emergency room)** 530-7000  
900 E. Broadway, Bismarck
- **CHI St. Alexius Health Employee Assistance Program (EAP)** 530-7195
- **Sanford Health (hospital-emergency room)** 323-6000  
300 N. 7<sup>th</sup> Street, Bismarck
- **Abused Adult Resource Center (for assistance with sexual assault, dating violence, domestic violence, neglect or abuse) or Crisis Line** 222-8370  
218 W. Broadway Ave., Bismarck 1-866-341-7009
- **West Central Human Services (24 hour emergency line)** 328-8888  
1237 W. Divide Ave. #5, Bismarck
- **Bismarck Police (administrative)** 223-1212  
700 S. 9<sup>th</sup> Street, Bismarck
- **Mandan Police (administrative)** 667-3250  
205 1<sup>st</sup> Ave. NW, Mandan

### **Employee Responsibility:**

All employees are considered “responsible employees” (as defined above). When a responsible employee becomes aware of any complaint or type of sexual misconduct, they must report it immediately to either the Title IX Coordinator or a Title IX Deputy. Employees who fail to immediately report any complaint or type of sexual misconduct are subject to disciplinary procedures.

### **Informal/Formal Resolution:**

BSC offers both informal and formal resolution of sexual misconduct reports involving BSC students, faculty or staff. Independent of the path chosen by the recipient of the behavior, 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. Typically, investigation/resolution of the report 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, parties will be notified in writing indicating the reason(s). Investigation/resolution (whether it is an informal or formal resolution) of the allegations shall include:

- a) The reporting party and the respondent have equal opportunities to present relevant witnesses and other evidence;
- b) Providing both sides with similar and timely access to any information that will be used during the process;
- c) Equal opportunity to have a support person present, and equal restrictions on how a support person may participate during the process;
- d) The right of the reporting party and the respondent to be informed of the outcome of the investigation/resolution, and the right of either party to appeal; and

- e) The right of the reporting party and the respondent to receive periodic status updates throughout the investigation/resolution process.

All sexual misconduct cases shall use a “preponderance of the evidence” standard; meaning that in order for the accused to be held responsible, the appropriate administrative officer, in conjunction with the Title IX Coordinator must determine that it is more likely than not that the sexual misconduct occurred.

### **Informal Resolution:**

Except in cases of sexual assault which always require a formal resolution, reporting party may choose to pursue informal resolution of their complaint. Informal resolution is entirely voluntary and the reporting party and respondent may end informal resolution at any time and enter the formal process. The reporting party should never attempt to resolve the complaint on their own or directly with the respondent. In cases of informal resolution, the Title IX Coordinator shall assign a College official with the authority to remedy the alleged violation (e.g. Dean of Students, the alleged perpetrator’s supervisor, etc.) to oversee the informal resolution process. The informal process provides the reporting party 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 College official may impose a sanction warranted by the information gathered during the informal resolution, 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. In cases where the parties are not in agreement with the informal resolution, they could then enter the formal process.

### **Formal Resolution:**

Formal resolution of sexual misconduct complaints will be resolved as follows:

- a) If the parties involved are employees, the College will follow the applicable policy(s) for the circumstances (e.g. NDUS HR Policy Manual 25. Job Discipline/Dismissal—staff, NDUS HR Policy Manual 28. Grievance Procedures—staff, SBHE Policy 605.3 Nonrenewal, Termination or Dismissal of Faculty, SBHE Policy 612 Faculty Grievances, [BSC General Harassment Policy](#)). For employees excluded from the broadbanding system, SBHE Policy 608.2 NDUS Employees – Non-renewal and Dismissals will be followed.
- b) If the parties involved are students, BSC will follow the procedure outlined in the [Student Rights & Responsibilities Policy](#) and/or [Student Harassment Policy](#).

### **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 of the violation(s)
2. Prior violations and disciplinary history

3. Mitigating circumstances surrounding the violation
4. The student's motive or purpose for engaging in the behavior
5. Sanctions which have been imposed in similar cases in the past
6. The developmental and educational impact on the student

**Possible Sanctions:**

A sanction is a consequence placed upon any student for conflicts with specified College policies. Sanctions help define the student relationship with the College in the context of current and potential future behavior including a notice that further conflicts may lead to more severe behavioral sanctions.

Individual students who are found in violation of College policy may be subject to one or more of the sanctions below.

**Possible disciplinary action may include:**

1. **Warning** – A verbal or written notice to the student that the student is violating or has violated College regulations.
2. **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.
3. **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.
4. **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.
5. **Suspension from Class**— The immediate revocation of the privilege of attending a class, using a laboratory, or participating in a shop.
6. **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.
7. **Discretionary Sanctions** – Work assignments, service to the College, confiscation, educational projects, alcohol and drug testing and/or screening, participation in a specific program.



8. **Restitution** – Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.
9. **Fine** – The imposition of a monetary penalty.
10. **Eviction** – The formal removal of a student from College housing.
11. **Revocation of Admissions and/or Degree** – Admission to or a degree awarded from the College may be revoked for fraud, misrepresentation, or other violation of College standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.
12. **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.
13. **Failing Grade** – Possible penalty that may be used in the case of academic dishonesty. Depending on the circumstances, the failure may apply to a single assignment or exam, a unit of study, or an entire course.
14. **Interim Action** – A student may be temporarily suspended when the student actions or threats of actions indicate a serious threat to the welfare and/or safety of persons or property. Conditions under which emergency suspension may be imposed: to ensure the health, safety, or well-being of members of the College community; to preserve College property; to ensure the suspended student's own physical and emotional safety and well-being; or to ensure against the disruption of, or interference with, the normal operations of the College.

### **Anonymous Reports:**

Anonymous reports will be accepted by the College. BSC's ability to investigate and resolve anonymous reports will be limited if the information contained in the anonymous reports cannot be verified by independent facts.

### **Interim Measures:**

When warranted by the circumstances surrounding a reports of sexual misconduct, the College may implement interim measures until its investigation concludes. Violation of these interim measures may be considered grounds for additional reports of sexual misconduct or as retaliation for the ongoing investigation of sexual misconduct. Potential interim remedies include, but are not limited to:

- a) Providing an escort to the reporting party so that he/she may move safely on campus;

- b) Issuing a no contact order to the parties, prohibiting any contact between them;
- c) Moving the reporting party and/or respondent to different BSC housing;
- d) Altering the class schedule of the parties so that they do not attend the same classes;
- e) Providing counseling services;
- f) Providing academic support services; and
- g) Restraining order assistance and/or enforcement on campus.

### **Prevention:**

BSC attempts to foster a safe living, learning, and working environment for all members of the campus community. To accomplish this, BSC considers the educational programming that addresses all aspects of domestic violence, dating violence, sexual assault, and stalking (safety precautions and prevention, crisis management, reporting, medical and counseling services, academic schedules, living arrangement, etc.), the campus response to sexual violence, domestic violence, dating violence, and instances of stalking, and physical surroundings throughout the campus community.

BSC develops programming concerning domestic violence, dating violence, sexual assault, and stalking. BSC Campus Safety and Security department supports the educational programs by providing input and personnel to accomplish this task. For additional information about campus programming concerning domestic violence, dating violence, sexual assault, and stalking, contact the Title IX Coordinator, Human Resources, Student and Residence Life Office, Mystic Advising and Counseling Center, and Student Affairs Office.

First year students are required to participate in a Title IX and VAWA education program that combines sexual assault 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 violence awareness, and intimate partner violence. These courses prepare students before they begin their life in college.

BSC continuously considers the physical surroundings in addressing campus security to avoid assault and other crimes on campus. The physical surroundings are modified when seen as a possible threat to the safety of students, staff, and faculty. Campus administrators, Campus Safety & Security, and the BSC Student Government Association (SGA) tour campus on an annual basis to determine if there are any safety concerns. They assess campus signs, emergency phones, lighting, and locking procedures. For further safety information, contact BSC's Campus Safety & Security Department.

### **Intervention:**

The BSC community actively supports individuals who experience sexual misconduct through a coordinated response system that attends to their physical and emotional well-being. BSC disciplinary efforts respect the personal rights of all parties. For further information, see [BSC Student Rights & Responsibilities](#) and [BSC Student Handbook](#). All reports/notices of sexual assault and sexual misconduct are handled in a manner designed to respect the privacy of the involved individuals, to the extent permitted by law. Incidents are reported to appropriate Departments and agencies in consideration of safety concerns and investigative needs. In addition, BSC publishes and disseminates annual statistics on incidents of sexual assault as required by the Clery Act. The annual Clery Act Report is available online at: <https://bismarckstate.edu/students/resources/HealthandSafety/CampusSafety/CampusSecurity/>.

### **False Reports:**

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

### **For More Information:**

FOR MORE INFORMATION regarding sexual misconduct and Title IX, visit the [website](#) or contact the BSC Title IX Coordinator – Rita Lindgren, Chief Human Resources Officer, [Rita.Lindgren@bismarckstate.edu](mailto:Rita.Lindgren@bismarckstate.edu), 701/224-5427.

### **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.