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Sexual Harassment, Discrimination, and Sexual Misconduct Policy



Title IX Compliance

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

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

To simplify Dakota College at Bottineau’s policy and procedures, the following index is provided to help the reader locate the specific topic of interest more easily. Some language from one section may be repeated in another section to assist the reader.

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Non-Discrimination Statement

Dakota College at Bottineau (DCB) does not engage in discrimination or harassment against any person because of race, color, religion or creed, sex, gender, gender identity, pregnancy, national or ethnic origin, disability, age, ancestry, marital status, sexual orientation, veteran status, political beliefs or affiliations, or information protected by the Genetic Information Nondiscrimination Act (GINA); and complies with all federal and state non-discrimination, equal opportunity and affirmative action laws, orders and regulations, including remaining compliant and consistent with the Civil Rights Act, the Americans with Disabilities Act, the Rehabilitation Act of 1973, and Title IX of the Education Amendments of 1972. This policy on non-discrimination applies to admissions, enrollment, scholarships, loan programs, participation in college activities, employment, and access to participation in, and treatment in all college programs and activities.

DCB prohibits retaliation against any individual or group who exercises its rights or responsibilities protected under the provisions of state law, federal law and/or DCB policy. Employees or students who violate this policy may face disciplinary action up to and including separation from DCB. Third parties who commit discrimination or harassment may have their relationships with DCB terminated and/or their privileges of being on college premises withdrawn.

Questions, comments, or complaints regarding sexual discrimination or sexual harassment may be directed to the Title IX Office. All other forms of discrimination or harassment may be directed to the appropriate associate dean or director of human resources. Complaints may also be filed with the U.S. Department of Education, Office for Civil Rights.

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John C. Kluczynski Federal Building
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PURPOSE

To establish Dakota College at Bottineau policy prohibiting discrimination, harassment in all forms, sexual misconduct, relationship violence, and retaliation related to reports of such conduct. These procedures apply to complaints alleging all forms of sex discrimination (including sexual or gender-based harassment, assault and violence) against employees, students, and third parties. These apply to all College programs and activities, including those conducted off-campus.

POLICY STATEMENT/OVERVIEW

Dakota College at Bottineau strives to provide an educational environment where all members of the campus community are expected to conduct themselves in a manner that enhances the well-being of the community. Members of the college community, guests, and visitors have the right to be free from all forms of sexual harassment, discrimination, and sexual misconduct ("Prohibited Conduct"). This policy covers student, faculty, and staff-related matters of Prohibited Conduct, regardless of whether the alleged conduct occurred on or off campus, and regardless of whether the alleged Respondent is a student, faculty member, staff member, or third party. Examples include acts of sexual violence (including sexual assault and rape), any harassment based on sex or gender, domestic violence, dating violence, and stalking.

Dakota College at Bottineau will not tolerate incidents of harassment, discrimination, or sexual misconduct occurring on or off campus, where relevant, whether there is a hostile environment on campus, or in an off-campus education program or activity.

If the off-campus misconduct did not occur within the context of a College program or activity, the college will consider the effects of off-campus conduct when evaluating whether there is a hostile environment on campus, or in an off-campus education program or activity.

When such an allegation is reported to an appropriate Dakota College official, protective and supportive measures will be used. Such measures are to reasonably ensure such conduct ends, the conduct is not repeated, and the effects on the Complainant and community are remedied. Measures by the College may include serious sanctions (up to and including termination, suspension, or expulsion, if circumstances warrant) when a Respondent is found to have violated this policy. Students and employees who retaliate against individuals who report Prohibited Conduct may be subject to disciplinary action.

Employees are required, and students and are strongly encouraged, to report any and all incidents of sexual discrimination, harassment, or sexual misconduct to the Dakota College at Bottineau Title IX Coordinator, or any Title IX Investigator/Deputy. When an allegation of misconduct is brought to an appropriate

College official, Dakota College at Bottineau will respond promptly, equitably, and thoroughly.

This policy manual is written to address the many issues and varying aspects of sexual discrimination. While there are many laws, regulations, policies, and other such sources written for the purpose of preventing or responding to sexual discrimination, the explanation that it takes to satisfy and comply with all of the standards and requirements is a somewhat difficult task. The amount of information in this manual may seem overwhelming, so we've attempted to organize it so the reader may easily find and understand the particular aspect that is relevant. If the answer sought does not seem readily available, or needs further clarification, please do not hesitate to contact the Title IX Coordinator.

DEFINITIONS

For the purposes of this Policy, the listed terms shall have the following definitions:

- a. **Actual Knowledge.** Notice of sexual harassment or allegations of sexual harassment to an institution's Title IX Coordinator or any institution official with authority to institute corrective measures on the institution's behalf.
- b. **Campus Security Authority (CSA).** Any College employee whose responsibilities fall under any of the following conditions:
 - a. A campus security department of an institution
 - b. Any individual or individuals who have responsibility for campus security but who do not constitute a campus security department
 - c. Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses
 - d. An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. An official is defined as any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution

CSAs are required by the Clery Act to report certain crimes for statistical purposes.

- c. **Coercion.** Coercion is unreasonable pressure for sexual activity. 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 considered coercive.
- d. **Complainant.** An individual who is alleged to be the victim of conduct which could, after investigation, constitute sexual harassment.

- e. **Consent.** Consent is an affirmative decision to engage in mutually acceptable sexual activity given by clear actions or words. (Further discussion of consent and North Dakota law is found in the section of "Sexual Misconduct/Violence.")

- f. **Dating Violence.** Violence committed by the respondent:
 - i. Who is or has been in a romantic or intimate relationship with the complainant; and
 - ii. Where the existence of such a relationship shall be determined by considering the length of the relationship, the type of relationship, and the frequency of interactions between the complainant and respondent.

- g. **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.

- h. **Domestic Violence.** Violence committed by the respondent, who is:
 - i. a current or former spouse or intimate partner of the complainant;
 - ii. a person with whom the complainant shares a child in common;
 - iii. cohabiting with or has cohabited with the victim as a spouse or intimate partner;
 - iv. similarly situated to a spouse of the complainant; or
 - v. any person against whose acts the complainant is protected by N.D.C.C. ch. 14-07.1.

- i. **Education program or activity.** Includes locations, events, or circumstances over which an institution 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 an institution.

- j. **False Complaint.** A false complaint is an allegation made with knowledge that the allegation is wholly or substantially untrue.

- k. **Force.** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent. (Further discussion of force is found in the section of "Sexual Misconduct/Violence.")

- l. **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.

- m. **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.
- n. **Incest.** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- o. **Preponderance of the Evidence.** Preponderance of the Evidence is the standard by which a determination will be made regarding violations of this policy. It means the decision will be based on whether it is more likely than not that the discrimination occurred.
- p. **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.
- q. **Respondent.** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- r. **Sexual Assault.** Either 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.
- s. **Sexual Harassment.** Conduct, on the basis of sex, constituting one (or more) of the following:
 - i. An employee of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct;
 - ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; or
 - iii. Sexual assault, dating violence, domestic violence, or stalking, as defined in this section.
- t. **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.
- u. **Statutory Rape.** Sexual intercourse with a person who is under the

statutory age of consent.

- v. **Supportive Measures.** Non-disciplinary, non-punitive individualized services offered as appropriate (as reasonably available) and without fee or charge to the complainant or respondent.

ADMISSIONS/FINANCIAL AID

No person shall be discriminated against because of sex, gender, or gender-orientation during the application and admissions processes, or the awarding of financial aid.

ATHLETICS

The DCB Athletic Department realizes that gender equity is a key component in a successful athletics program. Since the inception of Title IX, there is the misconception that gender equity is simply meeting one of the three prongs of the Three-Part Test:

1. Provide participation opportunities for women and men that are substantially proportionate to their respective rates of enrollment as full-time undergraduate students.
2. Demonstrate a history and continuing practice of program expansion for the underrepresented sex.
3. Fully and effectively accommodate the interests and abilities of the underrepresented sex.

Beyond these prongs, gender equity stretches through every program and every student-athlete. It is our goal to provide equitable opportunities for ALL student-athletes to succeed, through various avenues, such as participation, scholarships, and other benefits. These avenues include (but are not limited to) the following:

- provision of equipment and supplies;
- scheduling;
- travel;
- tutoring;
- coaching;
- locker rooms;
- facilities;
- medical and training facilities and services;
- publicity;
- recruiting; and
- support services.

Within the Athletics Department, the Gender Equity/Minority Issues Committee plans to evaluate the Gender Equity Plan on an ongoing basis to ensure progress is made and other issues that may surface are identified and addressed.

EMPLOYMENT

DCB prohibits discrimination on the basis of sex or gender when making decisions regarding employment unless a bona fide occupational qualification exists (BFOQ). This includes (but is not limited to) decisions for hiring, promotion, transfers, and salary administration. A BFOQ would exist if the duties of the position reasonably necessitate the choice of one sex or gender over the other.

All regular staff and faculty are considered mandated reporters and are obligated to report cases of sexual discrimination of which they are aware. Employees must report such cases to the Title IX Coordinator, and that office will coordinate the College's response. Employees are not to conduct their own investigations of such cases.

CONSENSUAL RELATIONSHIPS

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship may also be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. For the personal protection of members of this community, relationships in which power differentials are inherent (such as faculty-student, staff-student, and administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor or the Title IX Coordinator, and will likely result in the necessity to either remove the employee from the supervisory or evaluative responsibilities, or shift the other party out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes resident advisors and students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

SEXUAL MISCONDUCT/VIOLENCE

Sexual misconduct, whether involving violence or not, is a form a sexual discrimination that is prohibited by this policy. Misconduct offenses include, but are not limited to, the following:

1. **SEXUAL HARASSMENT** is:

- a. An employee of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct;
- b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; or
- c. Sexual assault, dating violence, domestic violence, or stalking, as defined in this section.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

2. **Consent**

- a. Consent is an informed decision made freely and actively by all parties. Relying solely upon nonverbal communication can lead to miscommunication. It is important not to make assumptions; if confusion or ambiguity on the issue of consent arises anytime during a sexual interaction, it is essential that each participant stops and clarifies, verbally, willingness to continue.
- b. Individuals should understand that consent may not be inferred from silence, passivity, or lack of active resistance alone. Furthermore, a current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- c. Conduct will be considered "without consent" if no clear consent, verbal or nonverbal, is given. The perspective of a reasonable person will be the basis for determining whether a Respondent knew, or reasonably should have known, whether consent was given. However, being intoxicated or incapacitated does not diminish one's responsibility to obtain consent and will not be an excuse for sexual misconduct.
- d. In some situations, an individual may not be able to freely consent. Examples include, but are not limited to, when an individual is incapacitated due to alcohol or other drugs, unconsciousness, intimidation, coercion, mental or physical impaired disability, isolation, or confinement. The perspective of a reasonable person will be the basis for determining whether the Respondent knew, or reasonably should have known, whether the Complainant was capable of providing consent.
- e. In order to give effective consent, one must be of legal age. According to the North Dakota Century Code:

- i. The “age of consent” is 18 years old in North Dakota.
- ii. A person under the age of 15 cannot legally consent to sexual activity under any circumstances.
- iii. 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.

There is no requirement that a party resist the sexual advance or request, but resistance is a clear demonstration of non-consent.

REPORTING SEXUAL DISCRIMINATION

All regular college employees (faculty, staff, and administrators) have an obligation to report actual or suspected discrimination or harassment to the Title IX Coordinator though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality, meaning they are not required to report actual or suspected discrimination or harassment to appropriate College officials, thereby offering options and advice without any obligation to inform the Title IX Coordinator unless you have requested information to be shared. Other resources exist for the Complainant to report policy violations and these resources will take action when the Complainant reports victimization to them. The following describes the two reporting options:

Confidential Resources and Reporting

The following describes the confidential reporting options:

- Campus mental health counselor,
- Campus health nurse,
- Off campus:
 - Licensed Professional Counselors
 - Domestic Violence Crisis Center counselors,
- On or off-campus members of the clergy/chaplains

The College will seek to balance a complainant’s request for anonymity or not to participate in an investigation with its broader obligation to campus safety. **In cases indicating pattern, predation, threats, weapons, and/or violence, Dakota College may be unable to honor a request for confidentiality.** If the complainant asks that their name not be disclosed to the Respondent, or that no investigation be pursued, it may limit the scope of the College’s response.

Reporting

The College's primary concern is the safety of its students, faculty and staff, and to encourage reporting of Prohibited Conduct. All College employees have a duty to report actual or suspected sexual discrimination or harassment to the Title IX Coordinator though there are some limited exceptions for those that fall under "confidential reporting." A Complainant may want to consider carefully whether they share personally identifiable details with employees who have a duty to report, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy Title IX Coordinator(s). To be clear, employees with a duty to report must share all details of the reports they receive.

Failure of a non-confidential employee, as described in this section, to report an incident of sexual discrimination of which they become aware, is a violation of College policy and is subject to disciplinary action ranging from a warning up to and including termination of employment.

1. Complainant may request confidentiality.

If complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the Complainant may make such request to the Title IX Coordinator and/or Deputy Title IX Coordinator(s)/(Investigators), who will evaluate that request in order to ensure the safety of the campus, in compliance with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the College may be unable to honor a request for confidentiality. In cases where the Complainant requests confidentiality and the circumstances allow the College to honor that request, the College will offer supportive measures and measures to the Complainant but will not otherwise pursue formal action.

2. Complainants will have their complaints promptly and thoroughly investigated.

A Complainant has the right to have complaints taken seriously by the College when reported, and to have those incidents investigated thoroughly and properly resolved through the procedures set forth below. The College will promptly act on any complaint or notice of violation of this Policy when received by the Title IX Coordinator or any College official with authority to institute corrective measures on the College's behalf. DCB will investigate each complaint thoroughly to determine whether the alleged violation has occurred. The outcome of an allegation will be determined based on the preponderance of the evidence. This means that violations of this policy will be based on whether it is more likely than not that the conduct occurred.

3. Dakota College at Bottineau will conduct an investigation; however, it will be separate from a criminal investigation, though communication with law enforcement may be maintained.

DCB's responsibility to enforce this policy is not part of the criminal judicial system. Complainants may pursue a complaint with the College and local law enforcement simultaneously. The College may need to briefly suspend the fact-finding aspect of a Title IX investigation at the request of law enforcement while the law enforcement agency is in the process of gathering evidence. In the event, the College will maintain regular contact with law enforcement to determine when it may begin or resume its investigation. The College will promptly resume its investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process, or sooner if the College determines that the evidence gathering process will be lengthy or delayed. The College will not delay its investigation until the ultimate outcome of the criminal investigation; however, the College reserves the right to implement appropriate supportive measures during any law enforcement agency's investigative period when the College has temporarily deferred its investigation, to assist and protect the safety of the complainant(s) and the campus community and to prevent retaliation.

DCB's response to a report will be more effective if the report is made soon after the incident. In cases where the Respondent is no longer affiliated with the DCB campus, DCB will provide support for the Complainant and will attempt to investigate for the purpose of sanctioning the Respondent. However, the more time passes after the incident, the more difficult it may be for DCB to respond.

Anonymous reports can be made by Complainant and/or third parties using the online reporting form posted on the DCB website. Note that these anonymous reports may prompt a need for DCB to investigate.

Reports to the Title IX Coordinator can be made via email, phone, or in person at the contact information below:

Laura Halvorson
Title IX Coordinator
Director of Student Success
Library
Thatcher Hall Room 1124
701-228-5680
laura.halvorson@dakotacollege.edu

Hannah Hoffert
Title IX Investigator
Mental Health Coordinator
Thatcher Hall
701-228-5636
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Paige Baade
Title IX Investigator
Assistant Dean for Nursing and Health Professions
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Corey Gorder
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Michelle Cauley
Title IX Investigator
UAS and Natural Resources Instructor
Nelson Science Center-Bottineau
701-228-5498
michelle.cauley@dakotacollege.edu

Amnesty

The health and safety of students is of primary concern at Dakota College at Bottineau. Fear of punishment for violation of the Dakota College at Bottineau Student Code of Conduct regarding drugs and alcohol should not prevent students from seeking help for an individual who has been assaulted.

While the student seeking help is not exempt from facing disciplinary action under the Dakota College at Bottineau Code of Student Conduct, all efforts made by students to positively impact the health and safety of others will be taken into consideration and may lessen possible disciplinary outcomes.

The amnesty does not apply to other prohibited conduct, including (but not limited to) assault, violence, property damage, or the distribution of dangerous substances, whether legal or illegal.

RESPONDING TO REPORTS

Equitable Treatment

At all times, DCB 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.

Pre-Grievance Process

- a. Timing.** DCB will strive to complete the grievance process within sixty (60) days, including time frames for filing and resolving appeals, and for informal resolution processes if offered. Notwithstanding, temporary delays or extensions of the time frames will be offered for good cause, with written notice to the parties setting forth the cause for the action.
 - i. *Good cause.* 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.

- b. Actual Knowledge of Sexual Harassment.** With or without the filing of a formal complaint, once DCB has actual knowledge of sexual harassment within its educational program or activity in the United States, the institution must respond promptly and without deliberate indifference pursuant to this Policy and any applicable institutional policies.
 - i. Once the institution has actual knowledge of sexual harassment, the Title IX Coordinator or designee must contact the complainant and:
 - a) Discuss the availability of supportive measures;
 - b) Consider the complainant's wishes regarding supportive measures;
 - c) Inform the complainant that supportive measures are available with or without the filing of a formal complaint; and
 - d) Explain the process of filing a formal complaint.
 - ii. No disciplinary sanctions or other actions which are not supportive measures may be imposed against a respondent prior to the conclusion of the grievance process.

- c. Supportive Measures.** The College will take prompt and effective steps to end the sexual or gender-based harassment, assault and violence; eliminate any hostile environment; prevent its recurrence; and remedy the

discriminatory effects on the victims and others as appropriate. The college reserves the right to take whatever measures it deems necessary in response to an allegation of sexual discrimination in order to protect a person's rights and personal safety. When warranted by the circumstances surrounding a complaint of sexual misconduct, the College may implement supportive measures until its investigation is concluded. Violation of these supportive measures may be considered grounds for additional complaints of sexual misconduct or as retaliation for the ongoing investigation of sexual misconduct. Requests can be made by the complainant or respondent.

- i. Potential supportive measures include, but are not limited to:
 - a) Providing an escort to the Complainant or Respondent so they may move safely on campus;
 - b) Increased security or monitoring locations;
 - c) Issuing a no-contact order to the parties, which prohibits any contact between them;
 - d) Moving the Complainant and/or Respondent to different on-campus housing;
 - e) Altering the class schedule of the parties so they do not attend the same classes;
 - f) Extensions of deadlines or other course related adjustments;
 - g) Providing counseling services;
 - h) Providing academic support services;
- ii. The institution must maintain confidentiality with respect to supportive measures unless disclosure is required to implement the supportive measures.
- iii. The Title IX Coordinator shall coordinate the effective implementation of supportive measures.
- iv. Supportive measures may not restrict any party's rights under the United States Constitution.

d. Emergency Removal. The institution may remove a respondent from the education program or activity on an emergency basis, provided that the institution determines, based on an individualized safety and risk analysis completed the Title IX Coordinator, that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.

- i. The institution must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- ii. An appeal may be requested in writing to the Title IX Coordinator within three (3) business days of the emergency removal. The written request must include an explanation of the reason for the appeal.

e. Administrative Leave. The institution may place a non-student employee respondent on administrative leave during the pendency of a grievance process.

Grievance Process

a. Formal Complaint and Notice of Allegations.

- i. Once a formal complaint is received by the institution, the institution will provide the following written notice to the known parties:
 - a) Notice of the grievance process, including any informal resolution process;
 - b) Notice of the allegations of sexual harassment, including:
 - v. 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.
 - c) A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
 - d) A statement that the parties may have an advisor of their choice, who may be an attorney, and may inspect and review evidence. The statement should also indicate that if the party does not have an advisor of choice, the institution will appoint an advisor to assist with cross-examination for the live hearing.
 - e) Notice of any provisions in the institution's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- iii. If during the course of the grievance process, additional allegations are added to the investigation which were not included in the initial notice, the institution must provide notice of the additional allegations to the parties.

b. Advisors.

- i. Parties to a grievance proceeding must be afforded the opportunity to select the advisor of their choice to assist them during the proceeding, including during the live hearing.

- ii. If a party does not choose an advisor, the institution will provide the party with an advisor free of charge to conduct the party's cross-examination at the live hearing.
- iii. DCB is not required to provide attorneys to parties to act as advisors, but appointed advisors will 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.
- iv. DCB is not required to attempt to create equality of advisors between the parties, particularly where one party selects an outside advisor, but should endeavor to seek parity of advisors where the institution provides advisors to both parties.

c. Investigation.

- i. DCB is required to investigate every filed formal complaint unless the complaint is subject to dismissal, as explained below.
- ii. At all times, the burden of proof and the burden of gathering evidence sufficient to make a determination regarding responsibility rests on the institution, and the institution may not seek to shift that burden to the parties.
 - a) Notwithstanding, DCB may not restrict the parties' ability to discuss the allegations or to gather or present relevant evidence.
- iii. At all times, the institution shall observe a presumption that respondent is not responsible for the alleged conduct until and unless there is a determination of responsibility at the conclusion of the grievance process.
- iv. The Institution may not access, consider, disclose, or otherwise use a party's medical records made or maintained in connection with the provision of treatment to the party, unless voluntary, written consent to do so is provided by the party (or the party's parent, if the party is not eligible to provide consent).
- v. The Institution may 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.
- vi. The Institution must provide to the parties written notice of the date, time, location, participation, and purpose of all hearings, investigative

interviews, or other meetings, with sufficient time for the party to prepare.

- vii. The parties must be afforded an equal opportunity to have others present during any grievance proceeding, including their advisor, though the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, so long as the restrictions apply equally to both parties and comply with this Policy.
- viii. Both parties must have an equal opportunity to inspect and review any evidence obtained as part of the investigation related to the allegations raised in a formal complaint, including any evidence upon which the institution does not intend to rely in reaching a determination of responsibility and any inculpatory or exculpatory evidence, from whatever source.
- ix. At least ten(10) days prior to the preparation of the investigative report, the institution must provide each party and the party's advisor the evidence obtained in the investigation in an electronic format or hard copy. The parties may submit a written response to the evidence, which the investigator shall consider prior to completion of the investigative report.
- x. At the conclusion of the investigation, the investigator must create an investigative report that fairly summarizes the relevant evidence. At least ten(10) days prior to the hearing, the investigator must send a copy of the investigative report to each party and the party's advisor, if any, for review and written response.

d. Dismissal.

- i. Mandatory Dismissal.
 - a) The institution must dismiss the formal complaint if, at any time during the investigation or hearing:
 - 1) The conduct alleged would not constitute sexual harassment as defined in this Policy even if proved;
 - 2) The conduct alleged did not occur in the education program or activity; or
 - 3) The conduct alleged did not occur against a person in the United States.
 - b) If the formal complaint is subject to mandatory dismissal, the institution may take action under another provision of the code

of conduct without that action constituting retaliation under this Policy.

ii. Permissive Dismissal.

a) The institution may dismiss the formal complaint if, at any time during the investigation or hearing:

- 1) A complainant notifies the Title IX Coordinator, in writing, that the complainant would like to the withdraw the formal complaint or any allegations contained in the formal complaint;
- 2) The respondent is no longer enrolled or employed by the institution; or
- 3) Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations in the formal complaint.

b) In the event that a formal complaint is permissively dismissed, DCB will consult with its legal counsel prior to taking action under another provision of its code of conduct to avoid taking actions constituting retaliation.

iii. Notice of Dismissal. Upon a dismissal pursuant to this section, the institution must promptly send written notice of the dismissal and reasons therefore to both parties simultaneously.

e. Consolidation of Formal Complaints. Dakota College at Bottineau may consolidate formal complaints against more than one respondent, by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

f. Live Hearing.

- i. The grievance process must provide for a live hearing after the completion of the investigative report. All evidence obtained by the investigator as part of the investigative process must be made available to the parties and the decision-maker at the live hearing.
- ii. The live hearing will be presided over by the decision-maker, who will be appointed by the Title IX Coordinator.

- iii. At the request of either party, the hearing must be conducted with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or witness answering questions. Hearings may be conducted with all parties physically present in the same geographic location, or, any parties, witnesses, and other participants may appear at the live hearing virtually, so long as the participants are able to simultaneously see and hear each other.
- iv. At the live hearing, the decision-maker must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those questioning credibility. This cross-examination must be conducted directly (the questions may not be asked by the decision-maker), orally, and in real time by the party's advisor and never by a party personally.
 - a) Prior to a party or witness answering a question, the decision-maker must rule on the relevance of the question and explain any decision to exclude a question as not relevant.
 - b) Decision-makers may request, but may not require, that questions by the parties be submitted in advance, to permit the decision-maker to rule on the relevance of questions.
 - c) The institution may otherwise limit the extent to which the party's advisor may participate in the hearing by institution policy, but should consult with legal counsel prior to imposing any significant limitations.
- v. *Rape Shield*. Questions and evidence about the complainant's sexual predisposition or sexual history are not relevant, unless such questions are offered to prove that someone other than the respondent committed the alleged conduct, or regard specific incidents of the prior sexual behavior with respect to the respondent, and are offered to prove consent.
- vi. *Cross-Examination*. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility. Decision-makers may not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence or refusal to answer cross-examination or other questions. There are no exceptions to this exclusion as there are in legal proceedings.
- vii. *Hearing Decorum*. Decision-makers 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.

- viii. The institution will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

g. Determination Regarding Responsibility.

- i. *Standard of Evidence.* All decisions in grievance processes under Title IX shall require a determination of responsibility based on the preponderance of the evidence.
- ii. After the conclusion of the live hearing, the decision-maker must issue a written determination regarding responsibility, which must include:
 - a) Identification of the allegations potentially constituting sexual harassment;
 - b) 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;
 - c) Findings of fact supporting the determination;
 - d) Conclusions regarding the application of the institution's code of conduct to the facts;
 - e) 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; and
 - f) The procedures, timelines, and permissible bases for the complainant and respondent to appeal.
- iii. The written determination must be provided to the parties simultaneously. 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.
- iv. The Title IX Coordinator shall be responsible to implement any remedies provided by the written determination.

APPEAL PROCESS

- a. Both parties must be offered the opportunity to appeal from a determination regarding responsibility or from the dismissal of a formal complaint (or any

allegations within the formal complaint). The following may form the basis for an appeal:

- i. Procedural irregularity 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, 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.
- b. Upon filing of an appeal, the institution must:
- i. Notify the non-appealing party in writing when an appeal is filed and implement appeal procedures equally for both parties.
 - ii. The appeal's decision maker will be appointed by the Title IX Coordinator.
 - iii. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
 - iv. Issue a written decision describing the result of the appeal and the rationale for the result; and
 - v. Provide the written decision simultaneously to both parties.
- c. In the event that a disciplinary sanction of suspension or expulsion is imposed by the decision-maker, the institution shall provide a method of reviewing an appeal from a determination regarding responsibility or dismissal for a period of at least one year following the original decision. The Institution may set a shorter deadline for appeals from lesser discipline or for appeals filed by the complainant.

When the appeal is based on new evidence, the Title IX Coordinator will return the case to the assigned investigator(s) for reconsideration. The investigator(s) will supplement the previous investigation, which may include recalling witnesses, and issue a revised report. The Title IX Coordinator, Deputy Title IX Coordinators, and/or Title IX investigators not directly involved in the case will review the revised report to determine if the original finding should stand or be reversed.

When the appeal is based on a procedural error or a sanction substantially disproportionate to the severity of the violation, the Title IX Coordinator and Deputy Title IX Coordinators(Investigators) not directly involved in the case will review the appeal to determine if the original finding should stand, be modified, or be reversed.

At the discretion of the appeal decision maker, implementation of sanctions may be stayed pending review of an appeal.

Once the final result of an appeal is determined, notices of the appeal outcome will be sent to the Complainant and the Respondent

RETALIATION

- a. Neither DCB or any person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this policy, 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 policy, 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.

DISCIPLINE/SANCTIONS

Not all forms of sexual discrimination will be deemed to be equally serious offenses, and the College reserves the right to impose different sanctions, ranging from warning to expulsion or termination, depending on the severity of the offense. The College will consider the concerns and rights of both the Complainant and the Respondent.

The following lists of sanctions may be imposed upon current members of the campus community found to have violated this policy.

Sanctions for current students may include, but are not limited to:

1. Written Warning: The Respondent may be warned that such conduct is not acceptable under college standards and that similar future conduct will result

- in further, more severe sanctions.
2. Educational Intervention: Requiring the Respondent to participate in online and/or physical classes addressing issues such as dating or domestic violence, stalking, and sex/gender-based violence. This may include facilitating a program, creating educational posters regarding institutional policies and student conduct, or writing a paper.
 3. Referral for Assessment or Counseling: Requiring the Respondent to meet with a staff member of Dakota College at Bottineau Counseling Services to have an assessment of their mental health. The Dakota College at Bottineau Counseling Services may also recommend further evaluation and participation in counseling services, which may be at an on or off campus health/counseling center.
 4. Community Service: Requiring the Respondent to perform a certain number of service hours either on campus or in the community.
 5. Probation: A status that indicates either serious misconduct not warranting suspension, expulsion, or removal of institutional privileges, or repetition of misconduct after a warning has been imposed.
 6. Residential Reassignment: Removal of the Respondent from current residence and reassignment to a new residence. Specific restrictions on access to one's previous residence may be imposed.
 7. Changes in Academic Schedule: Requiring the Respondent to make changes in class schedule to ensure that no classes are shared with the Complainant.
 8. Removal of College Privileges: Restrictions on the Respondent's access to certain locations, functions, organizations, teams, and/or activities; does not preclude the student from continuing their academic program.
 9. Termination of Residency: Loss of on-campus housing, without refund, and/or dining privileges, permanently or for a specified period of time.
 10. Restitution/Fines: The individual may be required to make a payment to the institution and/or another person or group for damages incurred as a result of the violation.
 11. Removal or Non-Renewal of Scholarships: Institutionally-administered scholarships may be cancelled or not renewed to students that have violated this policy.
 12. Withholding of Degree: The institution maintains the right to withhold the awarding of a degree otherwise earned until the completion of any imposed sanctions.
 13. Suspension: A temporary separation from the institution that involves denial of all student privileges, including entrance to campus premises, and may include conditions for reinstatement, such as successful completion of a counseling or treatment program. A suspension may be imposed if counseling or treatment is not successfully completed.
 14. Expulsion: A permanent separation from institution that involves denial of all student privileges, including entrance to the institution premises and matriculation.

Sanctions for current college employees include:

1. Warning (Written or Verbal)
2. Performance Improvement Plan
3. Required Counseling
4. Required Training or Education
5. Demotion
6. Reduction in Pay
7. Loss of intended pay increase
8. Suspension with pay
9. Suspension without pay
10. Termination

RESOURCES

The following are many of the resources available on campus and in the community.

Bottineau Police Department: 701-228-3422

- **911** for emergency situations.

Campus Safety & Security: 701-228-5621

Family Crisis Center: 701-228-2028*

DCB Student Health Nurse: 701-228-5460*

St. Andrew's Hospital: 701-228-9400

DCB Mental Health Counselor: 701-228-5451*

Bottineau Ministry: 701-228-3021*

Title IX Coordinator: 701-228-5680

*Confidential support services

PREVENTION AND EDUCATION

Dakota College at Bottineau is committed to the prevention of sexual harassment through educational and awareness programs. Prevention and education programs include an overview of the College's policy and procedures; relevant definitions, including prohibited conduct; the impact of alcohol and illegal drug use; effective consent; safe and positive options for bystander intervention; and information about risk reduction, resources, and reporting options.

Incoming first-year students and new employees will receive primary prevention and awareness programming as part of their orientation. Returning students and employees will receive ongoing training on a periodic basis.

TRAINING

- a. All persons involved in the grievance process, including, but not necessarily limited to, Title IX Coordinators, investigators, decision-makers, and any

person who facilitates an informal resolution process, must receive training on the following areas:

- i. The definition of sexual harassment;
 - ii. The scope of the education program or activity;
 - iii. How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable;
 - iv. How to serve impartially, including by avoiding prejudgment of the facts at issue; conflicts of interest, and bias.
- b. Additionally, decision-makers must receive training on the following areas:
- i. Any technology to be used at a live hearing;
 - ii. Issues of relevance or questions and evidence, including when questions about the complainant's sexual predisposition or prior sexual behavior are not relevant;
- c. Investigators must also be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- d. All materials used to train the foregoing individuals must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints.
- e. All training materials used to train the foregoing individuals must be made available to the public by posting on DCB's website.
- f. Students/Employees who do not complete training within 60 days will be provided comprehensive Title IX resources via their DCB email. Students/Employees with questions regarding training options should contact DCB's Title IX Coordinator.

CLERY ACT REPORTING

Certain campus officials have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"). All personally identifiable information can be kept confidential, but statistical information must be reported to Campus Security regarding the type of incident and its general location (e.g., on or off campus, but no addresses are given or reported) for publication in the College's Annual Security and Fire Safety Report. This report helps to provide the community with a clear picture of the extent and nature of campus crimes in order to ensure greater community safety.

Mandated federal reporters, also known as Campus Security Authorities (CSA), may include (but are not limited to) the following: student affairs staff, campus safety & security, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, time, location of the incident, and the incident details. This reporting allows for anonymous reporting if the Complainant wishes to remain anonymous.

FEDERAL TIMELY WARNING REPORTING OBLIGATIONS

Victims of sexual misconduct should be aware that College officials must issue timely warnings for incidents reported to them that pose a serious or ongoing threat to students and employees. The College will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the threat/danger.

REVISION

This policy and procedures will be reviewed and updated at a minimum annually by the Title IX Coordinator and Deputy Title IX Coordinators. Procedures may also vary with notice (on the institutional web site with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural modifications. If government regulations change in a way that impacts this policy, this policy will be construed to comply with regulations in their most recent form.