

NOTRE DAME DE NAMUR UNIVERSITY POLICY AGAINST GENDER-RELATED MISCONDUCT

I. INTRODUCTION AND SUMMARY

Notre Dame de Namur University (NDNU) is committed to maintaining all of its programs and activities free from gender-related misconduct. Gender-related misconduct is all forms of gender (also known as sex) based discrimination, harassment, and other forms of gender-based misconduct such as sexual assault, dating violence, domestic violence, stalking, and all forms of misconduct on the basis of pregnancy, family status, sexual orientation, gender stereotypes, and gender identity (LGBT) are prohibited wherever that behavior occurs if connected to the University, even if not at a University facility.

This policy establishes mandatory procedures for reporting, investigating, and resolving such misconduct. This policy is intended to comply with recent federal and California legal requirements.

This policy applies to all NDNU students, employees, volunteers, independent contractors, and other third parties participating in NDNU's programs and activities, including admissions and employment, both on and off NDNU's campus and in the online environment.

This policy must always be posted verbatim on the website under the tab with the title, "Policy Against Gender-Related Misconduct."

The person responsible to carry out this policy is called Title IX Coordinator. The current Title IX Coordinator: Mary Haesloop. The email address of Mary Haesloop is mhaesloop@ndnu.edu. The phone number of Mary Haesloop is 650 508 3651. Any questions, needs or complaints related to this policy should be addressed to Mary Haesloop.

The Title Coordinator is trained pursuant to materials in the attached link, <https://www.nacua.org/program-events/online-courses/title-ix-coordinator-training/home>

This policy prohibits all forms of gender-based mistreatment including when the mistreatment is on the basis of pregnancy, family status, sexual orientation, gender stereotypes, gender identity (LGBT), and inclusive of sexual harassment and sexual assaults, wherever that behavior occurs if connected to the University, even if not at a University facility.

When any employee has information that reasonably could concern this policy, they are expected to immediately inform the Title IX Coordinator, even if it is not about current or recent events or current NDNU community members.

This policy can be initiated by a writing stating a complaint or by an oral statement to that effect: in either case transmit it to the Title IX Coordinator.

Here is the contact information for the US Department of Education at its Office of Civil Rights which handles federal oversight of these areas of operations of the University.

San Francisco Office
Office for Civil Rights
U.S. Department of Education
50 United Nations Plaza
Mail Box 1200, Room 1545
San Francisco, CA 94102
Telephone: 415-486-5555
FAX: 415-486-5570
TDD: 800-877-8339
Email: ocr.sanfrancisco@ed.gov

Here is the contact information for the California Department of Education offices which handles state oversight of these areas of operations of the University.

California Department of Education
1430 N Street
Sacramento, CA 95814-5901
Website: www.cde.ca.gov/re/di/cd/index.asp
Phone Numbers General: 916-319-0800

II. NOTICE OF NON-DISCRIMINATION

NDNU does not discriminate on the basis of gender. Gender-related misconduct is all forms of gender (also known as sex) based discrimination, harassment and other forms of gender-based misconduct such as sexual assault, dating violence, domestic violence, stalking and all forms misconduct on the basis of pregnancy, family status, sexual orientation, gender stereotypes, and gender identity (LGBTQ) are prohibited wherever that behavior occurs if connected to the University, even if not at a University facility.

III. TITLE IX COORDINATOR

The Title IX Coordinator oversees implementation of this policy and compliance with Title IX and California SB 493. NDNU's Title IX Coordinator is:

Mary Haesloop
Interim Director of Human Resources &
Title IX Coordinator
1500 Ralston Avenue, Belmont, CA 94002
650 508 3651 | mhaesloop@ndnu.edu

IV. DEFINITIONS

Gender-Based (also known as Sex-Based) Harassment: Conduct on the basis of gender that satisfies one or more of the following:

1. An employee conditioning educational benefits or participation on an individual's participation in unwelcome sexual conduct (i.e. quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking.

Sexual Assault: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. This includes rape, fondling, incest, and statutory rape.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence: A felony or misdemeanor crime of violence committed by:

- A current or former spouse or intimate partner of the victim;
- A person with whom the victim shares a child;
- A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction; or
- Any other person against an adult or youth victim protected from that person's acts under the domestic or family violence laws.

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

Affirmative Consent: Affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved to ensure they have the affirmative consent of the other to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Consent must be ongoing and can be revoked at any time. The existence of a dating relationship or past sexual relations between the persons involved should never by itself be assumed to be an indicator of consent. Consent is not present if an individual is incapacitated due to alcohol, drugs, sleep, or unconsciousness.

V. REPORTING GENDER-BASED MISCONDUCT

A. Reporting to the Title IX Coordinator

Any person may report gender-based misconduct, to the Title IX Coordinator in person, by mail, phone, email () or using the online reporting form at (<URL>). Reports may be made at any time, including non-business hours. The Title IX Coordinator will promptly contact the complainant to discuss supportive measures, consider their wishes regarding supportive measures, inform them of the availability of supportive measures with or without filing a formal complaint, and explain the process for filing a formal complaint. Filing a formal complaint need not be in written form.

B. Reporting to Responsible Employees

Many NDNu employees are considered “responsible employees” and they must promptly notify the Title IX Coordinator of any allegations of gender-based misconduct of which they become aware. “Responsible employees” are officers and department heads, faculty, deans, program and lab and research directors, student affairs personnel, internship or externship directors or coordinators and human resources staff, and of course the Title IX coordinator and deputy coordinator, if there is a deputy.

Responsible employees must report to the Title IX Coordinator all relevant details about the alleged sexual misconduct that were shared by the reporting party, including the names of the alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time, and specific location of the alleged incident.

C. Confidential Employee and Their Limited Reporting Obligations

Some employees are exempted from the obligation to report gender-based misconduct to the Title IX Coordinator:

- Therapists, psychologists, or other professional counselors;
- Clergy or other religious advisors;
- Physicians providing medical treatment; and
- Sexual assault and domestic violence counselors and advocates.

These confidential employees must provide the person with allegations with information on reporting options and assist them in accessing support services and resources, including supportive measures. They must also provide information to students about their ability to report to a responsible employee and how to contact the Title IX Coordinator.

Please note: If a faculty member is licensed as a social worker, therapist, psychologist, or counselor, but is acting in their capacity as a faculty member or other staff member rather than as a confidential counselor, they would still be considered a responsible employee.

The exemption for social workers, therapists, psychologists, and counselors applies only when these individuals are acting in their professional capacity and providing mental health counseling services. If they are not acting in this capacity, and instead are serving in a role such as a faculty member or instructor, they are required to report incidents of sexual harassment and sexual violence to the Title IX Coordinator.

D. Reporting to Law Enforcement

Gender-based misconduct may constitute a violation of both university policy and criminal law. NDNU encourages complainants to report to law enforcement if they believe there is a crime but it is not required. The Title IX Coordinator can assist in notifying law enforcement if the complainant chooses. Complainants may also decline to notify law enforcement.

NDNU's grievance process and the criminal justice process are separate and independent. Complainants may pursue both, either, or neither option. Law enforcement investigations do not relieve NDNU of its obligation to respond to reports of gender-based misconduct.

E. Timeframe for Reporting

There is no time limit on reporting gender-based misconduct to the Title IX Coordinator or law enforcement. Complainants are encouraged to report as soon as possible to maximize NDNU's ability to respond promptly and effectively. Delayed reporting may limit the available scope of supportive measures and hamper NDNU's ability to complete the grievance process.

If the respondent is no longer a student or employee, NDNU may not be able to impose disciplinary sanctions but will still seek to meet its Title IX obligation by providing support for the complainant and taking reasonable steps to end the misconduct, prevent its recurrence, and address its effects.

F. Amnesty

To encourage reporting, NDNU provides amnesty for student complainants and witnesses who disclose substance abuse or other minor policy violations in the course of reporting gender-based misconduct. They will not be subject to disciplinary action for such violations.

G. Privacy and Confidentiality

NDNU will protect parties' privacy by only sharing information with those who have a legitimate need to know. Confidentiality cannot be guaranteed but will be maintained to the extent possible. NDNU will keep confidential the identity of any individual who has made a report or complaint of gender-based misconduct, including any complainant, any individual reported to be

the perpetrator, any respondent, and any witness, but confidentiality does not extend to what is necessary to carry out this policy or the law.

If a complainant requests that their name not be disclosed or that no investigation be conducted, the Title IX Coordinator will weigh that request against NDNU's obligation to provide a safe environment for other people at the University. The Title IX Coordinator will consider various factors in making this determination:

- The seriousness of the alleged conduct;
- Whether there have been other complaints about the same respondent;
- The respondent's rights to receive information about the allegations under FERPA;
- Whether the alleged incident poses a risk of harm to others; and
- Whether NDNU possesses other means to obtain relevant evidence.

If NDNU cannot honor a request for confidentiality, the Title IX Coordinator will inform the complainant prior to starting an investigation and will only share information with those necessary to conduct the investigation and resolve the matter. NDNU will still provide supportive measures as appropriate.

H. Formal Complaints

A formal complaint is a document or a clear and unequivocal oral statement presented by a complainant to the Title IX Coordinator or signed by the Title IX Coordinator alleging gender-based misconduct against a respondent and requesting that NDNU investigate the allegations. Formal complaints may be filed with the Title IX Coordinator in person, by mail, email, or using the online reporting form. The Title IX Coordinator will confirm in writing to the Complainant a clear and unequivocal oral statement to present a formal complaint.

If a complainant chooses not to file a formal complaint, the Title IX Coordinator will weigh that request against the obligation to provide a safe environment for all as described in Section V.G. above.

VI. GRIEVANCE PROCESS FOLLOWING FORMAL COMPLAINT

NDNU's grievance process treats complainants and respondents equitably, provides an objective evaluation of all relevant evidence, and includes the procedural protections outlined below. Upon receiving a formal complaint, NDNU will provide written notice to known parties and investigate the allegations by gathering evidence and interviewing parties and witnesses. NDNU bears the burden of proof and of gathering evidence.

A. Notice to Parties

Upon receiving a formal complaint, NDNU will provide written notice to known parties including:

- Notice of the grievance process, including any informal resolution process;
- Notice of the allegations, including sufficient details (identity of parties involved, conduct alleged, date and location of conduct) and time to prepare a response;
- Statement that the respondent is not presumed to be responsible and that responsibility is determined at the conclusion of the grievance process;
- Notice that parties may have an advisor of choice who may be an attorney;
- Notice of provisions in NDNU's code of conduct prohibiting knowingly making false statements or submitting false information; and
- Additional notice of any new allegations that arise during the investigation.

B. Dismissal of Complaints

If the allegations, if proven, would not constitute gender-based misconduct, NDNU must dismiss the formal complaint as a violation of this policy. The conduct may still be addressed under another policy or code of conduct. NDNU may dismiss a complaint if:

- Complainant withdraws the complaint in writing;
- Respondent is no longer enrolled at or employed by NDNU; or
- Circumstances prevent NDNU from gathering sufficient evidence to reach a determination.

NDNU will promptly and simultaneously send written notice of any dismissal to the parties, including the reason for dismissal. Parties can appeal a dismissal as outlined in Section VI.H. below.

C. Consolidation

NDNU may consolidate formal complaints of allegations 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 arise out of the same facts or circumstances.

D. Advisors

Parties may have an advisor present at any grievance proceeding, including the opportunity to be accompanied by an advisor of choice to any related meeting or proceeding. NDNU may establish restrictions on advisors' participation in proceedings as long as the restrictions apply equally to both parties.

E. Informal Resolution

NDNU may offer informal resolution options (mediation, restorative justice, etc.) if a formal complaint is filed, as long as both parties give voluntary, informed written consent. Any party may withdraw from informal resolution at any time prior to agreeing to a resolution. This option is not available and cannot be used to resolve sexual assault cases.

F. Investigation

If not dismissed or resolved through informal resolution, NDNU will investigate the allegations in the formal complaint. NDNU bears the burden of gathering evidence sufficient to reach a determination. The investigator will interview parties, gather relevant evidence, provide parties an opportunity to present witnesses and evidence, and create an investigative report that fairly summarizes the evidence and when appropriate, reaches fact and violation conclusions and/or recommended remedies. "When appropriate" includes when NDNU does not plan to hold a live hearing.

Prior to completing the investigative report, NDNU will send to each party and advisor the evidence for inspection and review, and the parties will have 10 days to submit a written response, which the investigator will consider prior to completion of the report. NDNU will make the evidence available at any hearing for reference by the parties.

After finalizing the report, NDNU will send it to each party and advisor at least 10 days prior to a hearing for their review and written response.

When there is no live hearing, the Provost is the decision-maker unless the Provost has a material conflict of interest or bias, in which case the President will appoint another person. When there is a live hearing, the hearing officer is the decision-maker. The hearing officer is appointed by the Provost.

G. Live Hearings

NDNU has the discretion to require a live hearing as part of the grievance process if it deems doing so is required or permitted by California law or by other NDNU policies or is in the best interest at arriving at a just outcome such as when witness credibility is particularly material and disputed. The hearing may be conducted with parties in the same location or, at NDNU's direction, virtually with technology enabling the parties to see and hear each other simultaneously. The hearing officer will be appointed by the Provost from among persons who have no material conflict of interest or bias and can include a third party quasi-judicial professional.

Only relevant cross-examination and other questions may be asked of a party or witness. The decision-maker will determine relevance before a party or witness answers each question. If they

decide to exclude a question, they must explain the decision. Questions about a complainant's prior sexual history are generally not relevant.

If a party or a material witness does not submit to cross-examination at the hearing, the decision-maker cannot rely on any statement of that party or witness in reaching a determination. However, the decision-maker cannot draw an inference about responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.

NDNU will create an audio or audiovisual recording or transcript of any live hearing and make it available to parties for inspection and review.

H. Determination

The decision-maker will issue a written determination of responsibility based on the preponderance of the evidence standard (more likely than not).

The written determination will include:

- Identification of the allegations;
- Description of procedural steps taken (notifications, interviews, site visits, methods of evidence gathering, hearings);
- Findings of fact;
- Application of NDNU policy to the facts;
- A rationale for the result of each allegation and determination of responsibility;
- Disciplinary sanctions imposed on respondent;
- Whether remedies will be provided to complainant; and
- Appeal procedures and bases.

The determination will be provided to the parties simultaneously. It becomes final on the date the parties receive the written determination of the appeal, if an appeal is filed, or on the date on which an appeal would no longer be timely.

I. Appeals

Either party may appeal from a determination or dismissal on the following bases:

- Procedural irregularity that affected the outcome;
- New evidence not reasonably available at the time of determination that could affect the outcome;
- Conflict of interest or bias by the Title IX Coordinator, investigator, or decision-maker that affected the outcome; or
- Any other bases offered equally to both parties.

Appeals must be submitted in writing to the Provost within 5 (five) business days of receiving the written determination or dismissal. If an appeal is filed, NDNU will notify the other party and ensure that the appeal officer is not the same person involved in the grievance process previously. Both parties will have a reasonable, equal opportunity to submit a written statement supporting or challenging the outcome.

The appeal officer will issue a written decision describing the result of the appeal and rationale, and provide the decision simultaneously to both parties.

J. Timeframe

NDNU aims to complete the grievance process within 60-90 business days, excluding appeals. Extensions may be granted for good cause with written notice to the parties.

K. Sanctions and Remedies

Sanctions for respondents determined to have violated this policy may include warning, probation, suspension, expulsion, transcript notification, termination of employment, or restrictions on access to campus, programs or courses.

Remedies for complainants may include counseling, extensions of deadlines, modifications of work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas, and other measures designed to help the complainant succeed in their education program.

VII. PROVISIONS FOR STUDENTS IN CALIFORNIA

In addition to the above policy provisions, NDNU provides the following rights to student complainants in California in accordance with the requirements of SB 493:

A. Notification of Rights

The Title IX Coordinator will notify student complainants of their rights and options under this policy, including:

- The importance of preserving evidence;
- Their right to report to law enforcement;
- Available confidential resources;
- Counseling and support services on and off campus;
- Supportive measures available with or without filing a formal complaint;
- The grievance process and potential outcomes, sanctions and remedies; and
- Their rights throughout the process, including the right:

- To be treated with respect by NDNU officials;
- To take advantage of campus support resources;
- To experience a safe living, educational, and work environment;
- To have an advisor of choice, including an attorney (at their own expense), present at any meeting or hearing;
- To refuse to have an allegation resolved through informal resolution procedures;
- To receive amnesty for minor student conduct violations related to the incident;
- To be free from retaliation for reporting violations of this policy;
- To have complaints heard in accordance with established procedures;
- To fully participate in the process whether complainant or respondent; and
- To be informed in writing of the outcome and available appeal procedures.

B. Confidential Resources

Student complainants will be provided with contact information for confidential resources including counseling, mental health support, and sexual assault resource centers on and off campus.

C. Supportive Measures

Student complainants will be provided with information on how to request supportive measures and resources, such as changes to academic, living, transportation and working situations, and protective measures such as no contact orders. Such measures will be available regardless of whether the complainant chooses to report to law enforcement or file a formal complaint.