

## TEMPORARY SUPPLEMENT TO SEXUAL MISCONDUCT POLICY

**Overview:** This temporary policy supplement is an extension of the existing Title IX Sexual Misconduct Policy. It implements the DOE August 2020 Rules. If the Title IX Coordinator considers a report to be of **a very serious** asserted violation of the NDNU Sexual Misconduct Policy, use this temporary supplement along with the Policy. To the extent there is a conflict between the NDNU Sexual Misconduct Policy and this temporary supplement, this temporary supplement will be the policy that applies with respect to the process for live hearings.

**Very serious** reports are those that upon completion of the intake, the Title IX Coordinator believes that if true, the case reasonably may lead to sanctions of expulsion, suspension of matriculation or of co-curricular activities and/or a permanent adverse finding of sexual misconduct on record with the University.

**Notice:** Very serious reports require more detailed written notice. The Title IX Coordinator will provide written notice to the parties who are known, including a statement of the allegations and details known at the time, such as names of those involved, the alleged conduct, the date, time and location of the incident; a statement of the policies and standard of evidence that will apply; a statement that the Respondent is presumed not responsible for the alleged conduct until a final determination is made by the appointed fact-finder(s); and a reminder that both parties will have the opportunity to review the investigative report and evidence prior to the hearing and an opportunity to bring an advisor of their choice to the hearing. Both parties are sent a copy of the NDNU Sexual Misconduct Policy and this supplement.

**Live Hearing:** Very serious reports require a live hearing if the report is not resolved by an agreement that is approved by the Title IX Coordinator, unless both the Complainant and the Respondent do not want a live hearing.

The hearing will take place in real-time, however, participants may be located in separate rooms using audio and/or video technology that allows simultaneous viewing and listening. The hearing fact-finder(s), whether the University's Sexual Misconduct Board or an external fact-finder(s) appointed by the Title IX Coordinator, shall decide who is allowed at the hearing and the order of the proceedings. The University may retain an external person to be the neutral fact-finder.

The live hearing is held by the fact-finder(s) who is appointed by the Title IX Coordinator and who is not otherwise involved in the case. The person will be appropriately trained. The fact-finder(s) will not have a conflict of interest or any bias for one side or the other.

All parties will receive 20 days or more notice of the date, time and location for the hearing, and a reminder of the equal opportunity for bringing an advisor/support person to the hearing.

At least ten (10) days before the hearing takes place, both the Complainant and the Respondent will have equal opportunity to review the investigative file subject to any parameters set by the Title IX Coordinator. This information will also be available at the hearing.

Each party's advisor will be permitted an opportunity to ask the other party and any witness who testifies, relevant questions and follow-up questions, including those challenging credibility, but only upon the advance approval by the fact-finder(s), and subject to their guidelines, if any. Direct questioning of any witness by a party is not permitted. If a party does not have an advisor, they may inform the Title IX Coordinator in advance of the hearing, who will determine how to proceed. The fact-finder(s) will decide questions of relevance at the hearing.

Complainants and Respondents will be treated equitably. All relevant evidence at the hearing and in the hearing file will be objectively evaluated, including both inculpatory and exculpatory evidence. A determination will not be based on a party's status as a Complainant, a Respondent, or a witness, or any preconceived notions or biases.

Within ten (10) business days of the live hearing, with extension as permitted by the Title IX Coordinator, the fact-finder(s) will provide a written determination to the Title IX Coordinator of whether or not the Respondent is found responsible under this Policy, and may also include a recommendation for sanctions or remedies.

The Title IX Coordinator will thereafter send the parties (simultaneously) a written Outcome Letter as stated in the NDNU Sexual Misconduct Policy. The range of possible disciplinary sanctions or remedies that may follow a determination of responsibility are stated in the NDNU Sexual Misconduct Policy.

**Records:** An audio or audiovisual recording or transcript of the live hearing will be created. The Title IX Coordinator will receive and retain records of the case including the interim and the supportive measures, if any. If no such measures were provided, the University will document the reasons why. The Office of the Title IX Coordinator will also maintain materials used to train any staff of the University who are appointed to serve as investigator(s), fact-finder(s) or in any other role related to this Policy. Requests for inspection of such records may be directed to the University's designated Title IX Coordinator.