

General Policy – Sexual Misconduct

Purpose:

To establish Bismarck State College’s policy prohibiting sex/gender-based discrimination, sexual misconduct, relationship violence, and retaliation related to reports of such conduct. These procedures apply to complaints alleging all forms of sex/gender-based discrimination against employees, students, and third parties. These apply to all BSC programs and activities.

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.

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.

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

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.

Procedure:

Definitions:

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

- **Sexual Misconduct Adjudicator.** The decision maker responsible for conducting a sexual misconduct hearing while treating all parties with respect and empathy, while ensuring decorum and professionalism are maintained.
- **Coercion.** Unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- **Complainant.** An individual who is alleged to be the victim of conduct which could, after investigation, constitute sexual misconduct.
- **Consent.** Consent is a clear, voluntary, mutual, affirmative verbal and physical agreement to engage in sexual activity;
 - Someone who is incapacitated cannot consent;
 - Incapacitation can be due to the use of drugs or alcohol, when a person is asleep or unconscious, or because of an intellectual or other disability that prevents the individual from having the capacity to give consent
 - Past consent does not imply future consent;
 - Silence, passivity, or an absence of resistance does not imply consent;
 - Consent to engage in sexual activity with one person does not imply consent to engage in sexual consent with another;
 - Consent may not be inferred from a current or previous dating or sexual relationship;
 - Consent can be withdrawn at any time; and
 - Coercion, force, or threat of either invalidates consent.

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

“Age of Consent” – North Dakota –

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

The “age of consent” is 18 years old in North Dakota; A person under the age of 15 cannot legally consent to sexual activity under any circumstances; A person between the ages of 15 – 17 is legally able to consent to sexual activity if the partner is less than three years older. For example, a 16-year-old can legally consent to engage in sexual activity with a partner who is 18 years old, but not a partner who is 19 years old;

- **Dating Violence.** Violence committed by the respondent:
 1. Who is or has been in a social relationship of a romantic or intimate nature with the complainant; and
 2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship
 - iii. The frequency of interactions between the complainant and respondent.
- **Deliberate Indifference.** When an institution’s response to sexual misconduct is clearly unreasonable in light of the information known to the institution at the time.
- **Domestic Violence.** Violence committed by the respondent, who is:
 1. a current or former spouse or intimate partner of the complainant;
 2. a person with whom the complainant shares a child in common;
 3. cohabiting with or has cohabited with the victim as a spouse or intimate partner;
 4. similarly situated to a spouse of the complainant; or
 5. any person against whose acts the complainant is protected by N.D.C.C. ch. 14-07.1.
- **Educational programs or activities.** Includes locations, events, or circumstances over which BSC exercises substantial control over both the respondent and the context in which the sexual misconduct occurs, as well as in any building owned or controlled by a student organization that is officially recognized by BSC.
- **Exculpatory Evidence.** Evidence that shows a person’s innocence or clears from guilt or blame.
- **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

- **Formal Complaint.** A document filed by a complainant (which either contains the complainant’s signature or indicates that the complainant is the one filing the complaint) or signed by the Coordinator alleging sexual misconduct against a respondent, in which the complainant requests that the institution investigate.
- **Grievance process.** The process designed to provide prompt and equitable methods of investigation and resolution to concerns regarding sexual misconduct, remedy any harm, and prevent its recurrence.
- **Incapacitation.** A state in which an individual cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
- **Incest.** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Inculpatory Evidence.** Evidence that shows a person's involvement in an act, or evidence that can establish guilt.
- **Intimidation.** Implied threats or acts that cause an unreasonable fear of harm in another.
- **Mandated Reporter.** BSC has designated all employees as mandated reporters excluding those serving in a mental health counseling capacity. A mandated reporter is required to report sexual misconduct to the Sexual Misconduct Coordinator, however not every mandated reporter is a Responsible Employee.
- **Non Consensual Sexual Contact / Non-Consensual Sexual Intercourse.**
 - a. any intentional sexual touching,
 - b. however slight,
 - c. with any object,
 - d. by a person upon a person,
 - e. that is without consent and/or by force.

Intentional sexual touching examples include: intentional contact with the breasts, buttock, mouth, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.

Non-Consensual Sexual Intercourse includes vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

- **Preponderance of the evidence.** An evidentiary standard meaning that it is more likely than not that the sexual misconduct occurred. BSC applies the same standard of evidence for formal complaints against students and employees.
- **Rape.** Penetration, no matter how slight, of the vagina or anus of the complainant with any body part or object by the respondent, or oral penetration of the complainant by a sex organ of the respondent, without the consent of the complainant.
- **Remedies.** Remedies offered after the conclusion of the grievance process on a finding of responsibility must be designed to restore or preserve equal access to the educational programs or activities. Such remedies may include the same individualized services described as supportive measures; however, Remedies need not be non-disciplinary or non-punitive, and need not avoid burdening the respondent.
- **Responsible employees.**
 1. Those with authority to address and remedy sex and gender-based discrimination and misconduct;
 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.
- **Respondent.** An individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct.
- **Retaliation.**
 - a. BSC or any person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by sexual misconduct or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.
 - b. Intimidation, threats, coercion, or discrimination against an individual for reporting misconduct, participating or choosing not to participate in an investigation or hearing 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 sexual misconduct.

- **Sanctions.** A sanction is a consequence placed upon a Respondent for a violation(s) of BSC policies. Sanctions help define the individual's relationship with BSC in the context of current and potential future behavior, including a notice that further violations may lead to more severe behavioral sanctions.

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

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

- **Sexual Misconduct Appeal Officer.** The decision maker responsible for reviewing and deciding a sexual misconduct appeal.

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

- **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.

- Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:
 1. An employee of BSC conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to BSC's educational program or activities; or
- **Stalking.** According to North Dakota Century Code (12.1–17-07.1.)
 1. To engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person and which serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment; or
 2. The unauthorized tracking of the person's movements or location through the use of a global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and which serves no legitimate purpose.
- **Statutory Rape.** Sexual intercourse with a person who is under the statutory age of consent.
- **Supportive Measures.** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the BSC's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or BSC's educational environment, or deter sexual misconduct.

Grievance Process:

Reporting:

Any person may report sex discrimination, including sexual misconduct (whether or not the person making the report is the victim of the alleged sexual misconduct or sex discrimination). Such report may be made in person, by mail, by telephone, or by email, using the Sexual Misconduct Coordinator's contact information or any other means which results in the Sexual Misconduct Coordinator receiving the report, regardless of the time of day.

BSC does not limit the timeframe for reporting; however, depending on the status of the relationship between BSC and the respondent, the College may not have the authority to respond or impose actions

(if a student has left or graduated or an employee is no longer working for BSC). In cases where BSC no longer has authority over a respondent, BSC will seek to meet its sexual misconduct obligation by evaluating the reported conduct, assisting the Complainant in identifying external reporting options and potentially taking appropriate action to address the reported conduct. In all cases, regardless of elapsed time and unavailability of witnesses/evidence, BSC will provide the supportive measures that are appropriate.

Formal Complaint:

A document filed by a complainant or reporting party (which either contains the complainant's or reporting party's signature or indicates that the complainant is the one filing the complaint) or signed by the Sexual Misconduct Coordinator alleging sexual misconduct against a respondent and requesting that the institution investigate.

Anonymous Reports:

Anonymous reports will be accepted by the College. BSC's ability to investigate and resolve anonymous reports without actual knowledge will be limited if the information contained in the anonymous reports cannot be verified by independent facts.

False Reports:

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

A report can be filed with the Sexual Misconduct Coordinator:

Kaylyn Bondy
Vice President for Student Affairs/ Sexual Misconduct Coordinator
National Energy Center of Excellence
Room 331C
kaylyn.bondy@bismarckstate.edu
701.224.5638

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 complainant and/or recipient of the behavior; however, it is important that the complainant 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, including North Dakota Century Code § 44-04-18.28

Notice of sexual misconduct or allegations of sexual misconduct to an institution's Sexual Misconduct Coordinator or any institution official with authority to institute corrective measures on BSC's behalf in a BSC education program or activity, requires BSC to respond promptly in a manner that is not deliberately indifferent. BSC is deliberately indifferent only if BSC's response to sexual misconduct is clearly unreasonable in light of the known circumstances.

Once BSC has a report of sexual misconduct, the Sexual Misconduct Coordinator or designee must contact the complainant and:

- a. Provide a copy of the BSC Sexual Misconduct policy.
 - b. Discuss the availability of supportive measures;
 - c. Consider the complainant's wishes regarding supportive measures;
 - d. Inform the complainant that supportive measures may be available with or without filing a formal complaint;
 - e. Explain the reporting process.
 - f. Explain the process of making a complaint with law enforcement.
1. **Timing.** Process will be carried out using reasonably prompt time frames, including time frames for filing and resolving appeals, and for informal resolution processes if offered. Temporary delays or extensions of the time frames must be offered for good cause, with written notice to the parties setting forth the cause for the action. Typically, investigation/resolution of the grievance 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, the Sexual Misconduct Coordinator will notify all parties citing good cause.
 2. **Good Cause.** Good cause is defined as a reason to delay or extend reporting or investigation time frame which 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.

Confidentiality:

BSC will maintain confidentiality with respect to supportive measures unless disclosure is required to implement the supportive measures. The Sexual Misconduct Coordinator shall coordinate the effective implementation of supportive measures. Supportive measures may not restrict any party's rights under the United States Constitution.

BSC may require parties and advisors to refrain from disseminating the evidence by requiring parties and advisors to sign a non-disclosure agreement that permits review and use of the evidence only for the purpose of the grievance process.

Permissible Supportive Measures. BSC will coordinate supportive measures with respect to the parties' situations. Questions regarding or requests for supportive measures can be made to BSC's Sexual Misconduct Coordinator. Violation of these supportive measures may be additional policy violations or as retaliation for the ongoing investigation of sexual harassment. BSC will treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. Some possible supportive measures include, but are not limited to:

- a. Counseling;
- b. Extensions of deadlines or other course-related adjustments
- c. Modifications of work or class schedules;
- d. Campus escort services;
- e. Mutual restrictions on contact between the parties;
- f. Changes in on-campus work or housing locations;
- g. Leaves of absence; and
- h. Increased security or monitoring of certain areas of campus; and
- i. Law enforcement resource assistance.

Emergency Removal. BSC may remove a respondent from the educational programs or activities on an emergency basis, provided that the institution determines, based on an individualized safety and risk analysis, which will be conducted by Sexual Misconduct Coordinator, that an immediate threat to the physical health or safety of any individual arising from the allegations of sexual misconduct justifies removal.

- During the initial report or at any time during the investigation, the Sexual Misconduct Coordinator may convene a Sexual Misconduct Adjudicator for review of the initial evidence for the determination of an emergency removal.
- BSC will provide the respondent with notice and the opportunity to appeal the emergency removal decision immediately following the removal.
- The respondent must submit their appeal concerning the Emergency Removal to the Sexual Misconduct Coordinator within ten (10) calendar days from the date of from the Emergency Removal notice. The Sexual Misconduct Coordinator will submit the Emergency Removal Appeal to an Appeal Officer.
- Unless successfully appealed, the emergency removal will remain in place until sanctions are determined for the case.

Administrative Leave. BSC may place a non-student employee respondent on administrative leave during the investigation.

- During the initial report or at any time during the investigation, the Sexual Misconduct Coordinator may convene a Sexual Misconduct Adjudicator for review of the initial evidence for the determination of Administrative Leave.

- BSC will provide the respondent with notice and the opportunity to appeal the Administrative Leave decision immediately following the decision.
- The respondent must submit their appeal concerning the Administrative Leave to the Sexual Misconduct Coordinator within ten (10) calendar days from the date of from the Administrative Leave notice. The Sexual Misconduct Coordinator will submit the Administrative Leave Appeal to a Sexual Misconduct Appeal Officer.
- Unless successfully appealed, the Administrative Leave will remain in place until sanctions are determined for the case.

Dismissal:

In certain circumstances, BSC may dismiss a complaint:

- Conduct would not constitute sexual misconduct;
- The complainant makes written notice to the Sexual Misconduct Coordinator that they would like to withdraw the formal complaint or any allegations;
- Specific circumstances prevent BSC from gathering evidence sufficient to reach a determination.

During the preliminary review of the report or during the investigation process, if the alleged conduct does not meet the definition of sexual misconduct, the report be dismissed by the Sexual Misconduct Coordinator. The parties have the right to appeal the dismissal. Either party is able to submit an appeal in writing regarding the dismissal within ten (10) calendar days from the date of dismissal to the Sexual Misconduct Coordinator.

Informal/Formal Resolution Process:

BSC offers both informal and formal resolution of sexual misconduct reports involving BSC students, faculty or staff. An informal or formal resolution process may not be offered unless a formal complaint is filed. Independent of the path chosen by the complainant, BSC will conduct an impartial, fair, and prompt investigation into the allegations, and ensure that actions will be taken to prevent similar misconduct in the future. All parties have a responsibility to provide truthful information during the process. Parties will be notified in writing indicating the reason(s) for good cause by the Sexual Misconduct Coordinator. Investigation/resolution (whether it is an informal or formal resolution) of the allegations shall include the following:

1. The complainant and the respondent have equal opportunities to present relevant witnesses and other evidence;
2. Providing both sides with similar and timely access to any information that will be used during the process;
3. Equal opportunity to have an Advisor, and equal opportunity for advisors to participate;
4. The right of the complainant and the respondent to be informed of the outcome of the investigation/resolution, and the right of either party to appeal; and

5. The right of the complainant 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 evidence must show that it is more likely than not that the sexual misconduct occurred.

Notice of Alleged Violation: For both an informal and formal resolution process, the respondent will be contacted with the Notice of Alleged Violation through BSC email or certified mail. The notice of alleged violation will include, when known:

- Nature of the alleged violation;
- Date, time, and place of the alleged violation;
- Source of information;
- Maximum sanction applicable if found in violation of the Sexual Misconduct Policy;
- The right to choose an advisor of choice or have one appointed by BSC;
- Notice that a decision may be made in their absence based on the information currently available;
- The complainant’s desire for an informal or formal resolution.

Informal Resolution:

The informal process provides the complainant 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 informal resolution process is entirely voluntary and the complainant or respondent may end the informal resolution process at any time and enter the formal resolution process. The complainant and respondent should never attempt to resolve the complaint on their own or directly with the respondent.

Except in cases between a student and a BSC employee which always require a formal resolution, the complainant may choose to pursue informal resolution of their complaint.

To proceed with the informal resolution process, BSC must obtain the parties’ voluntary, written consent to the informal resolution process. BSC must provide the parties with written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The Sexual Misconduct Coordinator shall assign a Sexual Misconduct Adjudicator to oversee the informal resolution process.

A Sexual Misconduct Adjudicator may propose a sanction warranted by the information gathered during the informal resolution and 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. The Sexual Misconduct Adjudicator will prepare a document for the parties to sign indicating their agreement with the proposed resolution. In cases where the parties are not in agreement with the informal resolution, they would then enter the formal process.

Formal Resolution:

Investigation: Investigation means to gather the facts, details and circumstances associated with a complaint. The investigation may include interviewing witnesses, review of documents or other steps to assist the Investigator to gather facts regarding the allegation(s).

Formal written notice of investigation to complainant and respondent.

- Written notice shall be given to known parties that includes:
- Notice of the grievance process, including any informal resolution process.
- Notice of the allegations of sexual misconduct , including; 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 misconduct, and the date and location of the alleged conduct.
- BSC conducts the grievance process under the presumption that the respondent is not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- Both parties may have an advisor of their choice, who may be an attorney, and may inspect and review evidence. If a party does not have an advisor of their choice, BSC will appoint an advisor to assist with cross-examination for the live hearing free of charge.
- Notice that knowingly submitting a false report of sexual misconduct is prohibited. Anyone knowingly submitting a false report is subject to disciplinary action.
- If during the course of the grievance process, additional allegations are added to the investigation which were not included in the initial notice, BSC shall provide written notice of the additional allegations to the parties.
- BSC will send the parties their Notice of Investigation at least ten (10) calendar days prior to a scheduled meeting with an investigator.

Investigation:

- BSC is required to investigate every filed formal complaint unless the complaint is subject to dismissal or if the parties mutually agree to an informal resolution process.
- The burden of proof and the gathering of evidence is BSC's responsibility, not the responsibility of either party.

- At all times BSC shall observe a presumption the respondent is not responsible for the alleged conduct until and unless there is a determination of responsibility at the conclusion of the grievance process.
- BSC shall 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.
- BSC will provide both parties equal opportunity to present facts and expert witnesses and other inculpatory or exculpatory evidence.
- BSC will not restrict the ability of parties to discuss the allegation or gather evidence (e.g., no “gag orders”).
- BSC will provide 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.
- BSC will perform an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
- BSC will provide both parties and their advisors evidence directly related to the allegations, in electronic format or hard copy, with at least ten (10) days prior to the preparation of the investigative report for the parties to inspect, review, and respond to the evidence.
- BSC will send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least ten (10) days prior to the hearing for the parties to respond.
- BSC has the discretion to consolidate formal complaints where the allegations arise out of the same facts.

Advisors:

- At the beginning of the grievance process, complainants and respondents may select the advisor of their choice to assist with the grievance proceeding, as well as during the live hearing.
- If a party does not choose an advisor, BSC shall provide the party with an advisor free of charge during the initial contact with the Sexual Misconduct Coordinator. At minimum, BSC shall provide an advisor to conduct the party’s cross-examination at the hearing. If needed, the Sexual Misconduct Coordinator will assist parties in choosing a BSC advisor. However, nothing in this policy or the Sexual Misconduct regulations should be read to prohibit BSC from providing an advisor for the full duration of the grievance process, provided that the parties are treated equally as to timing insofar as BSC appoints advisors for both parties.

- BSC is not required to provide attorneys to parties to act as advisors, but appointed advisors shall be provided with access to appropriate training to ensure an understanding of the grievance process, though the same training provided to Sexual Misconduct Coordinators, decision-makers, and investigators is not required.
- BSC is not required to attempt to create equality of advisors between the parties, particularly where one party selects an outside advisor, but should seek equality of advisors where BSC provides advisors to both parties.

Hearings:

BSC will provide the parties written notification of the hearing at least ten (10) calendar days prior to the hearing date. The parties may mutually consent to a shorter notice period.

- All formal complaints are required to have a virtual live hearing.
- The hearing will be presided over by a trained Hearing Officer that will not be the investigator or Sexual Misconduct Coordinator.
- The hearing will provide each party with opportunity for each party's advisor to conduct cross examination of the other party and witnesses.
 - i. The cross examination **will not** be conducted personally by a party.
 - ii. The cross examination will be conducted directly, orally and in real time by the party's advisor.
 - iii. The advisors may ask the other party or witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Parties are required to submit their list of witnesses in writing to the Sexual Misconduct Adjudicator three (3) calendar days before the hearing.
- Parties and witness must be able to see and hear each other during the virtual live hearing.
- Prior to a party or witness answering a cross examination or other question the Sexual Misconduct Adjudicator will first determine whether the question is relevant and explain to the party's advisor asking the cross examination question any decision to exclude a question as not relevant.
 - i. In order to expediate the hearing, the Sexual Misconduct Adjudicator may request the submission of questions to be asked live during the hearing in advance to determine relevancy.
 - ii. The prior submission of questions does not limit either party's advisor to asking additional questions that were not included in the submitted question.
- If a party does not have an advisor present at the live hearing BSC will provide, without fee or charge an advisor of BSC's choice who may be, but is not required to be an attorney to conduct cross examination on behalf of that party.

- If a party or witness does not submit to cross-examination at the live hearing, the hearing panel/officiant will not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the hearing panel/ officiant cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- Hearing Officer 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.
- The Hearing Officer may call the Investigator as first witness.
- BSC will record the hearing by audiovisual means. BSC will create an audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.
- BSC provides rape shield protection for complainants, deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.

Determination Regarding Responsibility:

- BSC uses the preponderance of the evidence as the standard for determining responsibility in all grievances.
- BSC will perform an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
- The Sexual Misconduct Adjudicator will issue a written determination regarding responsibility with the following:
 - i. Identification of the allegations potentially constituting sexual misconduct;
 - ii. 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;
 - iii. Findings of fact supporting the determination;
 - iv. 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
 - v. The procedures, timelines, and permissible bases for the complainant and respondent to appeal findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.

- The written determination will be sent simultaneously to both parties. Information on how to file an appeal will be included with the determination.
- 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.

Remedies:

Remedies offered after the conclusion of the grievance process on a finding of responsibility must be designed to restore or preserve equal access to the educational programs or activities. Such remedies may include the same individualized services described as supportive measures; however, Remedies need not be non-disciplinary or non-punitive, and need not avoid burdening the respondent.

Sanctions:

A sanction is a consequence placed upon a Respondent for a violation(s) of BSC policies. Sanctions help define the individual's relationship with BSC in the context of current and potential future behavior, including a notice that further violations may lead to more severe behavioral 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 and severity of the violation(s);
2. Prior violations and disciplinary history;
3. The Respondent's motive or purpose for engaging in the behavior;
4. Sanctions which have been imposed in similar cases in the past;
5. The developmental and educational impact on the Complainant and Respondent;
6. The level of accountability taken and cooperation by the Respondent;
7. The level of risk and/or harm of the Respondent to the Complainant and the campus community;
8. Any other aggravating, mitigating, or relevant factors surrounding the violation.

Individuals who are found in violation of BSC policy may be subject to one or more of the sanctions below.

Student Sanctions:-Discretionary Sanctions – Work assignments, service to the College, educational projects, alcohol and drug testing and/or screening, participation in a specific program.

- **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. Students expelled from BSC through this process will be administratively withdrawn from all classes and will be subject to SBHE Policy 830.2 and NDUS Procedure 830.0 Refunds.
- **Eviction** – The formal removal of a student from College housing.
- **Fine** – The imposition of a monetary penalty.
- **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.
- **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.
- **Restitution** – Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.
- **Revocation of Admissions and/or Degree** – Admission to or a degree awarded from the College may be revoked for serious violations committed by a student prior to graduation.
- **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.
- **Suspension from Class** – The immediate revocation of the privilege of attending a class, using a laboratory, or participating in a shop.
- **Warning** – A verbal or written notice to the student that the student is violating or has violated College regulations.
- **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.

Employee Sanctions:

- Warning (Written or Verbal)
- Performance Improvement Plan
- Required Counseling
- Required Training or Education
- Demotion
- Reduction in Pay

- Loss of intended pay increase
- Suspension with pay
- Suspension without pay
- Termination

Appeal Process

Appeals of the outcome may be made by either the complainant or the respondent. If a respondent is found responsible for violating College policy, the complainant or the respondent may make one appeal. Appeals must be submitted in writing to the Sexual Misconduct Coordinator within ten (10) calendar days of the Adjudicator's Notice of Responsibility. However, in any case involving a student suspension and expulsion, an appeal from either party can be made in writing within one (1) year following the date of the sanction and/ or decision.

The written appeal must contain the reason for the appeal. Appeals must meet one of the following criteria:

- i. BSC's failure to follow its own process and procedures 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 Sexual Misconduct 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.
- iv. The severity of the sanction was not consistent with the severity of the offense.
 - BSC will notify the non-appealing party in writing when an appeal is filed and equally implement appeal procedures for both parties.
 - BSC will ensure that the Sexual Misconduct Appeal Officer was not the Sexual Misconduct Adjudicator that reached the determination regarding responsibility or dismissal, the investigator, or the Sexual Misconduct Coordinator.
 - BSC will give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
 - The Sexual Misconduct Appeal Officer will issue a written decision describing the result of the appeal and the rationale for the result; and provide the written decision simultaneously to both parties.
 - A complainant may appeal on the ground that the remedies are not designed to restore or preserve the complainant's access to BSC's education program or activity.

Policy Conflicts:

Any conflicts between this Policy and any existing BSC policy or procedure, student or employee handbook shall be resolved in favor of this Policy.

Shared Services and Cooperation between Institutions:

BSC may work collaboratively with other NDUS institutions, the NDUS System Office, and other resources and seek uniformity in processes and procedures to the greatest extent possible. BSC may enter into agreements with other NDUS institutions or the NDUS System Office to arrange for the availability of trained investigators, advisors, hearing officers, sexual misconduct appeal officers, and individuals to facilitate a grievance process. Such agreements must include arrangements to share the costs of utilizing shared personnel, potential issues posed by FERPA and the confidentiality requirements of this Policy.

Prevention:

BSC fosters a safe living, learning, and working environment for all members of the campus community. BSC develops programming that addresses all aspects regarding sexual harassment for the purpose of prevention and awareness. Various departments including, but not limited to, BSC Safety and Security, BSC Student & Residence Life, The Mystic Advising & Counseling Center provide input and resources for such programming. For additional information about campus programming concerning sexual harassment, contact BSC's Sexual Misconduct Coordinator.

First year students are required to participate in a Title IX and VAWA education program that combines sexual misconduct 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 misconduct awareness, and intimate partner violence

BSC Safety & Security and BSC Student & Residence Life regularly monitor the campus grounds and facilities for the purpose of sexual misconduct and crime prevention. Campus grounds and facilities are modified when considered to be a possible threat. A representative from BSC Administration, BSC Campus Safety & Security, BSC Student & Residence Life and the BSC Student Government Association (SGA) tour campus on an annual basis to determine any safety concerns. They assess campus signs, lighting, grounds, and locking procedures. For further safety information, contact BSC's Campus Safety & Security Department bsc.safety@bimarckstate.edu.

Additionally, BSC publishes and disseminates annual crime statistics including incidents of sexual misconduct as required by the Clery Act. The annual Clery Act Report is available online at:

<https://bismarckstate.edu/students/resources/HealthandSafety/CampusSafety/CampusSecurity/>.

Intervention:

BSC 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. All reports/notices of sexual misconduct are handled in a manner designed to respect the privacy of the involved individuals, to the extent permitted by law. Specific report details may be shared with appropriate Departments and agencies to address environmental safety concerns and investigative needs.

Recordkeeping:

BSC will create and maintain for seven years, records of any actions, including records of supportive measures, taken in response to a report or formal complaint of sexual misconduct. BSC will maintain records involving expulsion indefinitely. In each instance, the institution must document the basis for its response was not deliberately indifferent, and document that it took supportive measures, or, if supportive measures were not provided, an explanation of why such a response was not clearly unreasonable in light of the known circumstances.

1. Each sexual misconduct investigation, including any determination regarding responsibility; any audio or audiovisual recording or transcript; any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant.
2. Any appeal and the result;
3. Any informal resolution and the result;
4. All materials used to train Sexual Misconduct Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, which the institution must make available on its website.

Training:

BSC will consider Title IX training to count as a majority of Sexual Misconduct training, however BSC will provide specific training on the differences between the two policies.

1. All persons involved in the grievance process, including, but not necessarily limited to, Sexual Misconduct Coordinators, Investigators, Hearing Officers, Sexual Misconduct Appeal Officers, must receive training on the following areas:
 - a. The definition of sexual misconduct;
 - b. The scope of the education program or activity;
 - c. How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable;
 - d. How to serve impartially, including by avoiding prejudgment of the facts at issue; conflicts of interest, and bias.

2. Additionally, Hearing and Sexual Misconduct Appeal Officers must receive training on the following areas:
 - a. Any technology to be used at a live hearing;
 - b. Issues of relevance of questions and evidence, including when questions about the complainant's sexual predisposition or prior sexual behavior are not relevant;
3. Investigators must also be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
4. All training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints.

Retaliation:

1. BSC or any other person shall not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by 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.
2. Intimidation, threats, coercion, or discrimination, constitute retaliation.
3. The exercise of rights protected under the First Amendment does not constitute retaliation.
4. 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.
5. Complaints alleging retaliation may be filed pursuant to the grievance procedures for sex discrimination under this policy.

Resources:

The following resources are available to assist individuals involved with the sexual misconduct grievance process.

BSC Resources

BSC Mystic Advising and Counseling Center (MACC)

701-224-5752

Students Only

Personal Counselor

Student Union, Lower Level (1425 Schafer Street)

bsc.counseling@bismarckstate.edu

BSC Campus Safety and Security

701-224-2700
Address here
bsc.safety@bismarckstate.edu

Community Resources

Telehealth- will be adding more information

CHI St. Alexius Health Employee Assistance Program (EAP)
Employees Only
1310 Eat Main Avenue Bismarck, ND 58501
701-530-7195 or 1-800-327-7195
<https://www.chistalexiushealth.org/bismarck/facilities/employee-assistance-program>

CHI St. Alexius Medical Center

st.alexius.org
900 E. Broadway, Bismarck
Emergency Room.....530-7001
Archway Mental Health.....530-7333
Information.....530-7000

Sanford Health

bismarck.sanfordhealth.org
300 N. 7th Street, Bismarck
Emergency Room.....323-6150
Sanford Behavioral Health.....323-6543
Information.....323-6000
Walk in Clinic Appointments (*North*).....323-8300
Walk in Clinic Appointments (*Downtown*)323-5740

West Central Human Services

nd.gov/dhs/locations/regionalhsc/westcentral/
1237 W Divide Ave #5, Bismarck
Information 328-8888
Crisis Line.....328-8899
Toll-free.....1-888-328-2112

EMERGENCY.....911

Bismarck Police Department

bismarcknd.gov/
700 South 9th Street, Bismarck
Phone223-1212

Mandan Police Department

mandanpd.com/

205 1st Ave NW, Mandan

Phone667-3455

Abused Adult Resource Center (Abuse, Neglect & Rape)

If a medical emergency or a crime is in progress call 911

abusedadultresourcecenter.com/

218 W. Broadway Ave., Bismarck

Phone..... 222-8370

Toll-free (after hours).....1-866-341-7009

For More Information:

Sexual Misconduct

www.bismarckstate.edu/titleix or contact

Kaylyn Bondy

Vice President for Student Affairs/Sexual Misconduct Coordinator

701-224-5638

kaylyn.bondy@bismarckstate.edu

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

- a. Titles IV and VII of the Civil Rights Act of 1964
- c. Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990
- d. The Violence Against Women Act of 2013
- e. NDCC 15-10-56. Disciplinary Proceedings: Right to Counsel for Students & 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

Equal Opportunity and Non-Discrimination Statement

Bismarck State College is an equal opportunity institution that does not discriminate on the basis of race, color, sex, gender, gender identity, national origin, age, religion, sexual orientation, information protected by the Genetic Information Nondiscrimination Act (GINA), marital status, disability, veteran's status or any other status protected by law in its admissions, student aid, employment practices, education programs or other related activities.

Questions, comments, or complaints regarding sexual discrimination or sexual misconduct may be directed to the Sexual Misconduct Coordinator. All other forms of discrimination (e.g. racial) or misconduct may be directed to the Vice President for Student Affairs or the Director of Human Resources, as appropriate. Complaints may also be filed with the U.S. Department of Education, Office for Civil Rights.

Kaylyn Bondy
Vice President of Student Affairs/Sexual Misconduct Coordinator
National Energy Center of Excellence, Room 331C
Bismarck, ND 58501
Phone: 701-224-5638
Email: kaylyn.bondy@bismarckstate.edu

Office for Civil Rights
Chicago Office (Local OCR office for North Dakota)
U.S. Department of Education
John C. Kluczynski Federal Building
230 S. Dearborn Street, 37th Floor
Chicago, IL 60604
Phone: 312-730-1560
FAX: 312-730-1576; TDD: 800-877-8339
Email: OCR.Chicago@ed.gov
Website: <http://www.ed.gov/ocr/>

Inquiries concerning Title VI, Title VII, Section 504 of the Rehabilitation Act, Americans with Disabilities Act (ADA), and the Age Discrimination and Employment Act may be referred to:

Director of Human Resources
Meadowlark Building
PO Box 5587
1700 Schafer St.
Bismarck, ND
58506-5587
Phone: 701-224-5531
Phone: 800-366-6888 (TTY Relay ND)

For Section 504/ADA inquiries:
Student Accessibility Services

Jack Science Room 312
Phone: 701-224-5671

Effective Date:

This Policy shall take effect on August 14, 2020. If the Final Rule on Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, published at 85 Fed. Reg. 30,026 *et seq.*, is enjoined, delayed, or invalidated, this Policy shall not take effect until such a time as the Final Rule goes into effect.

History of This Policy:

First policy August 18th, 2020.

Reviewed by the Operations Council on August 18th, 2020 and approved by the Executive Council on August 18th, 2020