

Minot State University Policy

Harassment

Effective Date: October 20, 2008

Policy and Definition:

It is the policy of Minot State University that there shall be no discrimination against persons because of sex, gender, sexual orientation, race, ethnicity, color, religion, national origin, pregnancy, age, marital status, veteran's status, political beliefs or affiliation, or physical or mental disability. Harassment is a form of discrimination that creates a hostile environment in the workplace and the classroom and, therefore, Minot State University will not tolerate harassment in any form. The behavioral standard of this policy applies to faculty, staff, and students, as well as persons conducting business with or visiting the University. This policy contains a definition of harassment, procedures for reporting allegations of harassment, procedures for investigations and resulting disciplinary matters, and discussions concerning consensual relationships and retaliation. Appendix A contains further discussion for understanding the practical definition of harassment. This policy implements the State Board of Higher Education Policy 603.1, Sexual Harassment.

Definition:

Harassment is defined as verbal, nonverbal, or physical conduct towards another person or identifiable group of persons that is severe, persistent, or pervasive and has the purpose or effect of:

- a. Creating an intimidating or hostile education environment, work environment, or environment of participation in a University activity;
- b. Unreasonably interfering with a person's educational environment, work environment, or environment of participation in a University activity; or
- c. Unreasonably affecting a person's educational or work opportunities or participation in a University activity.

Sexual harassment is defined by unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education requirement;
- b. submission to, or rejection of such conduct by an individual is used as the basis for employment decision, educational decision (grades, etc.) affecting such individual;

- c. such conduct has the purpose or effect of substantially interfering with an individual's work or learning performance or creating an intimidating, demeaning, or hostile offensive working/classroom environment.

Reporting Procedures (Students):

Any and all complaints alleging any form of harassment may be reported to the Director, Human Resources or the Vice President for Administration and Finance; however, in an effort to satisfy a complaint and solve problems at the lowest level possible, students should also consider the following report methods:

- a. Complaints alleging any form of harassment related to **employment** should be reported to the student's supervisor or to someone in the supervisory line.
- b. Complaints alleging any form of harassment related to the **classroom environment** should be reported to the classroom instructor, department chair, dean, or Vice President for Academic Affairs.
- c. Complaints alleging any form of harassment related to **non-classroom environments** should be reported to the Director of Student Life or the Vice President for Student Affairs.

Reporting Procedures (Faculty and Staff):

Any and all complaints alleging any form of harassment may be reported to the Director, Human Resources or the Vice President for Administration and Finance; however, in an effort to satisfy a complaint and solve problems at the lowest level possible, faculty and staff should also consider the following report methods:

- a. Complaints alleging any form of harassment from **employees** should be reported to the employee's supervisor or to someone in the supervisory line.
- b. Complaints alleging any form of harassment from **students** should be reported to the department chair, dean, Vice President for Academic Affairs, or Vice President for Student Affairs
- c. Complaints alleging any form of harassment from other campus **visitors** should be reported to your supervisor or the vice president with responsibility for that environment.

Formal and Informal Reporting of Complaints:

Anyone with knowledge concerning allegations of harassment should report such behavior or incidents. Timely reporting of harassing behavior is essential to the investigation that will follow, though there is no deadline for reporting such behavior.

All reports will be referred to as "formal" or "informal." A formal complaint refers to complaints made in writing by the use of the MSU Harassment Complaint Form. Formal complaints will include a description of the allegation and will also include the name and signature of the complainant. An informal complaint refers to complaints made orally or

in any other form such as email or letter. All complaints, formal or informal, will be acted upon; however, an informal complaint may limit the University's ability to effectively resolve the complaint.

While the University respects the complainant's potential need for confidentiality, anonymity or confidentiality cannot be guaranteed. In the case of informal reports the complainant's name will not be used during investigations at any level; however, the nature of the specific issue may reveal the person's identity.

(See Appendix A)

Investigations:

Anyone receiving a complaint should contact the Director, Human Resources, to coordinate a plan for investigating the complaint. The Director, Human Resources, may investigate, assist, or accept a lead role in investigating any complaint of harassment.

While an investigation should happen as expeditiously as time permits, it is expected that an investigation will be completed within 30 days. This time line may be extended to a maximum of 120 days due to particular difficulties or unforeseen circumstances.

Each investigation will conclude with a "Report of Investigation" and will include at a minimum the background of the allegation, finding from the investigation, and a recommendation based on the finding. The finding will be a determination by the investigator whether the University's policy on harassment was violated. Copies of the report will be provided to the complainant, the accused party, and other parties who will need to act upon the recommendation. The Human Resources office will serve as the office of record for the original report of investigation.

In the event the report of investigation finds that the University policy on harassment was not violated, the complainant may appeal the finding. The appeal must be filed in writing within thirty days of the date of the report and may be filed on any basis, though bringing to light new or missed information or mischaracterizations in the reports will probably be more effective. The appeal should be delivered to the Director, Human Resources, who will provide it to the supervisor of the initial investigator for review.

Disciplinary Matters:

If a recommendation from the report of investigation calls for disciplinary action, the appropriate administrator is not bound by the recommendation. The administrator may discuss the report with the investigator and others in the supervisory chain to make a determination concerning the recommendation. Disciplinary action need not be progressive. Actions will be determined on the basis of the severity of the harassment and may include anything from a verbal warning to a dismissal, inclusively.

If the administrator takes disciplinary action against a member of the faculty or staff, the action will follow North Dakota Century Code, State Board of Higher Education Policies, NDUS Human Resource Policies, and local policies including those contained in the Faculty Handbook as appropriate.

- a. Any documented disciplinary action will include an opportunity for the recipient to acknowledge receipt of the document without discussion of agreement and to attach any comments to the document that will become a permanent part of that document. The right of the recipient to attach comment is without deadline, though three to five days should be provided the recipient prior to filing. (NDCC 54-06-21, State Government – General Provisions)
- b. The recipient of disciplinary action may appeal the action or grieve the policy, practice, or procedure through the Faculty Rights Committee or Staff Personnel Board as appropriate. (SBHE 605.4, Hearings and Appeals; NDUS HR Policy 27, Appeal Procedures)

The Vice President for Student Affairs oversees disciplinary action against a student and ensures the action conforms with North Dakota Century Code, State Board of Higher Education Policies, and local policies contained in the Student Handbook, specifically, the Student Conduct Policy.

Non-Retaliation:

This policy seeks to encourage the timely reporting of allegations of harassment to subsequently provide for the timely resolution of the allegations. Retaliation against faculty, staff, or students for reporting complaints of harassment or enforcing this policy is strictly prohibited. Anyone involved in overt or covert acts of reprisal, interference, restraint, penalty, discrimination, or harassment against an individual or group for reporting an allegation of harassment or participating in an investigation under this policy will be subject to prompt disciplinary or remedial action.

Student-Faculty Relationships:

Any intimate, dating, or sexual relationship between faculty and students is explicitly prohibited. Any form of sexual harassment toward students is explicitly prohibited. Relationships between faculty members and students beyond the academic scope create a potentially threatening situation within the context of harassment and may create conflicts of interest in other areas as well.

Appendix A

Dealing with Harassment

People harass will have no reason to stop unless they are challenged. Therefore, it is imperative to support and encourage people who are targets of harassment to come forward. Indeed, supervisors have an institutional and legal responsibility to respond to these concerns appropriately. However, many people do not report their experiences. They are afraid they will not be believed or that others will say, "They asked for it." It's natural in such circumstances to feel uncomfortable and worried. Yet, ignoring or minimizing the problem will not make it go away. Remember, too, that oftentimes harassment is not blatant or obvious; it can be subtle. In fact, sometimes it is so subtle that it may be only after a series of incidents that a person may begin to feel that harassment is occurring. Individual incidents, taken in isolation, may not constitute harassment. However, when these incidents constitute a series of ongoing offenses, he or she may well conclude that a pattern of harassment exists.

Sometimes harassment can be stopped by taking direct action. Anyone who believes they are being, or have been, harassed should first point out the harassing behavior to the other individual. Be direct and clearly communicate your disapproval of the behavior that makes you uncomfortable and that you considering harassing. Sometimes the other individual simply needs to be made aware of their behavior and that it has crossed the line into harassment. If the behavior persists, then the matter should be reported formally or informally as discussed in the policy section on "Reporting Procedures."

Appendix B

Types of Harassment

Racial/Ethnic Harassment. In addition to being a violation of University policy, racial and/or ethnic harassment is a form of discrimination and is a violation of Federal, State, and local law. The U.S. Department of Education, Office of Civil Rights, has interpreted Title VII of the Civil Rights Act of 1964 as prohibiting racial and ethnic harassment. Similarly, the Equal Employment Opportunity Commission interprets Title VII as prohibiting racial and ethnic harassment.

Recognizing Incidents of Racial or Ethnic Harassment. The following are some incidents that may constitute racial or ethnic harassment and may result in disciplinary sanctions under University policy. (To make an accurate judgment as to whether these incidents constitute racial or ethnic harassment, the full context in which these actions were taken or statements made must be considered.)

- Several Asian-American students are called names that are racially and ethnically vilifying as they cross the campus.
- An advisor tells an African-American student not to take a certain course because the advisor says that other African-American students have had difficulty in the course and so African-Americans are, therefore, not suited for this particular course.
- A University official requests that a group of Latino students display their student IDs as they enter their residence hall while white students are not required to display their IDs. The official cannot explain why the Latino students were stopped and asked to display IDs.
- A student group discovers that swastikas have been painted on the door of a room often used to prepare for the observance of the Jewish Sabbath.
- A male student approaches an Asian Pacific-American female student on several occasions and makes statements implying that certain sexual practices are common within her ethnic group.
- A supervisor assigns only menial tasks to a Hispanic staff member and writes on an evaluation that the staff member could not expect to be promoted because he is an “affirmative action” appointment.
- Several female students of color receive anonymous phone calls in which the caller uses language that is both obscene and racist.

Disability Harassment. In addition to being a violation of University policy, harassment based on physical ability is a form of discrimination and is a violation of Federal, State, and local laws. Section 504 of the Rehabilitation Act of 1973, as amended, prohibits job

discrimination because of disability and requires affirmative action to employ and advance in employment qualified individuals with disabilities who, with reasonable accommodation, can perform the essential functions of a job. The Americans with Disabilities Act of 1990, as amended, protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardship.

Recognizing Incidents of Disability Harassment. The following are some incidents that may constitute disability harassment and may result in disciplinary sanctions under University policy. (To make an accurate judgment as to whether these incidents constitute racial or ethnic harassment, the full context in which these actions were taken or statements made must be considered.)

- A student with dyslexia wants to be an English major. The student's advisor suggests this would not be a wise course of study to pursue because of the disability.
- A visually-impaired student is told to "get new glasses" when the student requests a seat closer to the board.
- A student with a physical disability requests a classroom change to an area with fewer stairs and is denied outright.

Sexual Harassment. In addition to being a violation of University policy, harassment based on physical ability is a form of discrimination and is a violation of Federal, State, and local laws. EEOC Guidelines on sexual harassment (as an amendment to the Guidelines on Discrimination Because of Sex, 29 CFR part 1604.11, 45 FR 25024), Title VII and Title IX provide the basis for the University's policy. In brief, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment. Incidents may be defined as sexual harassment as follows:

- a) Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment, advancement, evaluation, or participation in a University program or activity. This is referred to as *quid pro quo*, and one such incident is unlawful.
- b) Unwelcome conduct that is severe, persistent, and pervasive with the purpose or effect of unreasonably interfering with an individual's work performance, or creating an intimidating, hostile, abusive, or offensive working or educational environment, or hindering participation in or benefits from a University program or activity. This known as a *hostile environment*. A hostile environment is generally created by a series of incidents; however, a single incident may be so egregious as to also create a hostile environment.

It is important to remember that both men and women can be targets of sexual harassment, and that sexual harassment can occur between individuals of the same sex.

Recognizing Incidents of Sexual Harassment. The following are some incidents that may constitute sexual harassment and may result in disciplinary sanctions under University policy. (To make an accurate judgment as to whether these incidents constitute racial or ethnic harassment, the full context in which these actions were taken or statements made must be considered.)

- An undergraduate phones and sends email messages to someone s/he has a crush on, even though this person has clearly indicated no interest in him/her.
- A supervisor regularly makes sexually suggestive remarks in front of his/her staff. Several staff members have asked the supervisor to stop, but the behavior continues.
- A student dated his/her instructor at the beginning of the semester. S/he now believes the final grade for this course is not an accurate reflection of the work, but is an act of retaliation for ending the relationship.
- From time to time, a group of students hang out in front of the dining hall and rate other students from 1 to 10 as they leave the building. Some students avoid that dining hall because of this behavior.
- Two members of a student association or club persistently ask a prospective member to talk about favorite sexual fantasies. When the prospective member refuses and walks away, one member yells, "You won't get in this club if you don't know how to take a joke!"
- An employee sends unsolicited pornographic material and obscene messages to another employee via e-mail.
- An individual refuses to participate in sexually explicit conversations, and is called "gay" or "lesbian" for his/her refusal.

Distinguishing Between Sexual and Gender-Bias Harassment. Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991 provide protection against gender as well sexual harassment. Gender harassment is a form of sexual harassment that consists primarily of repeated comments, joke, and innuendoes directed at persons because of their gender or sexual orientation. It also occurs when attitudinal or organizational workplace barriers are maintained to deprive people of singled-out genders from competing and achieving at their highest potential. This behavior may or may not be aimed at eliciting sexual cooperation from those addressed, but it contaminates learning and work environments. Gender harassment closely resembles racial and ethnic slurs. Gender harassment may include:

- Disparaging women's seriousness about academics
- Using sexist humor as a classroom teaching technique
- Turning a discussion of a woman's work into a discussion of her physical attributes or appearance
- Opening a meeting with remarks about a colleague's appearance, and continuing to make references to it throughout the discussions

- Disparaging scholarly works by or about women
- Ridiculing specific works because they deal with women's perception or feelings
- "Bashing" male students for being "pigs" or "chauvinists" in a Women's Studies class
- Holding allegedly social events at which workplace issues are discussed or decided at venues or locations where women are excluded by either policy or habit
- Referring to women as "girls," "princess," "chicks," or other diminutive terms.
- Any of the above actions directed toward lesbians or gays

***Minot State University
Harassment Complaint Form***

Your Name: _____

Address: _____

Email Address: _____ Phone #: _____

(Please complete the information below. Use additional pages as necessary.)

1) Name of person against whom the complaint is lodged: _____

2) Nature of the Complaint (What's happened): _____

3) Facts/Witnesses (How can this be verified?): _____

4) History (events leading up to this point, attempts to remedy the situation): _____

5) Remedy (What solution do you seek?) _____

Your Signature: _____ Date: _____