

## 1. Title IX Compliance - Sexual Harassment, Assault, and Misconduct

WSC will not tolerate sexual or gender based harassment, domestic violence, dating violence, sexual assault, stalking, or other forms of sexual misconduct. Offenders may be subject to the appropriate campus adjudication processes, disciplinary action, and/or criminal proceedings. WSC utilizes procedures that provide prompt, fair, and impartial investigation and resolution in cases of any form of sexual misconduct. These procedures are carried out by officials who receive specific annual training.

When made aware of complaints regarding sex discrimination, WSC will: (1) take prompt and effective steps to end the sexual or gender-based harassment, assault, and/or sexual violence; (2) eliminate any hostile environment; (3) prevent its recurrence; and (4) remedy the discriminatory effects on the victim and others as appropriate.

Services are available for students, faculty, and staff who experience any form of sexual misconduct. In these situations, WSC is committed to providing crisis intervention measures for students, faculty, and staff, as well as appropriate administrative response for the Complainant and Respondent; referring individuals to criminal authorities; and educating and promoting discussion on interpersonal abuse and violence issues. The College's process does not preclude adjudication under state law.

This policy governs the conduct of: WSC students, staff, faculty, and third parties (i.e., nonmembers of the College community, such as vendors, alumni, visitors, or local residents). This policy applies to conduct that occurs on WSC property (i.e., on campus) and to conduct that occurs off campus property when the conduct is associated with a WSC sponsored program or activity, such as travel, research, or internship programs. Additionally, this policy applies when such conduct may have a continuing adverse effect or could create a hostile environment on campus. Judgments about these matters will depend on the facts of each incident.

### 1.1. Statement of Purpose

This policy is required by federal law and will be reviewed annually. Implementation of this policy is guided by the U.S. Department of Education, Office of Civil Rights. WSC strives to create a campus community free from interpersonal abuse including sexual misconduct. In working to achieve this intent, WSC commits to:

- Responding to complaints or reports of prohibited conduct in a reasonably prompt timeframe;
- Taking action to stop sexual misconduct and prevent recurrences;
- Taking action to remediate any adverse effects of such conduct on campus by providing advocacy, support and appropriate referral services for recipients of the behavior; and
- Educating individuals and promoting discussions on sex or gender discrimination, sexual misconduct, and violence.

All forms of prohibited conduct under this policy are regarded as serious College offenses, and violations will result in discipline, including the possibility of separation from the College. State and federal laws also address conduct that may meet the College's definitions of prohibited conduct, and criminal prosecution may take place independently of any disciplinary action instituted by the College.

WSC has an obligation to conduct a prompt and impartial investigation of all complaints or reports of sexual misconduct through fair and equitable procedures. Once made aware, the College must conduct an investigation regardless of how the information was brought to the College's attention or the extent to which the Complainant wishes to participate or be involved. All

individuals have access to confidential resources that they may use for support and guidance. In light of these commitments and in the best interest of the college, WSC has adopted this policy, which includes investigation and disciplinary procedures that will be followed in response to allegations of sexual misconduct, such as sexual harassment and sexual assault, intimate partner violence, stalking, and related retaliation.

To ensure a fair and equitable process for all parties, WSC's Title IX Staff receives annual training on issues related to sexual and gender based harassment, domestic violence, dating violence, sexual assault, stalking, and other forms of sexual misconduct as well as training on properly conducting investigations and hearing processes in order to protect the safety of victims and to promote the accountability of staff members. In addition, all WSC staff and faculty members are provided with training regarding sexual violence and mandatory reporting responsibilities.

WSC encourages all individuals to report any alleged or suspected violation of this policy to the Title IX Coordinator and/or Deputy Title IX Coordinator as available and to report potential criminal conduct to law enforcement.

## 2. Definitions

The following definitions are informational and are not used to classify crime statistics in the WSC Annual Security Report.

**Sexual Harassment** - Unwelcome verbal, nonverbal, or physical sexual advances, requests for sexual favors, intimidation or hostility based on sex, and other conduct directed at an individual because of the individual's gender constitute sexual harassment when:

- 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic achievement,
- 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions affecting such individual,
- 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, or
- 4) such conduct creates an intimidating, hostile, or offensive environment.

Please note that sexual harassment in electronic forms is also prohibited under SBHE Policy 1901.2 and NDUS Procedure 1901.2 - Computer and Network Usage. Individuals concerned about violations of this policy should request assistance from the College's Director for Human Resources or a Title IX Coordinator.

**Coercion** – To exploit fear and anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.

**Deviate Sexual Act** – Any form of sexual contact with an animal, bird, or dead person.

**Object** – Anything used in commission of a sexual act other than the person of the actor.

**Sexual Act** – Sexual contact between human being consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this subsection, sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or any object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.

**Sexual Contact** – Any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.

**Gross Sexual Imposition**

- 1) Any person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
  - a. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
  - b. That person or someone with that person’s knowledge has substantially impaired the victim’s power to appraise or control the victim’s conduct by administering or employing without the victim’s knowledge intoxicants, a controlled substances as defined in [NDCC chapter 19-03.1](#), or other means to prevent resistance;
  - c. That person knows or has reasonable cause to believe that the victim is unaware that a sexual act is being committed on him or her;
  - d. The victim is less than fifteen (15) years old; or
  - e. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.
- 2) A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:
  - a. The victim is less than fifteen (15) years old;
  - b. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being; or
  - c. That person knows or has reasonable cause to believe that the victim is unaware that sexual contact is being committed with the victim.

**Sexual Imposition** – A person who engages in a sexual at or sexual contact with another, or who causes another to engage in a sexual act or sexual contact, is guilty of a class B felony if the actor:

- 1) Compels the other person to submit by any threat or coercion that would render a person reasonably incapable of resisting, or
- 2) Engages in a sexual act or sexual contact with another, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification to become a member or an associate of any criminal street gang as defined in [NDCC section 12.1-06.2-01](#).

**Sexual Assault** – A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:

- 1) That person knows or has reasonable cause to believe that the contact is offensive to the other person;
- 2) That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person’s conduct;
- 3) That person or someone with that person’s knowledge has substantially impaired the victim’s power to appraise or control the victim’s conduct, by administering or employing without the victim’s knowledge intoxicants, a controlled substance as defined in [NDCC chapter 19-](#)

[03.1](#), or other means for the purpose of preventing resistance;

- 4) That person is in official custody or detained in the hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;
- 5) That other person is a minor, fifteen (15) years age of age or older, and the actor is the other person’s parent, guardian, or is otherwise responsible for general supervision of the other person’s welfare; or
- 6) The other person is a minor, fifteen (15) years of age or older, and the actor is an adult.

**Incest** – A person who intermarries, cohabits, or engages in a sexual act with another person related to him or her within a degree of consanguinity within which marriages are declares incestuous and void by [NDCC section 14-03-03](#), knowing such other person to be within said degree of relationship, is guilty of a class C felony.

**Domestic Violence** – Includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members.

**Stalking**

- 1) As used in [NDCC section 12.1-17-07.1](#):
  - a. “Course of conduct” means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.
  - b. “Immediate family” means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six (6) months regularly resided in the household.
  - c. “Stalk” means to engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and that 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.
- 2) No person may intentionally stalk another person.
- 3) In any prosecution under this section, it is not a defense that the actor was not given actual notice that the person did not want the actor to contact or follow the person; nor is it a defense that the actor did not intend to frighten, intimidate, or harass the person. An attempt to contact or follow a person after being given actual notice that the person does not want to be contacted or followed is prima facie evidence that the actor intends to stalk that person.
- 4) In any prosecution under this section, it is a defense that a private investigator licensed under [NDCC chapter 43-30](#) or a peace officer licensed under [NDCC 12-63](#) was acting within the scope of employment.
- 5) If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.
- 6) A person who violates this section is guilty of a class C felony if:
  - a. The person had previously been convicted of violating [NDCC sections 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07](#), or a similar offense from

another court in North Dakota, a court of record in the United States, or a tribal court, involving the victim of stalking.

- b. The stalking violates a court order issued under [NDCC chapter 14-07.1](#) protecting the victim of the stalking, if the person had notice of the court order; or
  - c. The person previously has been convicted of violating this section.
- 7) If subdivision does not apply, a person who violates this section is guilty of a class A misdemeanor.

#### **Consent**

- 1) Consent is:
  - a. Words or actions showing a clear, knowing, and voluntary agreement to engage in mutually agreed upon sexual act; or
  - b. An affirmative decision given by clear actions or words.
- 2) Consent may not be inferred from:
  - a. Silence, passivity, or lack of resistance alone.
  - b. A current or previous dating or sexual relationship.

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 makes verbal clarification of willingness to continue. Consent to one form of sexual act does not imply consent to other forms of sexual act(s).

#### **Consent as a Defense**

- 3) Assent does not constitute consent, within the meaning if:
  - a. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the actor;
  - b. It is given by a person who by reason of youth, mental disease or defect, or intoxication is manifestly unable or known by the actor to be unable or known by the actor to be unable to make reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
  - c. It is induced by force, duress, or deception.

#### **Intoxication as a Defense**

- 1) Intoxication is not a defense to a criminal charge. Intoxication does not, in itself, constitute mental disease or defect within the meaning outlined in [NDCC 12.1-04-04](#). Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged.
- 2) A person is reckless with respect to an element of an offense even though his/her disregard thereof is not conscious, if his/her not being conscious thereof is due to self-induced intoxication.

**Consensual Relationships** – Williston State College discourages consensual relationships, i.e., amorous, romantic, or sexual relationships, between faculty and students, staff and students, supervisors and subordinates, and students who have an authority relationship over other students. This policy is in effect when one individual has a control, power, authority, or responsibility position over another. WSC expressly prohibits any form of sexual

harassment of employees and students when a previous consensual relationship ceases to exist or such a relationship is rejected by one of the parties.

If the parties do engage in a consensual relationship as defined above, the person in the authority position is obligated to report the relationship to his or her department head or supervisor immediately. Failure to report the relationship or any significant delay in reporting may be cause for disciplinary action. Documentation of the reporting and any subsequent actions taken by the department head or supervisor, such as advising the parties of the potential for sexual harassment charges if the relationship ends, is required.

**Complicity** – Any act that knowingly aids, facilitates, promotes, or encourages the commission of prohibited conduct by another person. Any individual found responsible for complicity in prohibited conduct will be subject to the disciplinary procedures and sanctions outlined in this policy.

#### **3. Preventing and Responding to Sex Offenses**

WSC attempts to foster a safe living, learning, and working environment for all members of the campus community. To accomplish this, WSC considers the educational programming that addresses all aspects of domestic violence, dating violence, sexual assault, and stalking (safety precautions and prevention, crisis management, reporting, medical and counseling services, the WSC discipline systems, academic schedules, living arrangement, etc.), the campus response to sexual violence, domestic violence, dating violence, and instances of stalking, and physical surroundings throughout the campus community.

WSC has developed educational programs concerning domestic violence, dating violence, sexual assault, and stalking. Involved students, faculty, staff, and community members provide information and promote discussion on interpersonal abuse and violence issues. Campus Security supports the educational programs by providing input and personnel to accomplish this task. For additional information about campus educational programs concerning domestic violence, dating violence, dating violence, sexual assault, and stalking, contact the Title IX coordinator, the Residence Life office, Human Resources, office of the Vice President of Student Affairs, and/or the Williams County Family Crisis Shelter program.

First year students are required to participate in an alcohol self-assessment and a sexual violence prevention program, which is a comprehensive online training regarding assault prevention.

The College continuously considers the physical surroundings in addressing campus security to avoid assault and other crimes on campus. The physical surroundings are modified when seen as a possible threat to the safety of students, staff, and faculty. The Campus Services division regularly tours campus to identify safety concerns. They assess campus signage, lighting, phones, locking procedures, signage, etc. For additional safety information, contact Campus Security at (701) 570-6699.

#### **4. Reporting**

A guiding principle in the reporting of sexual harassment, domestic violence, dating violence, sexual assault, stalking, or other forms of sexual misconduct is to avoid possible re-victimization of the Complainant by forcing the individual into any plan of action. It is recommended that a person who has been assaulted consider each of the following:

- Getting to a safe place.
- Avoid the destruction of evidence by bathing, douching, changing clothes, or cleaning up in any way. Preserve evidence in a paper bag for possible future action. Also,

keep copies of emails, text messages, and voice messages.

- Pursuing medical treatment. Post-assault medical care can be performed at a local emergency room. CHI St. Alexius Health Williston Medical Center, Great Plain's Women's Health, and Trinity Community Clinic – Western Dakota have Sexual Assault Nurse Examiners (SANE\*) on staff who can complete an exam for victims of sexual violence. Such an exam can help the victim receive an appropriate medical assessment and treatment, and can preserve evidence for possible future action.

The exam is voluntary. The decision to participate in all or part of the exam is made by the victim.

CHI St. Alexius Health Williston Medical Center, Great Plains Women's Health, and Trinity Community Clinic – Western Dakota providers file reimbursement forms for the survivor to cover the cost of the initial exam. [See NDCC Chapter 12.1-34-07.](#)

\*NOTE: What is a Sexual Assault Nurse Examiner (SANE)?

Sexual Assault Nurse Examiners (SANE) are registered nurses who have completed specialized education and clinical preparation in the medical forensic care of the patient who has experienced sexual assault or abuse. The role of a SANE includes taking a history from the victim for the purpose of diagnosis and treatment of health care concerns; conducting a complete physical assessment; performing a thorough genital exam; collecting and documenting any forensic evidence; providing appropriate information and referrals; working with the victim advocate and other SART members to assure coordinated service; and providing courtroom testimony when needed (Retrieved from [http://www.ndcaws.org/what\\_we\\_do/sane/overview.html](http://www.ndcaws.org/what_we_do/sane/overview.html))

- Pursuing counseling services with appropriate agencies (e.g., Campus Counselor, Williams County Family Crisis Shelter program, Northwest Human Service Center, or private providers). Calling someone that is known and trusted, such as a friend or counselor, and discussing the assault with that person can help to evaluate the trauma and sort out next steps.
- Making a police report. A campus and/or criminal complaint can be initiated. Assistance may be obtained from campus authorities in this notification.
- Making a report to campus security, Title IX coordinator, or other responsible employee under Title IX.
- Making an anonymous report. An anonymous report to the police notifies them that an act of sexual violence has occurred but gives no names or identification.

All WSC employees, other than non-professional counselors, advocates, and those employees legally regarded as confidential resources, are expected to promptly report any sexual and gender-based harassment, assault, and violence that they observe or learn about.

#### 4.1 Filing a Police Report

Victims should consider filing a police report. A report to the police can empower the Complainant by exercising his/her legal rights and can aid in the protection of others. WSC staff will encourage the Complainant to file a police report and will assist the Complainant in notifying the police if requested. The police will then advise the Complainant of the legal process.

There may be consequences to waiting to file a police report. Early reports may improve the preparation of a viable prosecution. Filing a police report immediately following the incident does not force the Complainant to file charges and prosecute the Respondent. However, it does aid in the preservation of valuable evidence if the Complainant decides to pursue charges at a later date.

The States Attorney makes all decisions regarding the prosecution of alleged crimes reported to law enforcement.

Victims may pursue a complaint under this policy and with the police simultaneously. If a police report is filed, WSC may need to briefly suspend the fact-finding aspect of the Title IX investigation at the request of law enforcement while the law enforcement agency gathers evidence, but WSC will maintain regular contact with law enforcement to determine when the investigation may resume. As soon as WSC is notified by law enforcement, we will promptly resume the investigation. WSC may also resume its investigation if it is determined that the evidence gathering process by law enforcement will be lengthy or delayed. In no event will WSC delay its investigation pending the outcome of a criminal investigation.

WSC will implement appropriate interim measures during any law enforcement agency's investigative period to assist and protect the safety of the Complainant, the campus community, and to prevent retaliation.

#### 4.2 Alternatives to filing a police report

Alternatives to immediately filing a police report are:

- Report the crime at a later date.
- Make a complaint to a Title IX coordinator or to campus security. Such a complaint may be used for actions which include, but are not limited to, on-campus administrative proceedings.
- Make an anonymous report to the police (a report that notifies the police that a sexual harassment, domestic violence, dating violence, sexual assault, stalking, or other forms of sexual misconduct incident has occurred, but gives no names or identification).
- Contact a referral agency for help: the Williams County Family Crisis Center, Northwest Human Service Center, Title IX coordinator, Residence Life office, Human Resources, or the Vice President for Student Affairs.
- Contact the Title IX coordinator for more information concerning the administrative process.

If the Complainant does not choose to file a police report, he/she may still file an administrative complaint. The Complainant will be referred to other agencies if appropriate. Specifically, a Complainant may be encouraged to seek assistance at the Williams County Family Crisis Shelter, Northwest Human Service Center, or private providers. Support may also be sought from the Campus Counselor.

#### 4.3 Ongoing Care

Students may seek assistance at any time from the WSC Campus Counselor at no additional charge. Referrals may be made upon request for relatives, partners, and friends of either the Complainant or Respondent to various support agencies.

Students may seek ongoing medical assistance from outside agencies. Post-assault medical care may include testing and treating for sexually transmitted diseases (STDs). Students are responsible for any/all incurred costs. Regional outside agencies include: CHI St. Alexius Health Williston Medical Center, Great Plain's Women's Health, Trinity Community Clinic – Western Dakota, or Upper Missouri District Health Unit.

#### 4.4 Anonymous Reports

Anonymous complaints will be accepted by the College. The College's ability to investigate and resolve anonymous complaints

will be limited if the information contained in the anonymous complaint cannot be verified by independent facts.

#### 4.5 False Reports

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

#### 4.6 Confidentiality

The term "confidentiality" refers to the circumstances under which information will or will not be disclosed to others.

The Complainant may request confidentiality at the time they disclose the sexual misconduct. However, confidentiality cannot be guaranteed. The Title IX Coordinator or Deputy Title IX Coordinator will evaluate the request and determine the extent to which confidentiality may be maintained. WSC will make every attempt to safeguard the privacy of the Complainant; however WSC cannot ensure confidentiality in all cases. WSC must weigh the request for confidentiality against its obligation to protect the safety and security of the entire campus. As is the case with anonymous reports, the College's ability to conduct a meaningful investigation of the incident and pursue disciplinary action against alleged perpetrators may be limited when confidentiality has been requested.

Before a student reveals information that he or she may wish to keep confidential, any responsible employee at WSC is required to make every effort to ensure that the student understands:

- The employee's obligation to report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX Coordinator or Deputy Title IX Coordinator;
- The student's option to request that the school maintain his or her confidentiality, which the school will consider; and
- The student's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault related services (e.g., sexual assault resource centers, campus health center, and pastoral counselors).

Depending on the circumstances of the offense (the severity of the offense, the number of victims involved, etc.), WSC may be required to respond to an incident, even if confidentiality has been requested. Therefore, WSC employees cannot guarantee absolute confidentiality.

WSC's Reporting obligations under the Clery Act: The Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act (20 USC & 1092(0)) requires colleges and universities across the United States to disclose information about crime on and around their campuses. WSC is required to disclose statistics regarding certain types of crime, including sexual assault that occur on and around campus, as well as locations off campus at which WSC sponsored activities take place. The Clery Act also requires WSC to issue timely warning notices about crimes that pose a serious or ongoing threat to the campus community.

#### 4.6.1 Confidentiality Rights of Complainants and Respondents

Individuals involved in investigations or disciplinary proceedings under this policy are encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation. While discretion regarding the process is important, Complainants and Respondents are not restricted from discussing and sharing information with others who may support or assist them in presenting their case. Medical and

counseling records are privileged and confidential documents that parties will not be required to disclose.

#### 4.6.2 Privacy

The term "privacy" refers to the discretion that will be exercised by the College in the course of any investigation or disciplinary processes under this policy. The College has an obligation to make reasonable efforts to investigate and address complaints or reports of violations of this policy. In all such proceedings, the College will take into consideration the privacy of the parties to the extent possible. In cases involving students, the Title IX Coordinator may notify residential college staff and other College employees of the existence of the complaint for the purpose of overseeing compliance with this policy and addressing any concerns related to educational and residential life. While not bound by confidentiality, these individuals will be discreet and will respect the privacy of those involved in the process. Any additional disclosure of information related to the complaint or report may be made if consistent with the Family Educational Rights and Privacy Act (FERPA), or the Title IX requirements.

### 5. On-campus Investigation and Adjudication

This policy applies to complaints alleging all forms of sex discrimination (including sexual and gender-based harassment, assault, and violence) against employees, students, and third parties. WSC's response to complaints of sex discrimination may involve a number of individuals and agencies (e.g., campus security, Student Affairs office, Title IX Coordinator, and counseling services personnel). In addition, for cases involving campus community members, there is a timely, campus-based investigation which is private and protects individual rights and process. The Complainant is presented with options about how he/she may pursue the complaint.

It is understood that there may be circumstances in which a Complainant wishes to limit their participation. The Complainant retains this right and acknowledges that limiting their participation may impact the effectiveness of the investigation.

If a Respondent chooses not to answer any or all questions in an investigation for any reason, the College process will continue, findings will be reached with respect to the alleged conduct, and the College will issue any penalties, as appropriate. The College will not, however, draw any adverse inference from a Respondent's silence.

Title IX complaints, including those reporting violence or who are concerned about WSC's compliance with Title IX or Department of Education policies, may be directed to the Title IX coordinator or the U.S. Department of Education. Complaints may also be directed to any other federal agency.

#### 5.1 On-campus Investigation and Adjudication for Students

The *Student Code of Conduct* describes the procedures followed when a violation of the *Student Code of Conduct* is reported to the office of the Vice President for Student Affairs. The Student Affairs office manages all Title IX investigations when charges are brought.

Mediation, including referral to the Campus Counselor for the purpose of mediation between the parties, will not be used to resolve sexual violence complaints.

The *Student Code of Conduct* outlines the process and protection of rights of both the Complainant (the student who brings the grievance or makes the complaint) and the Respondent (the student or individual about whom the grievance or complaint is brought). For any Title IX allegation:

- All incidents are to be reported to the Title IX coordinator.

- Based on the initial report of the incident, the Title IX coordinator, with assistance from campus security, Human Resources, and/or the Student Affairs office, will immediately implement any temporary safety measures.
- The Title IX Office will give the Complainant a written explanation of their rights and options throughout the Title IX process in its entirety.
- If Complainant wishes to move forward with investigation, the Title IX coordinator will then assign a Title IX investigator or investigators to investigate the incident.
- The Title IX Coordinator is responsible for handling all requests of confidentiality.
- If the Complainant wishes to move forward with an investigation, the Title IX Coordinator will send a Notice of Investigation letter to both the Complainant and the Respondent. This letter will be sent via Williston State College E-mail, the College's official means of communication. If any party to the complaint is a student athlete, the student athlete's head coach and/or the Athletic Director may also receive Notice of the Investigation letter. The notice will include information regarding the initiation of an investigation, the potential policy violation(s) at issue, the right to participate in the investigation, the timeframe for responding, that the investigation may proceed without the participation of either party, and the institution's policy on retaliation.
- The Title IX Investigator will work to have his/her investigation completed within 60 days. The first official day of the investigation is the date that the Notice of Investigation letter is sent by the Title IX Coordinator. If for some reason (i.e. summer break, Christmas break, etc.) the investigator is not able to complete the investigation within the abovementioned 60 day period, he/she will contact the Complainant and the Respondent with an explanation for the delay and a revised expected date of completion.
- The Title IX Office will give the Respondent a written explanation of their rights and options throughout the Title IX process in its entirety.
- In the event that the Complainant or Respondent is temporarily removed from campus during the investigative period, the Vice President for Student Affairs will notify the appropriate party's instructors and advisor(s) in order to communicate the removal and make scholastic arrangements for the removal period.
- The Title IX investigator(s) will investigate the incident and submit a final written report, including an outcome recommendation, to the VPSA. WSC will not allow conflicts of interest (real or reasonably perceived) by those investigating or adjudicating complaints.
- Both the Complainant and Respondent will be notified in writing of the completion of the investigation and any resulting actions by the VPSA.
- Should the determination not include suspension, both the Complainant and Respondent may appeal the determination pursuant to the Section VI College Student Review Committee Process/Procedures.
- Should the determination of the VPSA include suspension, a disciplinary hearing will take place.
- The Complainant and the Respondent have the right to be assisted by an advisor, including an advisor they choose at their own expense.
- The advisor may be an attorney; in such cases, note that Guidelines for Attorneys who accompany accused students are available on the Williston State College website. Included in these guidelines is a requirement of a five business day notice to the College of a student's intent to be accompanied by an attorney.
- The Complainant and the Respondent have the right to access and review any information that will be used in the hearing.
- The Complainant and the Respondent will be advised of the date, time, and location of a hearing, when scheduled. Both may attend and participate.
- The VPSA may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the Complainant, Respondent, and/or other witnesses during the hearing, in whatever manner and as determined in the sole judgment of the VPSA, to be appropriate.
- The Complainant and Respondent will be afforded regular updates regarding the status of the investigation, hearing, and/or appeal process.
- The Vice President for Student Affairs shall render the decision to the Respondent and the Complainant simultaneously and in writing within five business days of completion of the hearing. The *Student Code of Conduct* provides for the disclosure of the final results of any disciplinary proceeding regarding a complaint of sexual harassment, domestic violence, dating violence, sexual assault, or stalking to the Complainant.
- Decisions may be appealed in accordance with the *Student Code of Conduct*, as applicable. All parties will be informed in writing of the outcome of any appeal.

The standard of proof that is used for campus disciplinary proceedings is preponderance of evidence, (i.e., more likely than not the event(s) occurred).

The Complainant has the right to decline to participate in an investigation, appear in a proceeding with the Respondent present, or otherwise confront the Respondent during the grievance process, including during hearings or appeals.

A student's privacy concerns are weighed against the needs of WSC to respond to certain incidents and crimes. To the greatest extent possible, all reports will remain private. However, information may be shared with appropriate departments and agencies under a need-to-know basis when it pertains to investigative needs and safety concerns of the campus community. Further, WSC has an obligation to promptly take steps to investigate or otherwise determine what occurred and to take appropriate steps to resolve the complaint when made aware of possible discrimination, regardless of the Complainant's willingness to participate in the process.

If WSC receives a complaint regarding off-campus misconduct, even if the misconduct did not occur in the context of a WSC program or activity, WSC will consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity.

### **5.2 On-campus Investigation and Adjudication for Faculty and Staff**

If a faculty or staff member is involved as the Complainant or Respondent:

- All incidents are to be reported to the Title IX coordinator.
- Based on the initial report of the incident, the Title IX coordinator, with assistance from campus security,

Both Complainant and Respondent have certain shared or complementary rights in disciplinary hearings, which are enacted when the student disciplinary procedures involve suspension. The rights of the Complainant and Respondent are as follows:



Human Resources and/or Student Affairs Office, will immediately implement any temporary safety measures.

- The Title IX coordinator will then assign a Title IX investigator or investigators to investigate the incident.
- The Title IX investigator(s) will investigate the incident and submit a final written report, including outcome recommendation, to the Director for Human Resources.
- If it is determined that discipline or dismissal of a faculty or staff member is warranted, the following policies and procedures will be followed:
  - Faculty – Faculty Handbook;
  - Staff – [NDUS Human Resource Policy Manual section 25](#) and [section 27](#);
  - Employees excluded from the broadbanding system who are not faculty [SBHE policy 608.2](#);
- Both the Complainant and Respondent will be notified in writing of the final results of the investigation and any resulting actions.
- Both the Complainant and Respondent may appeal the determination pursuant to the Faculty Handbook and [NDUS Human Resource Policy Manual section 27, Appeal Procedures](#).

The standard of proof that exists for campus disciplinary proceedings is preponderance of evidence, (i.e., more likely than not the event(s) occurred).

If a Complainant requests that his or her name not be revealed to the Respondent or asks WSC not to investigate or seek action against the Respondent, WSC will be limited in its ability to respond fully to the incident.

Title IX complaints, including the reporting of violence or the concerns about the compliance of WSC or Department of Education policies, may be directed to:

Heather Fink

Director for Student Financial Aid/Title IX Coordinator

Student Affairs Office, Stevens Hall

Williston, ND 58801

Phone: (701) 774-4281

Email: [heather.fink@willistonstate.edu](mailto:heather.fink@willistonstate.edu)

Hours: 8a-4:30p, Monday through Friday

Summer Hours may vary, please call for appointment

or

Amy Armstrong

Executive Assistant to the Vice President for Student

Affairs/Deputy Title IX Coordinator

Student Affairs Office, Stevens Hall

Williston, ND 58801

Phone: (701) 774-4586

Email: [amy.n.armstrong@ndus.edu](mailto:amy.n.armstrong@ndus.edu)

Hours: 8a-4:30p, Monday through Friday

Summer Hours may vary, please call for appointment

or to the:

Office for Civil Rights (OCR)

U.S. Department of Education

500 West Madison Suite 1475

Chicago, IL 60611-4544

Customer Service Hotline #: (800) 421-3481

Telephone: (312) 730-1560

Fax: (312) 730-1576

TDD#: (800) 877-8339

Email: [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov)

## 6. Interim Arrangements and Post-Hearing Intervention

WSC actively provides services, which include interim measures, for all parties in sexual harassment, domestic violence, dating violence, sexual assault, or stalking cases. WSC continues a coordinated response system that attends to the Complainant's and the Respondent's physical and emotional well-being as well as the safety of the community. Interim measures are available during the investigation process as well as during any student conduct process, including appeals. Requests for interim measures should be directed to WSC's Title IX Coordinator, Heather Fink, Student Affairs Office, Stevens Hall, Williston, ND 58801, Phone: (701) 774-4281. Email: [heather.fink@willistonstate.edu](mailto:heather.fink@willistonstate.edu).

### 6.1 Administrative Services to Assist a Student Complainant or Respondent

The Student Affairs Office will assist students, including collaborating with campus security and other departments to provide:

- Referral to the Campus Counselor, or referrals to outside provider(s).
- Escort services.
- Assistance in petitioning for a protection order. WSC honors orders of protection, no-contact orders, restraining orders, or similar orders issued by a criminal, civil, or tribal court.
- Withdrawal from college.
- An on-campus investigation and, if appropriate, initiate on-campus disciplinary procedures.
- Other referrals as necessary.

The Title IX Office will provide the Complainant and Respondent with written options available to them for assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures.

Additionally, The Title IX Office will provide the Complainant and Respondent with written resources available to them both within the institution and within the larger community.

Accommodations and protective measures provided to the Complainant and/or Respondent will be maintained as confidential by the Title IX Office, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures.

### 6.2 Administrative Services to Assist Faculty or Staff Complainant or Respondent

The Title IX coordinator will assist faculty and staff, including collaborating with campus security and other departments to provide:

- Referral to the Employee Assistance Program.
- Escort services.
- Assistance in petitioning for a protection order. WSC honors orders of protection, no-contact orders, restraining orders, or similar orders issued by a criminal, civil, or tribal court.
- An on-campus investigation and, if appropriate, initiate disciplinary/dismissal procedures.
- Other referrals as necessary.

### 6.3 Interim Conditions and Post-Hearing Interventions Applying to Complainants and Respondents

- The Complainant and/or Respondent may have parking re-assigned.
- The Complainant and/or Respondent may have on-campus residence changed.
- The Complainant and/or Respondent may have his/her academic schedule altered and/or arrangements with instructors to assist in offsetting potential academic problems will be coordinated.

- The Respondent may be directed not to have contact, by any means, with a Complainant.
- The Complainant may be directed not to have contact, by any means, with a Respondent.
- Any individual who is alleged to have committed a violent act, including domestic violence, dating violence, sexual assault, or stalking upon a member of the campus community, may be banned from campus and campus activities.
- Other conditions as deemed appropriate.

The Vice President for Student Affairs may impose one or more WSC sanctions as described below for violations of the *Student Code of Conduct*.

### 7. Status Sanctions

The Vice President for Student Affairs may impose one or more sanctions as described below for violations of the *Student Code of Conduct*:

- Written Warning,
- Consultation,
- Referral to special classes or counseling sessions,
- Parental notification,
- Restitution and/or fines,
- Conduct probation,
- Supervised conduct probation,
- Eviction from college-owned housing,
- Suspension, and/or
- Recommendation to the provost to withhold or rescind degree.

#### 7.1 Restrictions of Educational Activities Sanctions

Having the intent of effecting a safer campus environment and/or promoting the development of a student determined responsible for *Student Code of Conduct* violations, the VPSA may impose additional sanctions. Such sanctions may include but are not limited to:

- The VPSA will direct a disciplinary withdrawal of a student whose suspension was upheld by the Hearing Committee.
- No Contact Directive: A directive to refrain from any intentional contact, direct or indirect, with one or more designated persons or group(s) through any means, including personal contact, email, telephone, or through third parties.
- Suspension of or restriction(s) on access to all or to specified campus facilities, buildings, or other locations; or services; or events.
- Residence hall transfer, residence hall floor transfer, restricted access within the residence halls, restricted access to dining services, and removal and/or ban from the residence hall system for a specified period of time.
- Suspension of or restriction(s) on driving on or parking in campus-controlled streets, roads, and parking lots.
- Restitution to WSC for cleaning, replacing, or restoring some specific area or thing when loss or damage was a result of the student's disciplinary violation.
- Referral to the Campus Counselor or another provider approved by the Campus Counselor.
- Mandated community service and/or participation in campus educational programs.
- Mandated participation in one or more campus activities, lectures or workshops, and/or other activity that employs an educational purpose.
- Enhanced Sanctions for Bias-Motivated Offenses – Violators of the regulations and policies outlined in this document whose violations are motivated by bias may face more severe or enhanced sanctions. Violations

motivated by bias include the intentional selection of a person against whom the violation is committed because of the race, religion, color, genetic information, gender, disability, sexual orientation, gender identity, national origin, ethnicity, age, or ancestry of that person.

### 7.2 Suspension

The Hearing Committee will convene to hear a Title IX case if the VPSA's recommendation involves suspension of any type. The Hearing Committee may impose one or more College sanctions listed above and/or others and/or the WSC sanction of suspension as described below.

Suspension will normally be for at least the remainder of the semester in which the penalty is imposed and will normally result in the cancellation of registration of the student. Suspension may be recommended for violations involving sexual harassment, assault, domestic violence, dating violence, sexual assault, stalking, possession or trafficking in the sale of drugs or weapons, false emergency report, interference in WSC activities (classes, administration, research, fire, police, etc.), or other serious offenses, or knowingly violating the terms of any disciplinary sanctions imposed in accordance with the *Student Code of Conduct*.

- Suspension — Suspension is a temporary withdrawal of enrollment privileges and ban from campus property and activities (student) or recognition (student organization) for a specific period. Suspension notification will include conditions of the suspension and terms for reinstatement. In some cases, short term suspension may be imposed depending on the nature and severity of the offense.
- Indefinite Suspension — Indefinite suspension is a suspension which involves no definite time limit and may carry conditions which must be met before the student/student organization may request reinstatement.
- Emergency Suspension – The Vice President for Student Affairs (VPSA) or designee may direct the temporary, immediate removal of a student in accordance with the Student Code of Conduct.

### 7.3 Recommendation and Authority to Impose Sanction

VPSA has the final authority in the recommendation of a suspension in Title IX cases. The VPSA or designee authorizes an Emergency Suspension, subject to an Emergency Suspension Review Hearing by the Hearing Committee. The Hearing Committee has the sole authority to impose suspension in Title IX cases.

### 7.4 College Disciplinary Sanctions for Faculty and Staff

The College will follow the disciplinary policies and procedures in the Faculty Handbook for faculty. [North Dakota University System Human Resource Policy Manual section 25](#) and [section 27](#) will be followed for any disciplinary acts involving staff. For employees excluded from the broadbanding system, [State Board of Higher Education \(SBHE\) policy 608.2](#) will be followed. Faculty are not included under SBHE 608.2.

### 8. Title IX Hearings

The Hearing Committee consists of a group of staff and faculty members, appointed by the Title IX Coordinator, trained, and called upon to hear cases of alleged Title IX violations of the *Student Code of Conduct*. The Hearing Committee has the authority to suspend a student or student organization in Title IX cases.

When a student or student organization has allegedly committed a Title IX violation and the VPSA or designee recommends suspension for the alleged behavior, the Hearing Committee will convene to hear the case. If it is determined that there may be cause for a Hearing, the Title IX Coordinator shall inform the student of his/her rights related to the Hearing. If the student or student organization is found to have violated Title IX policy as described



in the *Student Code of Conduct*, appropriate sanctions are determined by the Hearing Committee. All procedural rules for the conduct of hearings shall be identified in the *Student Code of Conduct*. All procedures will apply to students and student organizations.

### 8.1 Types of Title IX Hearings

**Full Hearing for an accused student** - A hearing committee is convened to consider cases of a very serious nature which could lead to a sanction of suspension from the College. After hearing information from all parties, including the accused student; witnesses; student Complainant, if any; and the VPSA; the hearing committee decides whether the student is responsible for a Title IX violation of the *Student Code of Conduct*, using a preponderance of evidence standard. If the student is found responsible for violation(s) of the *Student Code of Conduct*, the committee will also determine the appropriate sanction for the student.

**Emergency Suspension Review Hearing for an accused student** – In extraordinary circumstances and/or emergency situations, the VPSA or designee may suspend a student or student organization for a Title IX violation, pending action on charges, the right of the student to be present on the campus and/or to attend classes (including on-campus or on-site instruction or practicum or on-line environments). The purpose of an Emergency Suspension Review Hearing is to determine if an Emergency Suspension should remain in effect until the matter is resolved.

**Full Hearing for a student organization** – A committee is convened to consider cases of a very serious nature which could lead to a sanction of suspension from the College. After hearing information from all parties, including the accused student organization; witnesses; student Complainant, if any; and the VPSA; the Committee decides whether the student organization is responsible for a violation of the *Student Code of Conduct*, using a preponderance of evidence standard. If the student organization is found responsible for violation(s) of the *Student Code of Conduct*, the committee will also determine the appropriate sanction for the student organization.

**Emergency Suspension Review hearing for a student organization** - In extraordinary circumstances and/or emergency situations, the VPSA or designee may suspend a student or student organization, pending action on charges, the right of the student to be present on the campus and/or to attend classes (including on-campus or on-site instruction or practicum or on-line environments). The purpose of an Emergency Suspension Review Hearing is to determine if an Emergency Suspension should remain in effect until the matter is resolved.

### 8.2 Hearing Committee Membership

The Hearing Committee for a Full Hearing shall normally consist of three WSC employees, one of whom will act at the Hearing Committee Chair. All panelists shall be trained in conducting hearings as it relates to possible violations of the *Student Code of Conduct*. When that composition of members is not available (e.g., summer session, College breaks, or other exceptional circumstances), the Committee size shall be determined by the VPSA or designee. The Committee size for an Emergency Suspension Review Hearing shall be determined by the VPSA or designee.

Composition of any Hearing Committee shall include a minimum of three members.

### 8.3 Personal Advisors (Advocates)

Both the Complainant and the Respondent are entitled to have a Personal Advisor present during the hearing. The rights/restrictions placed on a Personal Advisor and/or Personal Advocate will be applied equally to both parties. By definition, a Personal Advisor

may act on behalf of the student, make opening and closing statements, and call and question witnesses during the hearing. However, a Personal Advisor does not have speaking privileges during a hearing (unless previously mentioned), must not disrupt the hearing, and cannot be called as a witness during any phase of the process. Conversely a Personal Advocate acts only as a support system to the student during the hearing process. Additionally a Personal Advocate may provide support, guidance, and advice to the student but may not act on his/her behalf.

The accused, and if applicable, Complainant, student may each have one Personal Advisor present during all portions of the proceedings in which the student participates. A Personal Advisor may, but does not need to, be an attorney. An attorney who is serving as a Personal Advisor is expected to follow the [North Dakota Rules of Professional Conduct](#). Personal Advisors and Personal Advocates are selected by the student. The student is responsible for sharing and communicating all information with his/her Personal Advisor (Advocate) unless other arrangements are made. If applicable, the student is responsible for any and all expenses associated with the Personal Advisor (Advocate).

A student should select a Personal Advisor (Advocate) whose schedule allows attendance at a previously scheduled date and time for the hearing. If a student has selected a Personal Advisor (Advocate) prior to a hearing being scheduled, the student can provide his/her Personal Advisor's (Advocate's) contact information and availability to the VPSA for consideration in scheduling.

If the Personal Advisor (Advocate) is unable to attend a previously scheduled hearing, the student is encouraged to inform the VPSA that his/her Personal Advisor (Advocate) is unable to attend. Upon request the Hearing may be rescheduled. The College requests that a student notify the VPSA at least five business days prior to the scheduled hearing date of his/her intent to bring a Personal Advisor (Advocate).

The College requests that the notification also indicate if the Personal Advisor (Advocate) is a licensed attorney. This request is made to ensure that the parties involved in the Hearing may be notified of the name of the Personal Advisor (Advocate) and that any reasonable accommodations may be made prior to the hearing. If the student brings a licensed attorney to a Hearing as a Personal Advisor (Advocate) without prior notice to the VPSA, the attorney shall identify him/herself to the panel as such and the hearing may be rescheduled to allow for the College's legal representative to attend.

If the student is not in attendance, the Personal Advisor (Advocate) may not be in attendance.

### 8.4 Hearing Procedures

**8.4.1 Prior to the Hearing** – The Title IX Coordinator shall confer with the Hearing Committee to establish a time, date, and place for the hearing, and notify the accused student and the Complainant, if applicable, of such in writing, via Williston State College E-mail, the College's official means of communication. The accused student and the Complainant, if applicable, shall receive the Hearing Notification Letter at least seven business days prior to the hearing date. A student may request in writing that an earlier date be set. The Title IX coordinator will send each member of The Hearing Committee the final investigative report written by the Title IX investigator four business days before the hearing. The Hearing Committee may convene with the investigator, if necessary, to ask questions related to the investigation report.

The Hearing Committee, for good cause, may postpone the hearing. In the event that this occurs, the Title IX Coordinator will notify all

interested persons of the new hearing date, time, and place. The Hearing Committee Chair, in consultation with the Hearing Committee, may refuse to conduct a hearing when in their determination there is insufficient information for a Committee to consider the alleged violation or if the alleged violation would not merit suspension as a sanction. The Hearing Committee Chair may then assign such a case to the Student Review Committee for resolution.

**8.4.2 The Hearing Notification Letter to the accused student shall:**

- Direct the accused student to appear at the date, time, and space specified.
- Include alleged violations of the *Student Code of Conduct*.
- Advise the student that information provided to the Hearing Committee will be included in the deliberations.
- Advise the student of his/her rights.
- Include a request to the student to provide the following information to the Title IX Coordinator at least five (5) business days before the hearing: the identity of the student's Personal Advisor (Advocate) if any, whether the Personal Advisor (Advocate) is a licensed attorney, when the Person Advisor (Advocate) will act as a Personal Advocate, will be the student's Personal Advisor, and whether the student requests the hearing be an open hearing.
- Include a notice to the student to provide the following to the Title IX Coordinator at least two (2) business days before the hearing: a list of witnesses to be called on behalf of the student and copies of any documents or other materials to be presented by the student at the hearing.
- Contain the name of the person appointed to act as chairperson of the Hearing Committee.
- Contain the name of the person appointed to act as Process Advisor for the student.
- Contain the names of witnesses being called by the Hearing Committee Chair, and a description of information, materials, and charges that will be offered against them.
- Contain a redacted copy of the complaint.
- Provide a copy of the Retaliation Prohibited Statement.
- Notify the student that if he/she chooses to serve as a witness, the student may be questioned by the Hearing Officer, the student Complainant, and the Hearing Committee.

**8.4.3 Rights of the Accused Student**

- To a closed hearing, which is held in private, unless the accused student, the student Complainant, if applicable, and the Hearing Officer agree to an open hearing, which is open to the campus community.
- The opportunity to appear alone or with a Process Advisor, a Personal Advocate, and/or Personal Advisor.
- To challenge one (1) member of the Hearing Committee for bias at the start of the hearing.
- To know the identity of each witness who will speak to the alleged events.
- To serve as a witness, or not; to call witness(es); submit documentary and other information; offer information; and speak on his/her own behalf.
- To question each witness, for the purpose of clarification.
- To have access to the record of the hearing after all proceedings are complete.
- To appeal the decision of the Hearing Committee.

**8.4.4 When applicable, the Hearing Notification Letter to the student Complainant shall:**

- Inform the student of the date, time, and place specified for the hearing.
- Advise the student that information provided to the Hearing Committee will be included in the deliberations.
- Advise the student of his/her rights.
- Include a notice to student to provide to the VPSA at least five (5) business days before the hearing, whether an attorney will be the student's Personal Advisor.
- Contain the name of the person appointed to act as chairperson of the Hearing Committee.
- Provide a copy of the Retaliation Prohibited statement.
- Notify the student that if he/she chooses to serve as a witness, the student may be questioned by the Hearing Officer, the accused student, and the Hearing Committee.

**8.4.5 Rights of the Student Complainant**

- In such cases when an act of violence or harassment is alleged, the student Complainant has the following rights:
- To receive a notice of the hearing.
- The opportunity to appear, alone or with a Process Advisor, Personal Advocate, and/or Personal Advisor.
- To request accommodations during the hearing to increase his/her comfort or sense of safety in providing information.
- To speak for him/herself.
- To know the outcome of the hearing.
- To appeal the decision of the Hearing Committee.

**8.5 Full Hearing Process:**

**Introduction** – With all parties present, the Hearing Officer will call the meeting to order and will ask all parties participating in the hearing to introduce themselves and identify their role in the proceedings.

The Hearing Officer will describe the general outline of the hearing and will read the honesty statement. If a student is represented by an attorney or nonattorney advisor, that individual has the ability to fully participate in the hearing. Hearing advisors (attorney or nonattorney) will be required to sign a confidentiality statement pertaining to information about all parties involved in the hearing.

**Honesty Statement**

The College expects that all information presented in this hearing will be true and correct to the best of each person's knowledge. If students willfully provide false information, they will be in violation of WSC's Student Code of Conduct. As a result, they also may be subject to additional disciplinary action. Dishonest behavior of any faculty or staff members will be reported to supervisors for any necessary disciplinary action.

The Hearing Officer will dismiss witnesses until they are called to speak.

**Complaint and Response** – The Hearing Officer will introduce the case.

The accused student (and/or attorney or nonattorney advisor) will be permitted to respond to the charges and present information that is

relevant in determining whether the student violated one or more sections of the code.

**Presentation of Witnesses** – The Complainant and the Respondent will be allowed to present witnesses who may be asked questions by the Hearing Officer, Complainant (and/or attorney or nonattorney advisor), Respondent (and/or attorney or nonattorney advisor) and VPSA or designee. All questions will be directed to the Hearing Officer who will determine relevancy to the proceeding, request clarification if necessary, ask if the Respondent understands the question, and request a response.

**Final Questions** – The Hearing Officer and the Respondent (and/or attorney or nonattorney advisor) will be permitted to ask questions of each other.

The Hearing Officer and the Complainant (and/or attorney or nonattorney advisor) will be permitted to ask questions of each other.

Questions will be permitted by the Hearing Committee, who may question either party.

The Hearing Officer and Complainant (and/or attorney or nonattorney advisor) may be permitted to ask additional questions of each other.

The Hearing Officer and Respondent (and/or attorney or nonattorney advisor) may be permitted to ask additional questions of each other.

During this time, all questions will be directed to the Hearing Officer who will determine relevancy to the proceeding, request clarification if necessary, and request a response from the appropriate party.

In no event will the parties be allowed to personally cross-examine each other. The same applies to appeal proceedings.

**Closing Statements** - The Complainant (and/or attorney or nonattorney advisor) will have an opportunity for a closing statement.

The Respondent (and/or attorney or nonattorney advisor) will have an opportunity for a closing statement.

**Deliberation and Decision** – If the Hearing Committee believes that suspension is warranted, the Hearing Committee will make its written recommendation to the Title IX Coordinator and the Vice President for Student Affairs. Thereafter, Vice President for Student Affairs will issue the written decision within five business days of the completion of the hearing.

The Vice President for Student Affairs will provide written notice of findings to all parties stating whether or not the WSC Title IX Policy was violated. The written notice will include sanctions and terms and conditions for continued enrollment or re-enrollment, if any, as well as appeal information. The written notice, which will be provided via WSC email, will generally be provided within five business days following the hearing.

### 8.6 Record of the Hearing

An individual student's hearing record is confidential and consists of:

- A copy of the Hearing Notification Letter sent to the accused student.
- All documents, information, and materials admitted in the hearing.

- The audio recording of the hearing, which is the sole official verbatim record of the Hearing, is the property of Williston State College.
- A copy of the Hearing Decision Letter.

The result of a hearing involving a student organization is not subject to FERPA. The records of student members of student organizations are subject to FERPA. The charges, findings, and sanctions for the student organization will be considered public information. Personally identifiable information will be redacted or omitted from any disclosure document. The Office of Record for Hearings is the Office of Student Affairs. Records will be kept for a minimum of six (6) years following final resolution. Even if the report was unsubstantiated, files must be kept in order to monitor progress in creating a safer campus by conducting assessments of the campus climate. In addition, files must be kept in order to identify and resolve harassment-related issues, patterns and problems. Students who wish to review their disciplinary or hearing records may contact the Student Affairs Office to schedule an appointment to conduct the review of these records.

### 8.7 Appeal Procedures

The student in violation and the Complainant student have the right to appeal the outcome of a Full Hearing and both parties have the right to participate equally in the appeal process, even if the party has not filed an appeal. Appeals of a decision made by the Hearing Committee are made to the Vice President for Academic Affairs. Appeals must be made in writing to the VPAA within one (1) year after delivery posted date of the Hearing Decision Letter. A notice of appeal shall contain the student's name and contact information, the date of the decision or action, the reason for appeal, and the name of the student's Personal Advisor (Advocate), if any. An appeal may only be based on new information, contradictory information, and information that indicates the student in violation was not afforded due process.

The specific items for review that may be addressed in a written appeal are the following:

- Were Procedures for a Full Hearing as listed in section 8.4 of the Code followed? Please explain.
- Was a procedural error committed? Please explain.
- Were you given an adequate opportunity to make your presentation? Please explain.
- Is there any new or contradictory information that was unavailable at the time of the hearing that may have affected the outcome of the hearing and/or the sanctions? Please explain the information and why the information was unavailable at the time of the hearing.

Filing of an appeal suspends the sanctions until the appeal is decided. However, interim action may be taken as outlined in Section 6 herein.

The case will be reviewed by the VPAA or designee. The VPAA or designee may consider police reports, transcripts, the outcome of any civil or criminal proceedings directly related to the appeal, and information presented to the Hearing Committee. The VPAA or designee will make all decisions regarding the appeal. The disciplinary process is educational in nature and a determination is made using a preponderance of evidence standard. A later finding of a court of law does not change the outcome of any completed disciplinary process, but it may be considered by the VPAA or designee during an appeal process.

After reviewing the request for appeal, the VPAA or designee will determine if there are grounds for appeal, and make a determination whether to deny or grant the appeal. If the VPAA or designee denies the appeal, the decision of the Hearing Committee is final. If an appeal is granted, the VPAA or designee may:

- Modify the decision of the Hearing Committee. The VPAA or designee may overturn all or some of the decisions regarding violations determined by the Hearing Committee. If a violation is overturned, the VPAA or designee may modify, reduce, or vacate any sanction. If the accused student is found to be in violation of the *Student Code of Conduct* as the result of the appeal, the VPAA or designee may impose sanctions, including, but not limited to, suspension.
- Order a new hearing. The VPAA or designee may void all or some of the determinations of the Hearing Committee and call for a new Hearing. The VPAA or designee may provide specific instructions to those participating in the Hearing regarding the rights of a student, the hearing process, or information that is or is not relevant to the hearing as it relates to the details of the appeal.
- Uphold the decision made by the Hearing Committee.

The VPAA or designee shall have 21 business days from the receipt date of the appeal in which to issue a written determination on the appeal, although extensions of time may be granted and are available equally to each party. Such written determination shall be forwarded to the accused student; student Complainant, if applicable; and each Hearing Committee member. The action of the VPAA or designee shall be final. If the appeal results in a reversal of the decision or lessening of the sanction, the institution may reimburse the student for any tuition and fees paid to the institution for the period of suspension which had not been previously refunded.

### 8.8 Compliance with Sanctions

The student in violation is responsible for completing the sanctions imposed by the Hearing Committee within the timeframe stated in the Hearing Decision Letter. If a student does not complete the sanctions or violates the sanctions as prescribed, the student will be prohibited from registering. If a student has already pre-registered and the sanction has not been completed, the student's classes will be canceled. Student organizations that do not complete the sanctions or violate the sanctions as prescribed will no longer be considered in good standing and will not be entitled to the rights or privileges of student organizations.

### 8.9 Reinstatement Following a Suspension

Reinstatement for students following a Suspension involves the following procedure:

- The suspended student applies in writing to the VPSA for reinstatement.
- The VPSA reviews the record and ensures that the conditions (if any) for reinstatement have been satisfied.
- The VPSA shall either grant or deny the application. The student status of the Complainant student may be a factor among others in determining the reinstatement of the suspended student.
- If the VPSA reinstates the suspended student, the student must still complete the readmission process through the Enrollment Services Office.

Reinstatement for Student Organizations following a Suspension involves the following procedure:

- The suspended student organization applies to Student Senate for reinstatement.
- The Student Senate President, who may be assisted by other Student Senate members, reviews the record and ensures the conditions for reinstatement have been satisfied. The Student Senate President may consult with the Hearing Committee about the completion of the conditions.

- Student Senate shall either grant the reinstatement or deny the application.

## 9. Emergency Suspension Review Hearing Procedures

An emergency suspension is considered extraordinary and temporary in nature and subject to an Emergency Suspension Review Hearing (hereinafter "Review Hearing") by the Hearing Committee. In most circumstances a Hearing Committee will be convened within ten (10) business days. However, in extenuating circumstances, the Hearing Committee Chair, with the approval of the VPSA, may grant an extension of that timeframe. All Review Hearings will be scheduled as expediently as possible.

The purpose of a Review Hearing is to hear information from both the student who has been placed under temporary suspension and the Office of Student Affairs for consideration in determining if the temporary suspension should remain in effect until the matter is resolved. Final resolution of the matter will include an investigation by the Student Affairs Office and any necessary actions to follow, possibly to include a Full Hearing before the Hearing Committee. Under the *Student Code of Conduct*, a student may be suspended on an emergency basis for behavior that the Vice President for Student Affairs determines met at least one of the Criteria for Suspension.

### 9.1 Criteria for Emergency Suspension

Student's behavior poses a significant threat of danger and/or injury to self or others,

OR

Student's behavior poses a threat of disruption of the educational process for others,

OR

Student's behavior poses a threat of destruction of property.

### 9.2 Prior to the Emergency Suspension Review Hearing

The Vice President for Student Affairs or designee shall confer with the Hearing Committee to establish a time, date, and place for the hearing. Notice is provided to the accused student by the Student Affairs office. The date, time, and place for the Review Hearing will be specified in the Review Hearing Notification Letter.

### 9.3 The Emergency Suspension Review Hearing Notification Letter:

The Emergency Suspension Review Hearing Notification Letter shall:

- Direct the accused student to appear at the date, time, and place specified.
- Include the alleged violations of the *Code*.
- Provide the name and contact information of the Process Advisor.
- Advise the student that information provided to the Hearing Committee will be included in the deliberations.
- Advise the student of his/her rights.
- Include a request to the student to provide the following information to the VPSA prior to the hearing: the identity of the student's Personal Advisor (Advocate) if any, whether the Personal Advisor (Advocate) is a licensed attorney, whether the Personal Advisor will act as a Personal Advocate, and whether the student requests that the hearing be an open hearing.

### 9.4 Rights of the student during the Emergency Suspension Review Hearing Process

- To a closed hearing unless the accused student and the Judicial Officer agree to an open hearing.
- The opportunity to appear, alone or with a Process Advisor, Personal Advocate, and/or Personal Advisor.
- To challenge one member of the Panel for bias at the start of the hearing.

- To know the identity of each witness who will speak to the alleged events.
- To serve as a witness, or not; to call witness(es); to submit documentary and other information; to offer information; and to speak on his/her own behalf.
- To question each witness, for the purpose of clarification.
- To have access to the record of the hearing after all proceedings are complete.

**9.5 Emergency Suspension Review Hearing Process**

The accused student, the Hearing Officer, and each witness will sign an honesty oath, confidentiality statement, and Retaliation Prohibited statement prior to the hearing.

The Hearing Officer will convene the hearing at the designated time and location.

The Hearing Committee may proceed with a hearing in the absence of the accused student. Such an absence is not to be interpreted as an admission of responsibility nor as a basis for additional disciplinary action. The College will be required to document that a reasonable attempt has been made to provide notification of the hearing to the student.

The accused student and the Hearing Officer are given the opportunity to challenge one member of the Hearing Committee for bias. A confidentiality statement is read. The hearing shall be closed to the public unless the Hearing Officer and the accused student agree to an open hearing.

The Hearing Committee Chair will read the complaint as included in the Review Hearing Notification letter sent to the accused student by the VPSA.

The Hearing Officer presents the reason for emergency suspension.

Witnesses may be called to offer testimony for consideration in determining if the emergency suspension should remain in effect until the matter is resolved. Any one of Criteria for Suspension is sufficient for continuing the suspension pending further investigation. The Hearing Officer, the accused student or his/her Personal Advocate, and the Hearing Committee members will have an opportunity to question the witnesses.

The accused student or his/her Personal Advocate may make a statement or call witnesses to offer testimony. The accused student or Personal Advocate, Hearing Officer, and the Hearing Committee will have an opportunity to question the witnesses.

Members of the Hearing Committee deliberate and determine if the Emergency Suspension should remain in effect until the matter is resolved. After the Panel makes their determination, the Hearing Committee Chair and the VPSA will meet with the accused student to announce the decision.

**9.6 Emergency Suspension Review Hearing Decision Letter**

A written notification of the outcome of the Emergency Suspension Review Hearing will be sent to the accused student within one week following the preliminary hearing, with copies provided to the VPSA and to the Student Services Office to be placed in the student’s personal file.

**10. Communication of Decisions and Appeals**

Decisions regarding sanctions and/or appeal outcomes will be promptly communicated by the Vice President for Student Affairs or designee to all appropriate College administrators, faculty, and staff via WSC email to allow for general communication, suitable arrangements or updates to prior arrangements.

**11. Documentation**

WSC will document all complaints received, regardless of outcome. A final report will be compiled for each complaint rising to the level of an investigation. When applicable, the Final report will include the following information:

- Description of the incident
- Record of how and when the incident was brought to attention
- Documentation of investigation process, including interview notes and supporting materials
- Documentation of all information reviewed by adjudicator
- Documentation of policy violation(s) and sanction(s)
- Documentation of all updates given to involved parties
- Documentation of all contact with law enforcement
- Documentation of interim measures and services provided
- Any other relevant information to the case.

**11. References**

Clery Act <a href="http://clerycenter.org/summary-jeanne-clery-act">http://clerycenter.org/summary-jeanne-clery-act</a>
NDCC 12.1-17-07.1 – Stalking <a href="http://www.legis.nd.gov/cencode/t12-1c17.pdf">www.legis.nd.gov/cencode/t12-1c17.pdf</a>
NDCC 12.1-17-08 – Consent as a Defense <a href="http://www.legis.nd.gov/cencode/t12-1c17.pdf">www.legis.nd.gov/cencode/t12-1c17.pdf</a>
NDCC 12.1-20-02 – Definitions related to Sex Offenses <a href="http://www.legis.nd.gov/cencode/t12-1c20.pdf">www.legis.nd.gov/cencode/t12-1c20.pdf</a>
NDCC 14-03-03 – Void Marriages <a href="http://www.legis.nd.gov/cencode/t14c03.pdf">www.legis.nd.gov/cencode/t14c03.pdf</a>
NDCC 14-07.1-01 – Definitions related to Domestic Violence <a href="http://www.legis.nd.gov/cencode/t14c07-1.pdf">www.legis.nd.gov/cencode/t14c07-1.pdf</a>
NDUS Human Resource Policy Manual 25 – Job Discipline/Dismissal <a href="http://ndus.edu/makers/procedures/hr/?SID=44&amp;PID=246&amp;re=d%20">http://ndus.edu/makers/procedures/hr/?SID=44&amp;PID=246&amp;re=d%20</a>
NDUS Human Resource Policy Manual 27 – Appeal Procedures <a href="http://ndus.edu/makers/procedures/hr/?SID=46&amp;PID=248&amp;re=d%20">http://ndus.edu/makers/procedures/hr/?SID=46&amp;PID=248&amp;re=d%20</a>
U.S. Department of Labor - Title IX, Education Amendments of 1972 <a href="http://www.dol.gov/oasam/reggs/statutes/titleix.htm">http://www.dol.gov/oasam/reggs/statutes/titleix.htm</a>
NDCC 12.1-32-15 – Sex Offender Registration Policy <a href="http://www.legis.nd.gov/cencode/t12-1c32.pdf?20151207113531">http://www.legis.nd.gov/cencode/t12-1c32.pdf?20151207113531</a>

Students are encouraged to report incidents or information related to sexual misconduct as soon as possible. Anyone who becomes aware of a Title IX complaint or violation of this policy and has the authority to take action on the complaint or violation, shall report

the complaint or violation either to the Title IX Coordinator or a Deputy Title IX Coordinator:

Heather Fink  
Director for Student Financial Aid/Title IX Coordinator  
Student Affairs Office, Stevens Hall  
Williston, ND 58801  
Phone: (701) 774-4281  
Email: [heather.fink@willistonstate.edu](mailto:heather.fink@willistonstate.edu)  
Hours: 8a-4:30p, Monday through Friday  
Summer Hours may vary, please call for appointment

Amy Armstrong  
Executive Assistant to the Vice President for Student  
Affairs/Deputy Title IX Coordinator  
Student Affairs Office, Stevens Hall  
Williston, ND 58801  
Phone: (701) 774-4586  
Email: [amy.n.armstrong@ndus.edu](mailto:amy.n.armstrong@ndus.edu)  
Hours: 8a-4:30p, Monday through Friday  
Summer Hours may vary, please call for appointment