



SEXUAL MISCONDUCT POLICY

I. INTRODUCTION

The University is committed to maintaining its campus and programs free from all forms of sexual misconduct.

This Policy prohibits all forms of sexual misconduct, including sexual and gender-related: violence, assault, harassment, domestic violence, dating violence, and stalking.

This Policy applies to conduct occurring on NDNU property or at NDNU-sponsored events or programs whether they take place on campus or off campus. Off-campus conduct that is likely to have a substantial effect on on-campus activity or that poses a threat or danger to the University community also may be addressed under this Policy.

The University encourages all members of the NDNU community who believe they have been victims of sexual misconduct to report these incidents to local law enforcement authorities and to seek medical attention.

- For Emergencies: call 9-1-1
- For the Belmont Police Department: call 650-595-7400
- For the Rape Trauma Services 24 hour helpline: call 650-692-7273
- For the San Mateo County Medical Center – Keller Center for Family Violence Intervention: visit 222 West 39th Avenue, First Floor, San Mateo, CA 94403 or call (650) 573-2623
- For campus reporting options, please see below.

II. NOTICE OF NON-DISCRIMINATION

The University is committed to maintaining its campus and programs free from all forms of sexual misconduct. The University does not permit discrimination or harassment in its programs and activities on the basis of race, color, national origin, ancestry, sex, gender, gender identification, sexual orientation, disability, age, religion, medical condition, veteran status, marital status, or any other characteristic protected under law.

III. SCOPE OF THE POLICY

This Policy sets forth the policies and procedures for student reports of sexual misconduct.

For information related to academic misconduct, please refer to the University's Student Code of Conduct – Academic, which is found in the Student Handbook.

For information related to misconduct that is not sexual misconduct and is not academic misconduct, please refer to the Student Conduct Code – Behavioral, within the Student Handbook.

For Faculty and Staff who believe that they have experienced sexual misconduct, please consult the faculty and employee handbooks referencing the policies and procedures that apply to them. Employees should also contact the Title IX Coordinator for assistance.

IV. TITLE IX COORDINATOR

Title IX of the Education Amendments of 1972 (“Title IX”) is a federal law that prohibits discrimination on the basis of sex (or gender) of students and employees of educational institutions that receive federal financial assistance.

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” 20 U.S.C. §1681.

The Title IX Coordinator is the person designated by the University to oversee the University’s Student Sexual Misconduct Policy and to whom anyone with questions about this Policy may be referred.

The University has designated Dr. Karen D. White, HR Director, as NDNU’s Title IX Coordinator. Dr. White can be reached at (650) 508-3645. Her email is kwhite@ndnu.edu. Her office is located in Toso Residence, Namur.

The Title IX Coordinator will also from time-to-time appoint a staff or faculty member of the University to serve as the Chair of the Sexual Misconduct Hearing Board, or as the Title IX Intake Officer, as more fully explained below in Section VII.

In the event that the individuals appointed as the Intake Officer or as the Chair of the Sexual Misconduct Hearing Board is unavailable, the Title IX Coordinator may designate another person to serve as Intake Officer or Chair of the Sexual Misconduct Hearing Board, respectively.

V. PROHIBITED CONDUCT AND DEFINITIONS

Sexual Misconduct: The University prohibits all forms of sexual misconduct, which includes sexual and gender-related violence of any form: assault; harassment; domestic violence; dating violence; and stalking. Each of these terms encompasses a broad range of behavior.

The following are among the forms of sexual misconduct that violate University policy and the associated definitions:

1. **Sexual Assault**: Having or attempting to have sexual intercourse with another individual:
By force or threat of force;
 - Without effective consent; or
 - Where the individual is incapacitated.
2. **Non-Consensual Sexual Contact (or attempts to commit the same)**: Intentional sexual touching by any person upon any other person, that is without consent and/or is

by force. “Person” is regardless of gender status.

3. **Non-Consensual Sexual Intercourse (or attempts to commit the same):** Sexual intercourse, with any object or body part, by a person upon another person that is without consent and/or is by force. “Person” is regardless of gender status.
4. **Sexual Exploitation:** Taking non-consensual or abusive sexual advantage of another person for one’s own advantage or benefit, or to the benefit or advantage of another person. Examples of sexual exploitation include:
 - Causing or attempting to cause another person to become drunk, drugged or otherwise incapacitated with the intent of engaging in a sexual behavior;
 - Recording, photographing or transmitting images of sexual activity and/or the intimate body parts (groin, genitalia, breasts or buttocks) of another person without his/her consent;
 - Allowing third parties to observe sexual acts and voyeurism (spying on people who are engaging in sexual acts or who are doing other intimate activities such as undressing, showering, etc.);
 - Exposing one’s genitals in non-consensual circumstances or inducing someone to expose his/her genitals; and
 - Sexually-based stalking and/or bullying.
5. **Domestic Violence:** Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
6. **Dating Violence:** Violence committed by a person –
 - (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) The length of the relationship.
 - (ii) The type of relationship.
 - (iii) The frequency of interaction between the persons involved in the relationship.
 - (A) **Stalking:** A course of physical or verbal contact directed at another individual that would cause a reasonable person to-Fear for his or her safety or the safety of others; or
 - (B) Suffer substantial emotional distress.
7. **Retaliation:** Action which is taken against a person because of the person’s participation in a complaint or investigation of sexual misconduct, including but not limited to,

Complainants, Respondents, witnesses, or others involved in the complaint, investigation and/or resolution of the alleged sexual misconduct. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others.

8. **Sexual Harassment** is unwelcome, gender-based verbal or physical conduct that is sufficiently severe, persistent or pervasive to interfere with, deny or limit a student's ability to participate in or benefit from the University's education program and/or activities. Sexual harassment has many forms.

One form is quid pro quo or "this for that." Unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature constitutes sexual harassment when it is implicitly or explicitly suggested that submission to or rejection of the conduct results in adverse educational or employment action. An example is a resident advisor asking for sex to keep quiet about a student's rule infraction.

Another form of sexual harassment involves hostile environment. It is sexual harassment when an individual receives unwelcome sexual advances, unwanted verbal, physical, or visual behavior of a sexual nature, or is made to feel uncomfortable because of their gender or sexual orientation. Conduct that may constitute sexual harassment may include one or more of the following:

- Physical conduct: unwanted touching, blocking normal movement, or interfering with studies or work;
- Verbal conduct: epithets, derogatory comments, slurs, or humor of a sexual nature
- Visual conduct: leering, making sexual gestures, displaying suggestive objects or pictures, cartoon posters in a public space or forum
- Written conduct: letters, notes, or electronic communications containing comments, words or images as described above

9. **Other Sexual Misconduct:** Other forms of conduct that is sexual or gender-related in nature, severe and pervasive, and unwelcome.

The following are additional definitions used under this Policy:

1. **Consent** means "affirmative consent," which means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other person(s) to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

the determination of whether consent was given to sexual activity, it shall not be a valid excuse to an alleged lack of affirmative consent that the person whose conduct is at issue ("Respondent") believed that the person who experienced the Respondent's conduct ("Complainant") consented to the sexual activity under either of the following circumstances:

- (A) The Respondent's belief in affirmative consent arose from the intoxication or

recklessness of the Respondent.

- (B) The Respondent did not take reasonable steps, in the circumstances known to him/her at the time, to ascertain whether the Complainant affirmatively consented.

In the evaluation of complaints under this Policy, it shall not be a valid excuse that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:

- (A) The Complainant was asleep or unconscious.
- (B) The Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the complainant could not understand the fact, nature, or extent of the sexual activity.
- (C) The Complainant was unable to communicate due to a mental or physical condition.

2. **Coercion** is a form of force which comprises unreasonable pressure for sexual activity. When someone makes clear that they do not want to participate in a sexual activity, that they want to stop, or that their limit is at a certain point, continued pressure to act beyond that point can be coercive.
3. **Force** is the use of physical violence and/or imposing on someone physically to gain sexual access. Other forms of force include intimidation (implied threats), threats and coercion that overcome resistance or produce consent. For example, “Have sex with me or I’ll hit you.” “Okay, don’t hit me; I’ll do what you want.”
4. **Incapacitation** is a state where someone cannot knowingly give consent. It may occur as the result of alcohol or other drug use. This Policy also applies to a person who is incapacitated as a result of sleep, mental disability or from taking rape drugs. Administering any of these drugs to another person for the purposes of taking sexual advantage of them is a violation of this Policy.
5. **Sexual Contact** is the intentional touching of the intimate body parts (breast, buttocks, groin, and genitalia) or touching another person intentionally with these body parts. It is also using force (physical force, violence, threat, intimidation, coercion) to cause a person to touch his or her or another person’s intimate body parts, or any intentional bodily contact in a sexual manner
6. **Sexual Intercourse** is penetration (oral, anal or vaginal) by a tongue, mouth, penis, finger or an object.
7. **Complainant** refers to the individual who may identify him/herself as having experienced, or being a victim or survivor of sexual misconduct and who makes a report

of sexual misconduct under this Policy. A Complainant can also be a person who has knowledge of an incident of sexual misconduct but is not a victim.

8. **Respondent** refers to the individual whose conduct is at issue under this Policy. A Respondent may be a current or former University student, staff member, faculty, teacher, administrator, visitor, alumni, contractor, or any other person.
9. **Witness** refers to any individual who either witnessed an incident or who has relevant information regarding a case that is being investigated under this Policy.
10. **Advisor or Support Person** is a person who provides emotional support to a Complainant or Respondent and who may be present in a non-participating role to provide moral support during the Informal and/or Formal Resolution process. The advisor or support person may be a currently enrolled student, parent of the student, and/or NDNU faculty or staff member, including the Ombudsman or Academic Advisor. Non-participating means that the advisor or support person is silent and does not speak or present information during the meeting or proceeding. [Attorneys are not permitted to participate in any meeting or proceeding under this Policy, absent advance written consent of the Title IX Coordinator and agreement to terms.]

VI. REPORTING INCIDENTS OF SEXUAL MISCONDUCT

1. General Information

The University encourages all individuals to seek assistance from a medical provider and/or law enforcement as soon as possible after an incident of sexual misconduct. Prompt reporting is the best option to ensure preservation of evidence and for the identification and location of witnesses.

The University also encourages the reporting of student sexual misconduct to the University and to do so to the University's designated officers as described below. Persons should make reports of student sexual misconduct as soon as the person knows of the incident of sexual misconduct.

The University will promptly review and consider all reports of sexual misconduct. The University will also take steps to prevent recurrence of sexual misconduct and correct its effects. Members of the University community who learn of an incident of sexual misconduct, whether by witnessing an incident or by learning of it through another person, should report the incident, in writing, to the Title IX Coordinator, or by using the online reporting form described below.

The filing of a report of sexual misconduct under this Policy is independent of any criminal investigation or proceeding that may take place by the police or other law enforcement agencies, and both an investigation by the University and a criminal investigation by police or other law enforcement agencies may take place simultaneously.

2. Reporting Procedures

A. Emergency and External Reporting Options (non-University):

- Emergencies: call 9-1-1
- Belmont Police Department: call 650-595-7400

- Rape Trauma Services 24 hour helpline: call 650-692-7273
- National Domestic Violence hotline: 1-800-799-SAFE (7233)
- National Sexual Assault hotline: 1-800-656-HOPE (4673)

B. Reporting Options at the University:

If you are a student who believes you have been subjected to sexual misconduct in violation of this Policy by another student of the University, or by a University faculty, staff or visitor, or by any other person in circumstances related to the University, you should report such conduct by:

- using the online reporting form available on the Office of Public Safety's webpage: <https://www.ndnu.edu/conduct-report/>

OR

By submitting a complaint in writing to the University's Title IX Coordinator, Dr. Karen D. White. Dr. White's email is kwhite@ndnu.edu. Her office is located at Toso Residence, Namur. A complaint in writing includes email. Note: All reports of incidents of possible sexual misconduct received by the University will be reported to the Title IX Coordinator.

3. Anonymous Reporting

Anonymous reports, or reporting without disclosing your name, can be made. However, depending on the information received, the University's ability to respond to an anonymous report may be limited. The Title IX Coordinator and/or a person designated by the Title IX Coordinator will review anonymous reports received by the University and determine whether any investigation and response is appropriate.

4. Prohibition Against Retaliation

It is a violation of University policy to retaliate against any person making a complaint of sexual misconduct or against any person cooperating or otherwise involved in the investigation of any alleged sexual misconduct.

5. Requests for Confidentiality and Other Related Information

The University is committed to ensuring that students feel comfortable throughout the processes outlined in this Policy. Efforts will be made to respect the privacy of all individuals involved in this process in a manner consistent with the need for a thorough review of the report and carrying out of the processes. This means that the information related to a report under this Policy will only be shared with a limited circle of individuals who, in the University's judgment, have a "need to know" basis in order to assist the University in its investigation and response and to prevent the recurrence of any such conduct found to have been committed.

If there is a request that names remain confidential, the University will take steps to respond to the report in a manner that is consistent with that request. However, the University's ability to fully respond to the report may be limited and the University thereby cannot guarantee complete confidentiality.

If you do not wish to pursue a Complaint, you may so inform the University. However, in many

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circumstances, the University will still investigate the matter and take reasonable steps to protect the campus community and its members.

The University is required by law to report certain types of reported sexual misconduct in its annual crime statistics report. Neither names, nor other identifying details of the incident, will be made public in the annual crime report.

The University is also required by law to report any incident which might be classified as a sexual assault to the Belmont Police Department. However, it is up to the Complainant on whether or not to separately file their own report with the Police and/or to contact Rape Trauma Services.

6. Discussing An Incident(s) Of Possible Sexual Misconduct, Without Making A Report Or Record of The Incident

If a person would like to discuss the details of an incident of possible sexual misconduct, without making a report or record of the incident, or in an otherwise confidential manner, the person should speak with persons who hold a relationship with the person of which there is a legal duty of confidence, such as with their physicians, mental health therapists, priests, chaplains, etc. These persons generally will maintain confidentiality if they are acting in their capacity as your physician, mental health therapist, priest, or chaplain, except in cases of immediacy of threat or danger, or abuse of a minor.

VII. INTAKE MEETINGS AND INITIAL ASSESSMENT

1. Intake Meetings

When the Title IX Coordinator or the Title IX Coordinator's designee (Intake Officer) receives notice of a sexual misconduct report, he or she will schedule a meeting with the Complainant to go over this Policy and to identify possible forms of support for the Complainant (see the Resources section below).

At this meeting, the Intake Officer will also discuss whether there are any interim measures (see Interim Measures section below) that may be implemented at the discretion of the University, taking into consideration the preferences of the Complainant and the Respondent.

If the Respondent is another student of the University, the Intake Officer will also meet with the Respondent to go over this Policy, and to discuss whether there are any interim remedies or accommodations that may be of assistance during the investigation and resolution of the report.

If the Respondent is a University faculty, staff or visitor, or other person who is not a student, the Title IX Coordinator will conduct the intake meeting with the Respondent.

At the initial intake meetings, the Intake Officer will also discuss the following:

- A student's right to report the incident(s) to local law enforcement agencies

- A student's right to seek medical treatment and the importance of preservation of evidence
- The University's obligation to consider all reports of incidents of possible sexual misconduct and the inability of the University to thereby guarantee complete confidentiality
- The University's policy against retaliation of any person making a report or participating in the investigation or adjudication of an incident under this Policy
- The possibility of an Informal Resolution of the matter after an investigative report
- The possibility of a Formal Resolution of the matter after an investigative report, including a hearing before the Sexual Misconduct Hearing Board
- The use of an advisor or support person
- The University's obligation to report crime statistics into its daily crime log
- The University's advising the community of a potential threat, where appropriate in the judgment of the University

2. Initial Assessment

If the initial intake meetings are conducted by someone other than the Title IX Coordinator, they will report their initial assessment following the initial intake meetings, to the Title IX Coordinator and to the Director of Public Safety. The Title IX Coordinator, the Director of Public Safety and The Intake Officer will consider the nature of the report, the safety of the individuals involved and of the campus community, and the Complainant and Respondent's expressed preferences for resolution. The Title IX Coordinator will then decide whether to refer the matter for investigation. See Section VIII below.

3. Possible Interim Measures

Interim measures will be implemented at the discretion of the University, if needed to prevent possible harm to the University community or any member thereof. Interim measures may be applied to the Complainant and/or the Respondent or any other person. Such measures include:

- Issuance of a "no-contact" order or directive that restricts persons from having contact with one another in person or through electronic means;
- Change in class schedule;
- Change in on-campus housing;
- Change in on-campus employment;
- Rescheduling of exams or assignments (in conjunction with appropriate faculty);
- Voluntary leave of absence;
- Providing escort services for movement between classes and University activities;
- Interim suspension or University-imposed leave;
- Administrative hold on student accounts, including a hold on the release of transcripts while an investigation is pending;
- Denial of access to campus, campus facilities and/or University activities; and
- Other measures.

VIII. INVESTIGATION

Following the initial assessment, the Title IX Coordinator decides whether to refer the matter for investigation, and if so, the Title IX Coordinator and the Provost will designate an impartial investigator who has specific training and experience. The investigator may be an employee of the University or an external investigator engaged to assist the University in fact gathering. The University retains the right to designate an external investigator of its own choice at all times.

The investigator will conduct the investigation in a manner deemed appropriate in light of the circumstances of the case.

The role of the investigator is to be a neutral fact-finder. The investigator may also designate another trained colleague to assist in interviewing parties, identifying and locating witnesses, and in gathering other facts and evidence.

A typical investigation will include interviews with the Complainant, the Respondent and third-party witnesses, and of the collection of available physical, documentary and other evidence. Photographs may be taken. The Complainant, the Respondent and any third-party witnesses may present witnesses or other evidence to the investigator for consideration. If any law enforcement agency is also investigating the incident, the University investigator may defer to the police department for the collection and preservation of evidence.

The investigator will compile the details of the investigation into an investigative report, which will contain summaries of the interviews, photographs (if available) and other related evidence or duty logs and also a detailed analysis of the events. Before finalizing a witnesses' statement, the investigator may send a draft of the statement to the witness to allow them a chance to add to it or make any suggested changes to their statement.

The investigative report will include a summary of findings and recommended actions. In this summary, the investigator will:

- State the initial complaint by the student and/or the conduct at issue under the policy;
- Outline the details of the investigation;
- State, whether, using a preponderance of evidence standard, it is more likely than not that policy violation(s) occurred; and
- State what sanctions are recommended, if any, if policy violations are deemed to have occurred and if the Title IX Officer has requested the investigation to so state.

The completed investigative report will normally be submitted within twenty (20) work days of the Intake. However, depending on the complexity of the case, additional time may be needed to complete the investigation.

The investigative report will be forwarded to the Title IX Coordinator. The Title IX Coordinator shall have the right to amend the report based on University policy and/or new information and/or to identify recommended sanctions.

The Title IX Coordinator will then determine if the matter requires further proceedings. Note: In some cases, there is no need for further proceedings.

IX. INFORMAL RESOLUTION

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If the Title IX Coordinator determines that further proceedings are warranted, within ten (10) business days of the receipt of the investigative report, or as soon as possible thereafter, the Chair of the Sexual Misconduct Board will then meet separately with the Complainant and the Respondent in attempt to resolve the matter. The Chair of the Sexual Misconduct Board reserves the right to hold additional meetings with the Complainant and/or Respondent as he or she deems necessary to facilitate the Informal Resolution process. Note: In cases involving Respondents who are faculty, staff, visitors, or any other person that is not a student of the University, the Director of Human Resources and/or the Provost shall participate in the Informal Resolution process.

At these meetings, the summary of the investigative report will be available for review by both the Complainant and the Responding party. The Chair of the Sexual Misconduct Board may propose modifications to the sanctions in order to achieve an Informal Resolution.

The Complainant or Respondent may inform the Chair of the Sexual Misconduct Board what aspect of the proposed Informal Resolution and/or the Report they dispute and should do so in writing within five (5) business days of the meeting with the Chair of the Sexual Misconduct Board.

If both the Complainant and the Respondent agree to an Informal Resolution to be adopted by the Chair of the Sexual Misconduct Board, the matter will be deemed to be resolved.

Both the Complainant and the Respondent will be notified in writing of the results of the informal resolution process. If an Informal Resolution is reached, the Resolution is final and binding with no right of appeal.

If the matter is deemed to be resolved, both parties waive their right to the formal resolution process.

The Informal Resolution process typically will be completed within (20) business days of the completion of the investigative report.

If either the Complainant or the Respondent do not agree to make an Informal Resolution, then a **Formal Resolution** proceeding as described below will be initiated.

Note: Sexual assault cases will not be resolved through mediation.

X. FORMAL RESOLUTION

The Formal Resolution process will consist of a hearing held before the Sexual Misconduct Board. The following outlines the Formal Resolution process:

a) Notice of Hearing

The Chair of the Sexual Misconduct Hearing Board will issue notice of formal hearing which states the date, time and place of the hearing and the names of the Board members who are selected to hear the case. In most cases, the hearing will be scheduled within ten (10) business days of the Notice of Hearing. This time frame may be extended when appropriate.

Either the Complainant or the Respondent may object to the participation of a particular board member. However, this written request must be received within 72 hours of receiving notice of the hearing. The objection must contain the reasons for the objection. The Chair of the Sexual Misconduct Board will determine whether the objection has merit and has the right to decide whether to uphold

the objection and change the Board member.

Hearing notices will be delivered to the Complainant and the Respondent by an Assistant Dean of Students staff member. If either party fails to appear at the scheduled hearing, the Board Chair may either postpone the proceedings or have the Board proceed on the basis of the investigative report and other information. Likewise, if a witness does not appear, the Board Chair may either postpone the hearing or proceed without it.

b) Pre-Hearing Submissions

Both the Complainant and the Respondent may, after receiving notice of the hearing, provide the Board Chair with a list of witnesses whom they would like to call to the hearing. This should be done no later than 72 hours prior to the scheduled hearing. At this time, the Complainant and Respondent should also provide the Chair with any additional documentation which they would like the Board to consider.

The Chair of the Sexual Misconduct Board has the right to deny the use of additional documentation or witnesses whose statements would be deemed inappropriate or irrelevant. The Board may instead use witness statements and not call a witness to the hearing unless there are questions or additional information needed from the witness.

The Chair also has the right to call pertinent witnesses to the hearing. These witnesses may include people not named by the Complainant or the Respondent.

c) The Sexual Misconduct Board: Composition and Limits

The Sexual Misconduct Board is comprised of the following members:

1. Sexual Misconduct Hearing Officer (Chair, voting member); and
2. Two (2) members comprised of faculty and/or staff of the University (voting members) who, most commonly, are existing members of a Student Conduct Board.

An Administrative Assistant and the investigator may also be present at the hearing, however, neither one will vote. The purpose of the Administrative Assistant is to facilitate the attendance of participating individuals and the recording of the hearing. The investigator's role at the hearing is to provide any information needed concerning his or her investigation of the Complaint.

Dr. Karen White will choose which members of the Student Conduct Board shall serve on the Sexual Misconduct Board. This will be done on a case-by-case basis.

d) Pre-Hearing Review of Documents

At least five (5) business days prior to the hearing, the Complainant and the Respondent will each have the opportunity to review the investigative documents, subject to the privacy limitations imposed by state and federal law, and within a manner deemed by the Chair to be consistent with a person's reasonable expectation of privacy. The investigative documents may include the investigative report, witness statements, statements by the Complainant and the Respondent, and any other documentary information that will be presented to the Student Misconduct Hearing Board. Investigative documents may be redacted for privacy and confidentiality purposes consistent with this Policy.

e) Procedures & Format of the Formal Hearing

The Sexual Misconduct Board members who are selected for the hearing will be provided with investigative documents for review prior to the hearing.

The formal hearing is not intended to be adversarial. The hearing is intended to provide an impartial opportunity for each side to present his/her account of the incident and for the hearing panel to make a determination as to whether University policy was violated and if so, to recommend appropriate sanctions. The hearing does not follow a courtroom model or traditional rules of evidence.

The Chair of the Sexual Misconduct Board will start the proceedings by identifying the alleged violation(s) and a description of the applicable procedures. The Chair of the Sexual Misconduct Board may then call the Investigator to explain the basis for the complaint or conduct at issue under the policy, the charges and the evidence leading to the finding(s) and recommended sanction(s), and the details of the investigation. The Chair will then ask the Complainant and Respondent for any statements, and to call any pertinent witnesses. The Chair will determine the order of the witnesses and resolve any questions of procedure.

Only the Chair and Board members may question individuals during the hearing. Both parties may ask the Chair in writing or orally, either before the hearing or during the hearing, to pose specific questions or to ask about specific matters from witnesses. A break may occur between testimonies in order for such written questions to be formed and submitted. The Board Chair, in consultation with the Board, will determine the appropriateness and relevance of the questions.

After witnesses have been questioned, both the Complainant and the Respondent may ask for a short break in order to prepare a closing statement.

The hearing may be suspended and reconvened as determined proper by the Chair, but not due to the failure of witnesses to appear or due to the proposed introduction of documents or information which could and should have been presented prior to the hearing.

When requested, the Chair will make reasonable efforts to allow for the Complainant and the Respondent to avoid contact. This may be done via use of a privacy screen, conference call, closed-circuit television, or other similar technology. It may alternatively be done by having the Complainant and the Respondent participate at different times. In latter instances, the Chair will summarize the main points which were presented by the opposing party. The Board Chair has the discretion to preclude or remove persons found to be disruptive during the hearing.

f) Recording (audio or video or both)

The hearing may be recorded. If it is recorded, the recording is the property of the University. The Chair may arrange for a transcript of the recording to be made at the request of either party, but any expense involved will be assumed by the requesting party.

g) Standard of Proof

The University will evaluate the case based on a ‘preponderance of the evidence’ standard of proof. This means that the information pertaining to the case indicates that it is “more likely than not” that the Respondent violated the Sexual Misconduct Policy.

h) Deliberation

After all of the information has been presented, the parties will be dismissed and the hearing will be formally closed. The Board members will conduct their deliberations in private. The Board members must reach a decision on responsibility by majority vote. If the Board finds the Respondent responsible, the Board Chair, in consultation with the Board, will then recommend appropriate sanctions to the Title IX Coordinator, who will review the findings and proposed recommendations and impose the appropriate sanction or obtain the decision of the proper University Officer as to the sanctions.

i) Outcome of Hearing

The outcome of the hearing will be summarized in writing no later than ten (10) business days after the conclusion of the formal hearing. The outcome letter will include the name of the Respondent, the violation for which the Respondent was or was not found responsible, the essential information on which the findings were based, and the recommended sanction, if any.

For Respondents who are students, the Sexual Misconduct Hearing Board may recommend suspending or expelling any student who is found responsible for sexual misconduct. However, the Board may recommend any sanctions which it feels is appropriate, including but not limited to, warnings, censure, disciplinary probation, suspension, expulsion, revocation of admission and/or degree, or withholding a degree. The past violations of the responsible student may be considered. The Board will also consider whether the sanctions will bring an end to the violation in question, reasonably prevent a recurrence of a similar violation and/or whether the sanction(s) mediate the effects the violation had on the complainant and the University community.

For Respondents who are not students of the University, the Board may recommend any sanction. In the case of a Respondent who is a faculty member, the Board will send the outcome letter to the Provost for action and regarding a staff member, to the University's Director of Human Resources. The determination of sanctions, if any, shall be made pursuant to the complaint therein and applied to the Respondent.

j) No Right of Appeal

There shall be no internal right of appeal for either the Informal Resolution process or the Formal Resolution process, except as follows:

Following the outcome of the Formal Resolution process, if either the Complainant or the Respondent is not satisfied with outcome following the Formal Resolution process (including the determination of responsibility and/or imposition of sanctions), a request for review of the decision by an impartial arbitrator under Rules of the American Arbitration Association, can be made by submitting a request in writing to the Provost of the University, no later than forty-five (45) calendar days after issuance of the written outcome of the Formal Resolution.

The request shall consist of a plain, concise and complete written statement outlining the grounds for disagreement with the outcome and all relevant information to substantiate the basis for doing so.

The Provost retains the right to decide whether the case is suitable for arbitration.

Under written agreement between the University and the party seeking arbitration review, providing as a final and binding alternative to civil litigation, an arbitrator will be mutually selected between the parties, and the costs of the arbitrator's fees shall be agreed to in writing by an authorized representative of the parties.

Any matter submitted to binding arbitration under this Policy shall be submitted in accordance with the Rules of the American Arbitration Association. Attorneys or advisors of the party's choice may be present at and participate in the binding arbitration review process. This binding arbitration review process is the exclusive method of external review and is final and binding on both the University and the student, and the arbitrator's award shall be final, binding and conclusive upon the parties and may be entered in any state or federal court having jurisdiction.

k) Privacy of Records

The Title IX Coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by Informal or Formal Resolution. Further, complaints against a student under the Policy may become a part of the students' academic record.

Documents which are prepared in anticipation of the hearing (including the investigative report, notice of hearing, the pre-hearing submissions and any other documents) will not be disclosed outside of the hearing process, except as required by law.

The final outcome letter will be issued concurrently to both the Complainant and the Respondent. The University neither encourages nor discourages the further disclosure of the final outcome letter by either the Complainant or the Respondent. The University acknowledges that sharing the Final Outcome Letter with others may be an important part of a student's healing process.

XII. APPENDIX: DISSEMINATION OF POLICY; EDUCATIONAL TRAINING; AND RESOURCES

As part of the University's commitment to maintaining its campus and programs free from sexual misconduct, this Policy shall be disseminated widely to the University community through publications, websites, new employee orientations, student orientations, and other appropriate channels of communication. The University shall also make preventive educational materials or programs available to all members of the University community to promote compliance with this Policy.

In addition, the University will provide appropriate training to internal Intake Officers and investigators, hearing officers, and all other persons delegated responsibilities under this Policy. Students, faculty and staff are urged to take part in all prevention education and training providing by the University with respect to this Policy.

Resources:

Emergency Needs:

- **911** – Belmont Police Department Rape Trauma Services 24 hour helpline: 650-692-7273
- National Domestic Violence Hotline: 1-800-799-SAFE (7233)

Medical Needs:

- San Mateo County Medical Center – Keller Center for Family Violence Intervention
222 West 39th Avenue, First Floor, San Mateo, CA 94403, (650) 573-2623
- Health Services (650) 508-7526; JB 141

On-Campus Student Support Services:

- Title IX Coordinator, Karen White, kwhite@ndnu.edu

Other Services:

- NDNU Public Safety (650) 508-3502, (650) 504-0656 (cell), (650) 740-1483 (cell)
- Belmont Police Department, 1215 Ralston Ave., Belmont, CA 94002, (650) 595-7400
- Rape Trauma Services (650)692-RAPE or (650)692-7273; 1860 El Camino Real, Suite 406, Burlingame, CA 94010
- Center for Domestic Violence Prevention: (650) 312-8515
- Community Overcoming Relationship Abuse (CORA) 24-Hour Hotline: 1-800-300-1080
- National Sexual Assault Hotline: 1-800-656-HOPE (4673)