

## **Notre Dame of Maryland University Non-Discrimination Policy & Procedures**

### POLICY STATEMENT

Notre Dame of Maryland University (“University” or “NDMU”) values safety, diversity, equity, inclusion, and social responsibility. Consistent with these principles, the University does not discriminate and prohibits harassment with respect to access to and participation in its educational, and extracurricular programs and activities or with respect to employment terms and conditions on the basis of age, color, creed, disability, genetic information, marital status, national or ethnic origin or ancestry, race, religion, sex (including pregnancy, sexual orientation, or gender identity or expression) or veteran status or any other characteristic protected in accordance with applicable federal, state, and local laws and regulations including but not limited to Title IX of the Education Amendments of 1972 as amended (Title IX), Title VI of the Civil Rights Act of 1964 as amended (Title VI), Title VII of the Civil Rights Act of 1964 as amended (Title VII), Section 504 of the Rehabilitation Act of 1973 (Section 504), Americans with Disabilities Act of 1990 as amended (ADA), Age Discrimination in Employment Act of 1967 as amended, etc.

This policy protects all NDMU students, faculty and staff, and third parties under NDMU’s control if, when and while they are attempting to participate or participating in a NDMU program or activity or employment.

Retaliation against any individual who files a complaint or participates in an investigation under this Policy is strictly prohibited. In furtherance of the University’s commitment to equal opportunity, this Policy and associated procedures are established to address and remedy complaints of discrimination, harassment, and retaliation based on a protected class.

In addition to the University’s policy to not discriminate and prohibit harassment of any protected characteristic, reasonable accommodations will be provided by the University to applicants, students and employees for medical and religious reasons unless it would require undue hardship in accordance with the above referenced federal, state and local laws.

### DEFINITIONS

**“Discrimination”** is unequal treatment based on a legally protected status that is sufficiently serious to unreasonably interfere with or limit an individual’s opportunity to participate in or benefit from a University program or activity, or that otherwise adversely affects a term or condition of the individual’s employment or education.

**“Harassment”** is a form of discrimination (as defined above) that encompasses unwelcome and offensive conduct based on a person’s protected status. Harassment is severe and/or pervasive conduct that negatively affects the particular individual and also would negatively affect a reasonable person under the same circumstances. Harassment in violation of this Policy depends on the totality of the circumstances, including the nature, frequency, and duration of the conduct in question, the location and context in which it occurs, and the status of the individuals

involved. Harassing behaviors may include, but are not limited to, the following, when based on a person's protected status and rising to the standard set forth above:

- conduct, whether verbal, physical, written, graphic, or electronic that threatens, intimidates, offends, belittles, denigrates, or shows an aversion toward an individual or group;
- epithets, slurs, or negative stereotyping, jokes, or nicknames;
- written, printed, or graphic material that contains offensive, denigrating, or demeaning comments, or pictures; and
- the display of offensive, denigrating, or demeaning objects, e-mails, text messages, direct or private messages via social media applications or other electronic or web-based applications, public comments or statements on social media applications or cell phone pictures.

**“Reporting Party”** or **“Complainant”** refers to the member of the University Community who has been subjected to conduct that may constitute a violation of this Policy.

**“Responding Party”** or **“Respondent”** refers to the individual alleged to have engaged in prohibited conduct under this Policy.

**“Retaliation”** refers to action that is taken against an individual because they reported discrimination, filed a complaint of discrimination, or participated in an investigation or proceeding concerning a discrimination complaint.

**“University Community”** refers to students, faculty, staff, interns, employees, volunteers, contractors, guests and others within the University's control.

#### COMPLAINT PROCEDURE

##### **Reporting**

Individuals who experience violations of this policy are encouraged to promptly report or file a formal complaint with the Title IX/504/ADA Coordinator or designee.\* Any University administrator, supervisors, faculty, campus police, athletic coaches and staff, resident staff or assistants, and other staff who become aware of a complaint of conduct in violation of this Policy must report it to the Title IX/504/ADA Coordinator. This does not apply to confidential resources such as the University Counseling Center and University Chaplain.

Reporting a matter to the Title IX/504/ADA Coordinator does not mean that the individual intends to file a formal complaint or that the person is requesting the University to take action or investigate the conduct. Reporting parties should indicate if they intend to file a formal complaint.

The University will respond to all formal complaints of discrimination. Formal complaints must be made within 180 days of the incident(s). The Title IX/504/ADA Coordinator may waive the time limit upon a showing of good cause.

Written complaints are strongly encouraged, but not required. If a verbal complaint is made, the Title IX/504/ADA Coordinator or designee will prepare a written statement of the allegations and the Complainant will be required to acknowledge its accuracy in writing.

All formal complaints must contain the following information:

- Name, address, email and telephone number of the Complainant;
- Name and available contact information (address, email, and telephone number) of the Respondent.
- A description of alleged discrimination or harassment, including the location(s) and date(s) of the alleged discrimination or harassment, any supporting documentation or evidence, and the identity of witnesses or other individuals along with available contact information who may have relevant information; and
- The remedy, result, or resolution sought.

\* In the case of an employee Respondent, individuals may also report to the Director of Human Resources, or in the case of a student responding party, individuals may also report to the Associate Vice President of Student Life.

### **Confidentiality:**

The University recognizes the sensitive nature of information that it receives in the course of discussing complaints of alleged discrimination and/or harassment. The Title IX/504/ADA Coordinator and designees will keep the information reported under the Policy confidential including the identity of anyone who has made a report or filed a complaint and the identity of any Respondent or witness, except under limited circumstances.

Limited disclosure may also be required: (1) to provide supportive measures; (2) where the information reported discloses an immediate or continuing threat to the health or safety of the parties, witnesses or the University Community; (3) where there is a disclosure of apparent or suspected abuse of a child or dependent adult; (4) as permitted by FERPA; or (5) where there is some other legal obligation to make a specific disclosure.

### **Good Faith Requirement**

Reports or complaints of Discrimination must be made in good faith because they are so serious and have the potential to cause great harm if made without justification. Accordingly, it is a violation of the Policy and Procedure for an individual to make a complaint or report in bad faith or without justification. An individual found to have made a complaint or report in bad faith or without justification may be subject to disciplinary or other action.

### **Initial Assessment**

The Title IX/504/ADA Coordinator will acknowledge receipt of the report or complaint and then conduct an initial assessment (the “Initial Assessment”) to determine whether the complaint should be further investigated. In addition, the Title IX/504/ADA Coordinator or designee may implement appropriate interim measures (“Interim Measures”). Examples of Interim Measures include, but are not limited to, a referral to the Student Counseling Center or the Employee

Assistance Program (“EAP”), academic adjustments (if such alternatives are feasible and available), modifications in work location or schedule (if such alternatives are feasible and available), academic support, and no contact instructions.

The Title IX/504/ADA Coordinator or designee will then notify the Complainant whether:

- the complaint is appropriately filed with the Title IX/504/ADA Coordinator and the Title IX/504/ADA Coordinator has jurisdiction over the alleged conduct and the Respondent;
- the complaint has previously been filed under another University policy;
- the complaint is suitable for informal resolution; and
- the allegations, if true, would constitute a Policy violation.

If it is determined that the complaint is not appropriately filed with the Title IX/504/ADA Coordinator, the Complainant will be informed of the reason.

In assessing the appropriate response to a report or complaint, the Title IX/504/ADA Coordinator will consider a number of factors including but not limited to: the Complainant’s position as to whether or not the Complaint should be investigated; whether the Respondent is currently enrolled in or employed by the University; whether under the circumstances it will be possible for the University to gather evidence sufficient to reach a determination in any investigation.

Where a Complainant does not request a formal investigation, a formal investigation may also commence at the University’s discretion after consideration of a number of factors, including, but not limited to, the nature and scope of the alleged conduct, and the University’s obligation to provide a safe and non-discriminatory environment.

**Informal Resolution:**

Informal procedures are designed to mediate a mutually agreeable solution. When determined appropriate by the Title IX/504/ADA Coordinator, the Complainant may elect to resolve a complaint informally through a voluntary conversation between the Complainant and the Respondent, which is facilitated by an appropriate administrator. If the Complainant, the Respondent, and the University designee feel that a resolution has been achieved through this informal procedure, such resolution (“Informal Resolution”) shall be documented in writing and signed by the parties. The University will monitor the implementation of the Informal Resolution.

If the Complainant, the Respondent or the University designee chooses not to participate in the informal procedure, or feels that the informal procedure is inadequate or has been unsuccessful, the Complaint may proceed under the formal resolution procedure.

**Formal Resolution:**

When the Initial Assessment or upon the unsatisfactory end of the Informal Resolution process results in a determination that the Title IX/504/ADA Coordinator will investigate the complaint, the University shall issue a Notice of Investigation and advise the Complainant and Respondent of their rights under this Policy, including the following:

- Both parties have a right to an impartial investigation;
- Both parties have a right to produce relevant documents, witnesses, and other materials they would like to the investigator to consider; and
- Both parties may have an advisor of their choice present to provide advice during the investigative interview; however, the advisor may not speak or act on behalf of the party.

The Title IX/504/ADA Coordinator will assign one or more trained investigators who will conduct a thorough, reliable, and impartial investigation of the complaint. The investigator(s) will interview the Complainant and the Respondent and any other available relevant witnesses, and review available relevant documents and evidence.

If at any point during the investigation, it is determined there is no reasonable cause to believe that the Policy has been violated, the Title IX/504/ADA Coordinator has authority to terminate the investigation and end resolution proceedings.

**1. Standard of Review**

In making the determination of whether a Policy violation has occurred, the standard of review is “preponderance of the evidence,” which means it is more likely than not that a Policy violation occurred.

**2. Expectation of Cooperation**

Absent good cause, all parties and identified witnesses shall cooperate during the investigation by being available during reasonable business hours to discuss the complaint and by making available any relevant information requested by the investigator.

**3. Investigation Timeline**

The University seeks to complete an investigation within sixty (60) business days from the receipt of a complaint and may extend the time frames set forth in this Policy for good cause. Exceptions to this timeframe may vary by agreement of the Complainant or depending on the complexity of the investigation, access to relevant parties, witnesses and information, and the severity and extent of the alleged discrimination.

**4. False Information**

Anyone who knowingly files a false complaint under this Policy or who knowingly provides false information to the University during an investigation will be subject to appropriate disciplinary action.

**5. Draft Investigation Report and Findings**

The investigator shall complete a written draft report (“Draft Investigation Report”) of its investigation, including a summary of the allegations, evidence reviewed and witness statements, findings of material fact and an analysis of those facts, and a conclusion stating whether the Policy was violated, based on the preponderance of evidence standard.

After the Draft Investigation Report has been prepared, the parties will be provided with an opportunity to review and respond to the draft report.

Responses to the draft report must be provided within five (5) business days. Requests for additional time will be determined on a case-by-case basis, however, reasonable requests will be granted.

The Draft Investigation Report review period is both parties' final opportunity to identify or submit any additional evidence, information, questions, or witnesses, before the report is finalized.

In the absence of demonstrable good cause, information discoverable through the exercise of due diligence that is not provided to the investigator during the draft report review period will not be considered by the Investigator or decision-maker/s or during any appeal.

#### **6. Final Investigation Report and Findings**

After receiving the parties' comments and/or additional information regarding the Draft Investigation Report, the Investigator will determine whether or not any additional investigation is needed. If the investigation is deemed complete, the Investigator will finalize the report and make an investigative finding ("Final Investigation Report"), by the preponderance of the evidence, whether a Policy violation occurred. If applicable, and to the extent permitted by FERPA, the report will also include the resulting corrective measures, conditions or sanctions and rationale for the decision. The Final Investigation Report will be issued to both parties simultaneously.

#### **Appeal**

The Complainant and/or Respondent may appeal the Final Investigation Report within five (5) business days of the date of its receipt of the Final Investigation Report by submitting to the Title IX/504/ADA Coordinator a written statement of their intent to appeal. The statement must include the grounds for the appeal. The scope of the appeal is limited to the grounds set forth below. Mere dissatisfaction with the finding is not a valid basis for appeal.

1. Procedural error or irregularity that materially affected the outcome;
2. New evidence that was not reasonably available at the time the determination of responsibility was made, that could affect the outcome of the matter;
3. An investigator had a conflict of interest or bias for or against Complainant or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or
4. Excessiveness or insufficiency of the remedy or sanction.

If an appeal is received by the Title IX/504/ADA Coordinator, the other party will be notified and given five (5) business days from the date of receipt of that notice to respond by submitting a written statement to the Title IX/504/ADA Coordinator. Appeals filed by more than one party will be considered together in one appeal review process. All appeal documents submitted by a party will be shared with the other party.

If neither party submits an appeal, the decision will be considered final five (5) business days after the last date either party received the Final Investigative Report. Appeals submitted after five (5) business days shall be denied, except upon a showing of good cause.

Appeals are not intended to allow for a review of the entire investigation, with the exception of new evidence, as referenced above. The appellate review will be based on the written record; parties are not entitled to a hearing or meeting with the Title IX/504/ADA Coordinator or designee(s). The Title IX/504/ADA Coordinator or designee(s) will defer to the original finding and sanction(s), remand a matter on a specific issue(s), or modify a finding or sanction(s) only when there is compelling justification to do so. The Title IX/504/ADA Coordinator or designee(s) may take one of the following actions on appeal:

- A. Dismiss the appeal for failure to meet a deadline or articulate a valid ground of appeal;
- B. Deny the appeal and uphold the initial finding/sanction;
- C. Send the case back to the original or an alternate investigator with specific instructions on the remanded issue(s)
- D. Modify the finding(s) and/or sanction(s);

Within ten (10) business days, the Title IX/504/ADA Coordinator or designee(s) will issue a written decision, including a summary of their rationale to both parties simultaneously. The decision of the Title IX/504/ADA Coordinator or designee(s) shall be final.

If the Respondent is found responsible, the Office of Human Resources in the case of an employee Respondent, or the Office of Student Life in the case of a Student Respondent, will impose the final corrective measures, conditions or sanctions.

### **Notice**

Where not explicitly stated and to the extent permitted by FERPA, the University will comply with a reasonable written request from the Complainant for a status update on their complaint. Requests for a status update must be filed with the Title IX/504/ADA Coordinator. The University's compliance with the request is effective once the response is sent, including responses that determine the status update request was not reasonable.

### ***Sanctions and/or Conditions***

#### **Conditions**

In certain circumstances, even when there is no finding and/or there are no disciplinary actions or sanctions imposed, the University reserves the right to impose Conditions upon any party who is subject to the University's Non-Discrimination Policy.

Conditions are designed to prevent violations of the Non-Discrimination Policy and cultivate a safe and equitable academic and employment environment, while supporting the University's mission and legal obligations. Conditions are non-disciplinary and may include educational, remedial, or Interim Measures that may be imposed by the University upon any party who is, or was at the time of the events, subject to this Policy. The University may impose Conditions even

where no formal complaint has been filed, and no formal finding or decision regarding responsibility for prohibited conduct has been made.

### Sanctions

Sanctions are effective after a Final Decision has been issued and any Appeal has been decided. Sanctions are designed to eliminate violations of the Policy, prevent their recurrence, and remedy their effects, while supporting the University's mission and legal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, so harmful to the individuals involved and the entire University Community, or so deleterious to the educational or working environment, that it requires severe disciplinary action, up to and including suspension, termination from or dismissal from the University.

Sanctions for employees (including student employees) may include, but are not limited to: no contact orders, written reprimand, service to the University, counseling, retraining, transfer, demotion, suspension, and/or termination.

Sanctions for students may include, but are not limited to: no contact orders, housing restrictions (including removal from on-campus housing), community service, educational requirements, written reprimand, probation, suspension, and/or dismissal. Further, the University reserves the right to delay or refuse the conferring of an academic degree – undergraduate or graduate – during the pendency of an investigation.

### EXTERNAL GOVERNMENT AGENCIES THAT ADDRESS DISCRIMINATION COMPLAINTS

In addition to or as an alternative to the University's procedures for resolving complaints of alleged violations of this Policy, complaints may also be filed with the following agencies:

#### **Office for Civil Rights**

U.S. Department of Education  
The Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323  
Phone: 215.656.8541  
Website: <http://www2.ed.gov/about/offices/list/ocr/index.html>

#### **Equal Employment Opportunity Commission (EEOC)**

City Crescent Building  
10 S. Howard Street, Third Floor  
Baltimore, Maryland 21201  
Phone: 1.800.669.4000  
Website: [www.eeoc.gov](http://www.eeoc.gov)

#### **Maryland Commission on Civil Rights (MCCR)**

19 William Donald Schaefer Tower  
6 St. Paul Street, Ninth Floor



Baltimore, Maryland 21202  
Phone: 410.767.8600  
Website: [www.mccr.maryland.gov](http://www.mccr.maryland.gov)

It is important to note that in order to protect certain legal rights and remedies, Complainants must comply with certain time limits and deadlines. Affected persons should contact the relevant agencies listed above to verify time limits for filing. Failure to meet required deadlines may result in a loss of rights to seek a legal remedy.