

Engrossed HB 1256

Senate Human Services

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Chair Lee and Committee Members: my name is Katie Fitzsimmons and I serve as the Director of Student Affairs for the North Dakota University System (NDUS). I am representing the System Office and the NDUS campuses in opposition to Engrossed HB 1256. The bill is unnecessary and it could place the campuses in North Dakota in violation of federal regulation. For these reasons, we respectfully ask for a Do Not Pass recommendation.

First, a few words on our Title IX process, supportive measures, and policies currently in place. It must be stated that NDUS institutions are very attentive to the rights of both the complainant and the respondent in the review process. Our staff continually seek training on how to best work with students and staff when a complaint is filed but before that can occur, the Title IX staff vet each complaint thoroughly to determine if it meets the criteria for the Title IX process, if it would be handled more appropriately through a conduct channel available on campus, or if it needs to move to a criminal or civil charge outside of the University System. The latest regulations have a much steeper threshold and our Title IX staff members handle these complaints with the utmost concern and consideration.

Further, under the recently revised Title IX federal regulations (current iteration in place since August 2020; new adjustments are coming out in May 2023), campuses must afford supportive measures to both parties; the complainant and the respondent. In such, each party may receive an appointed Title IX advisor to assist them as they navigate through the process. Supportive measures could include counseling, extensions of deadlines, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, and/or increased security or monitoring of certain areas of campus. These supports are detailed in [SBHE Policy 520 Section 8\(c\)\(i\)](#). Also of note, in the [State Board of Higher Education Policy 520](#), section 8 (b)(ii) states: “No disciplinary sanctions or other actions which are not supportive measures may be imposed against a respondent prior to the conclusion of the grievance process.” Under Title IX, no campuses are permitted to prescribe any disciplinary actions against a respondent until the conclusion of a hearing, and only if responsibility is determined. In essence, although Title IX processes are not processes of a criminal justice system, this is the equivalent to “innocent until proven guilty” as practiced in criminal law.

In regard to Title IX training and awareness that happens on our campuses, all faculty, staff, and students are required by federal law to complete Title IX training upon hiring or start of their education. This is to provide education and awareness. All Title IX staff participate in ongoing training on how to handle a received complaint, investigate, adjudicate, and appeal a complaint. For a complaint to reach the Title IX threshold, the action in question must be “unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution’s education program or activity” or it must meet the definition of “sexual assault, dating violence, domestic violence, or stalking”. For a complaint to cross the threshold to trigger Title IX, the bar is very high. Campuses report that many complaints that arrive as a Title IX complaint get routed through a standard HR or student conduct process, if at all. These complaints are thoroughly vetted. Failure to do so could easily result in the aggrieved party filing a complaint with the Office of Civil Rights, which results in a lengthy investigation and hefty financial fines for the institution.

To address our concern that Engrossed HB 1256 is unnecessary, our criminal justice system in North Dakota already provides an avenue and remedy for false allegations made in a government matter. Our legal counsel determined that NDCC 12.1-11-02 could be utilized in a situation where a false statement was made during a Title IX process. Furthermore, the language in Engrossed HB 1256 is not consistent with the language set forth in Chapter 12.1-11, which covers Perjury, False Statements, False information to Law Enforcement and defines materially false information.

In addition to the current recourse in the criminal justice system, our internal student conduct or, in the case of employees, internal human resources actions, have disciplinary action required against those who knowingly make false complaints (examples of specific policies are attached) and campuses offer appeal processes to all parties. Going one step more, if an individual felt they had experienced slander or a similar wrongdoing, there would be recourse in the civil justice system. Because there are already criminal, administrative and appellate remedies available in the rare circumstance in which a false statement or allegation is made, Engrossed HB 1256 is redundant and unnecessary.

On a more philosophical note, something for the committee to consider. If NDCC 12.1-11-02 is not a satisfactory remedy for false accusations made in a Title IX complaint or hearing, the committee should consider this: why we are creating a criminal penalty for an allegation brought in a non-criminal administrative Title IX matter? On the other side of the coin, if a student is sexually assaulted, a complaint is filed, the proof is irrefutable, and the respondent party is found to be responsible, there are no prison sentences, fines, or restitution made upon the respondent in the Title IX process. The penalties and consequences remain within the institution. Just as a respondent who feels that an allegation was false could report that

allegation to law enforcement for an investigation pursuant to 12.1-11-02, a victim could also utilize the criminal justice system to report a sexual assault. These would be instances where the involved parties continue action on a complaint by moving it outside of the campus's process, whereas this proposed legislation does not clarify who would file the charges if a complaint was found to be false. The North Dakota University System believes it is unnecessary to conflate the administrative Title IX process with the criminal justice system remedies when there are already separate remedies in both systems to penalize false accusations/statements.

Finally, the federal limitations of Title IX are in place and compliance by our institutions of higher education are required to maintain those standards in order to maintain federal funding, access to scholarships, and support for research, not to mention avoid a lengthy and costly investigations by the Office of Civil Rights. When states impose further Title IX parameters, the legislature places the University System in a precarious position. Engrossed HB 1256 would require public officials with actual knowledge of a report of sexual harassment/discrimination or assault, meeting the definitions under Title IX, to violate the Title IX statute as it would criminalize their participation in the process dictated by federal mandate. Federal law expressly forbids an institution from retaliating against anyone making a Title IX complaint: "No school or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing." This bill, if enacted, and if it required the institutions to participate in an investigation and/or criminal charges against a complainant of Title IX, it could risk federal funding for our institutions. Of greatest concern right now is that the Department of Education will publish new Title IX regulations in May of this year, right after this Assembly gavel out sine die. We do not know what those new regulations will state, but if this law puts us in further conflict with those new regulations, what are the campuses to do?

I thank you for the opportunity to provide clarity on what is actually taking place on the campuses and how they uphold federal regulations and SBHE policies. I provided the details nine campuses provided to us pertaining to policies that address false accusations. That concludes my testimony on Engrossed HB 1256. Again, I respectfully request the committee consider a Do Not Pass recommendation. I thank you for your time and service and stand for questions.

Appendix: Campus policies on false reporting

Bismarck State College

[BSC Title IX Policy/Procedure](#)

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Sanctions Page 15

False Reports:

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

[BSC Sexual Misconduct Policy/Procedure](#)

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Sanctions Page 17

False Reports:

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

[BSC Student Code of Conduct](#)

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Sanctions Page 13

Individual violations and assisting or encouraging others to violate the college's policies are subject to disciplinary action through the appropriate process. The following behaviors violate BSC's Student Rights and Responsibilities. This is not an exhaustive list.

- Acts of Dishonesty - Making a false statement, identification, or act of lying.

[BSC Employee Code of Conduct](#)

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Sanctions Page 3 Alleged violations of this Code shall be investigated by the Chief Human Resources Officer and Chief Accounting Officer. All employees shall cooperate in investigations of alleged violations. A violation of this Code may lead to dismissal or other appropriate disciplinary action, in addition to any criminal or other civil sanctions that apply.

Employees must not make or engage in any false record or communication of any kind, whether internal or external, including, but not limited to, false expense, attendance, enrollment, financial, or similar reports and statements, or false advertising, deceptive marketing practices, or other misleading representations.

Lake Region State College

[Code of Conduct – 1500.05](#)

“It is expected that all employees will not make, send, enter or distribute a false record or communication of any kind.”

[Harassment – 1500.08](#)

“Anyone who is found to have intentionally made a false report of harassment or who fails to cooperate in the investigation of a complaint will be subject to disciplinary actions up to and including termination, suspension, or expulsion.

[Title IX and Sexual Harassment – 1500.09](#)

“Anyone who is found to have intentionally a false report of harassment or who fails to cooperate in the investigation of a complaint will be subject to disciplinary actions up to and including termination, suspension, or expulsion.

“Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, although a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

[Student Conduct – 800.30](#)

“Notice of any provisions in Lake Region State College’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.”

“A student, a group of students or a student organization shall not retaliate against any person who files a complaint or grievance; reports misconduct, participates as a witness in an investigation, or otherwise provides information to college officials. Retaliation can be classified as minor or major misconduct depending on the nature of the action.”

Mayville State University

Our policy does mention false claims on Pg 14 and states that people making them “may be subject to

discipline”. We would see this as a violation of the code of conduct and it would roll over to that policy.

Our full policy is [HERE](#)

https://mayvillestate.edu/files/4316/6439/7721/M520.01_Title_IX_Sexual_Misconduct_and_Sexual_and_Gender_Based_Discrimination_Policy_adopted_9-19-22.pdf

Minot State University

Minot State University’s Sexual Harassment Policy does entail information regarding False Allegations and Evidence (Item #24, p. 13, <https://www.minotstateu.edu/title9/documents/Sexual-Harrassment-Policy.pdf>).

This section is as follows:

“Deliberately false accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University policy.”

The Grievance Process for False Allegations and Evidence is outlined within the University’s Sexual Harassment Policy under Resolution Process for Alleged Violations of the policy (pg. 15, <https://www.minotstateu.edu/title9/documents/Sexual-Harrassment-Policy.pdf>)

Any matter not falling under the threshold of Title IX is referred to the Vice President for Student Affairs for evaluation of policy violation under the Student Code of Conduct (Student Conduct Policy <https://www.minotstateu.edu/title9/documents/Sexual-Harrassment-Policy.pdf>). The complete handbook is available electronically www.minotstateu.edu/student_handbook.pdf .

North Dakota State College of Science

Disciplinary sanctions imposed after the conclusion of a Title IX or Sexual Misconduct grievance process are assessed pursuant to **[NDSCS Student Guide to Rights and Responsibilities](#)**: A Code of Student Conduct. <https://www.ndscs.edu/current-students/student-conduct>

3.13 of the NDSCS Student Guide to Rights and Responsibilities provides: Deception/Falsification/Misrepresentation

Withholding or providing false information is prohibited. This includes but is not limited to:

- 3.13.1 Falsely representing an entity and/or committing or using the resources of an entity without proper authorization;
- 3.13.2 Knowingly, intentionally or recklessly making false accusations of prohibited conduct against another individual;
- 3.13.3 Providing false information or falsified evidence with the intent of harming another person;
- 3.13.4 Seeking admission to the College under false pretenses and/or
- 3.13.5 Attempting to intimidate witnesses and/or altering or destroying evidence necessary to conflict resolution.

**3.16 of the NDSCS Student Guide to Rights and Responsibilities provides:
Failure to Comply**

Failure to comply with the instructions or directions of all College and/or emergency personnel in the performance of their duties is prohibited. Such acts may include, but are not limited to, recklessly obstructing or delaying any College proceedings, providing misleading or false information during an investigation, resisting or fleeing a police officer, failing to comply with assigned College conduct sanctions, or engaging in verbal and/or physical abuse directed toward any College personnel.

**6.1 of the NDSCS Student Guide to Rights and Responsibilities provides:
Hearing Procedures for Potential Suspension or Expulsion Cases**

Introduction With all parties present, the hearing officer will call the hearing to order and ask all parties participating to introduce themselves and identify their role in the proceedings. The hearing officer will describe the general outline of the hearing and read the following honesty statement:
Honesty Statement *“There is an expectation 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 NDSCS’s Code of Conduct. As a result, they may be subject to additional disciplinary action. Dishonest behavior by any faculty or staff members will be reported to supervisors for any necessary disciplinary action”*

North Dakota State University

[NDSU Policy 162: Sexual and Gender-Based Harassment and Sexual Misconduct \(Not Title IX policy\)](https://www.ndsu.edu/fileadmin/policy/162.pdf)

<https://www.ndsu.edu/fileadmin/policy/162.pdf>

Section 2: Prohibited Conduct

2.5: Interference with an investigation – Any person who knowingly and intentionally interferes with an investigation conducted under this policy is subject to disciplinary action up to and including dismissal or separation from the University. Interference with an investigation may include, but is not limited to: 1) Attempting to coerce, compel, influence, or prevent an individual from providing testimony or relevant information; 2) Divulging confidential information; 3) Removing, destroying, or altering documentation relevant to the investigation; or 4) Providing false or misleading information to the investigator, or encouraging others to do so.

2.7: Obligation to provide truthful information – All University community members are expected to provide truthful information in any report or proceeding under this policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of prohibited conduct is prohibited and subject to disciplinary action and sanctions under the appropriate disciplinary policy. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

NDSU Policy 601: Rights and Responsibilities of Community: A Code of Student Conduct

<https://www.ndsu.edu/fileadmin/policy/601.pdf>

Section 3: Prohibited Conduct

3.17: Deception/Falsification/Misrepresentation

Withholding information or providing false information is prohibited. This includes: Providing false identification; Falsely representing an entity and/or committing or using the resources of an entity without proper authorization; Knowingly, intentionally, or recklessly making false accusations of prohibited conduct against another individual; and/or Altering, destroying, or falsifying evidence.

3.20: Failure to Comply

Failure to comply with the instructions or directions of all University and/or emergency personnel in the performance of their duties is prohibited. Such acts may include recklessly obstructing or delaying any University proceedings, providing misleading or false information, resisting or fleeing a police officer, or failing to comply with assigned University directives or conduct sanctions.

6: Hearing Procedures for Suspension or Expulsion Cases

Honesty Statement

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

University of North Dakota

At UND we have a statement in our notice of allegations that is sent to both parties that [states](#) “UND prohibits knowingly making false statements or knowingly submitting false information during the grievance process.”

Our [sexual misconduct policy](https://campus.und.edu/equal-opportunity/title-ix.html) states (<https://campus.und.edu/equal-opportunity/title-ix.html>) (<https://und.policystat.com/policy/11804149/latest/>)

Prohibition against False Statements

UND prohibits knowingly making false statements or knowingly submitting false information during the Sexual Misconduct grievance process. Doing so will subject the party making the knowingly false statement to disciplinary action.

The policy also states that a determination of responsibility alone is not sufficient to conclude someone made a materially false statement in bad faith.

Non-Retaliation for Filing or Participating in a Sexual Misconduct Complaint

Neither the University nor any employee, student, or affiliate may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Sexual Misconduct Policy.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Policy. Charging an individual with a policy violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation prohibited by this Policy. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Valley City State University

This statement is at the beginning of the Student Code of Conduct:

Valley City State University is committed to the view that an important purpose of higher education is to develop mature responsible adult citizens and community leaders. Likewise, the university expects that, on or off campus, students will conduct themselves with courtesy, truthfulness, respect for law, and a thoughtful concern for the rights of others.

In the Student Code of Conduct regarding behavior that is subject to disciplinary action:

Furnishing false information to any university official, faculty member or office.

In our Title IX policy:

Upon receipt of a formal complaint, VCSU will provide the following written notice to the parties who are known:

Notice informing the parties of VCSU's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Also in our Title IX policy:

In Bad Faith, Charging an Individual with a Code Violation for Making a Materially False Statement

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited

under this policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Williston State College

4.17 Deception/Falsification/Misrepresentation

Withholding or providing false information to WSC personnel or members of law enforcement while conducting an investigation regarding WSC students or activities is prohibited. This includes but is not limited to:

- Falsely representing an entity and/or committing or using the resources of an entity without proper authorization.
- Knowingly, intentionally, or recklessly making false accusations against another individual that are intentionally false or made with reckless disregard for the truth.
- Providing false information or falsified evidence with the intent of harming another person.
- Furnishing false or misleading information on admission, registration, student identification, or any other forms.
- Altering College records; and/or
- Attempting to intimidate witnesses and/or altering or destroying evidence necessary to conflict resolution.

4.18 Fraud

Willfully destroying, damaging, tampering with, altering, stealing, misappropriating, or using without permission any College document, program, or file is prohibited.