

**RESOLUTION AGREEMENT**  
**OCR Case No. 05-15-2025**  
**North Dakota State University**

North Dakota State University (University) enters into this Resolution Agreement (Agreement) to ensure its compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. §104.7(b), and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. §35.107(b), which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities, respectively.

This Agreement is the result of a complaint filed by a former employee. While the former employee's individual allegation of disability discrimination was dismissed for failure to state a violation of the laws enforced by OCR, the goal of this Agreement is to ensure codification of the University's current procedures regarding the ability of former students and former employees to file a complaint with the University.

**REVIEW OF UNIVERSITY POLICIES AND PROCEDURES**

- 1) By June 30, 2015, the University will review and revise, as necessary, its written policies and procedures to clarify the procedures for handling grievances from terminated employees and former students. Additionally, with respect to terminated employees, former students, and all other covered individuals, the University will ensure that its policies and procedures include, at a minimum, the following:
  - a) a statement setting forth the University's commitment to establish and adopt grievance procedures to resolve complaints of discrimination based on disability by current and former students and employees pertaining to conduct related to their employment or participation in the University's services and programs;
  - b) an explanation of how current and former students and employees may file complaints of discrimination based on disability pertaining to conduct related to their employment or participation in the University's services and programs;
  - c) a description of the formal complaint procedures, including a complaint form, designated and reasonably prompt timeframes for major stages of the investigation and for completion of the investigation of a complaint, a requirement that written notice of the outcome be provided to the parties, a requirement that both parties have an equal opportunity to access and present evidence, an assurance that both parties will receive periodic status updates, clarification that to the extent an appeal process exists, it is available for both parties and will be conducted in an impartial manner by an impartial decision-maker, and notice that the University will keep the complaint and investigation confidential to the extent possible;

- d) an assurance that the University uses in its investigation of complaints of discrimination based on disability a preponderance of the evidence standard of review (*i.e.*, it is more likely than not that discrimination occurred);
- e) specific information as to the name or title and contact information (including office and email address and telephone number) for the University employee(s) responsible for receiving the complaint form and/or investigating reports of discrimination based on disability;
- f) a requirement that all employees who observe acts of discrimination based on disability document and report all such incidents to the Office of Equity, Diversity, and Global Outreach;
- g) a requirement that designated employee(s) within the University document all reports of incidents of discrimination based on disability, and that the University establish a protocol for recordkeeping of such incidents;
- h) a statement that the University will take appropriate disciplinary action against students and staff who violate the University policies and procedures prohibiting discrimination based on disability, and examples of the range of possible disciplinary sanctions;
- i) a prohibition of retaliation against persons who report discrimination based on disability or participate in related proceedings, and discipline of individuals who engage in retaliation;
- j) an assurance that the University's primary concern is to enact and implement policies and procedures to ensure the rights of its students and employees are protected, to encourage reports of discrimination based on disability, that the University will not discipline a student or employee who makes a good faith report of discrimination;
- k) a statement that the University will, where appropriate, take reasonable steps to remedy the harm to the affected student(s) or employee(s) of discriminatory conduct, and examples of the types of remedies available; and
- l) identification of the means to investigate incidents of discrimination, including but not limited to the various steps the University will take to conduct adequate, reliable and impartial investigations of reported incidents, an assurance that the University will take action to stop the discriminatory conduct, remedy its effect(s), and its prevent recurrence.

**REPORTING REQUIREMENT:** By June 30, 2015, the University will submit to OCR for its review and approval its revised policies and procedures referenced in this item.

- 2) Within 30 business days of receipt of notice of OCR's approval of the policies and procedures referenced in item #1, the University will adopt, implement and publish the

revised policies and procedures. Publication will include written notice of the nondiscrimination policy, including its formal and informal complaint procedures, to the University community, including students, administrators and staff. The University will make this notification available through the University's website, revised student handbooks, and any other additional means of notification the University deems effective to ensure that the information is widely disseminated.

**REPORTING REQUIREMENT:** Within 30 business days after the completion of this item, the University will provide OCR with documentation that it has completed this item, including copies of the written notices to students, administrators and staff regarding the revised policies and procedures and a description of how the notices were distributed, copies of its revised student handbooks, a link to its webpage where the revised policies and procedures are located, and documentation of any other additional means of notification used by the University.

- 3) Effective immediately, the University agrees to maintain documents relating to specific complaints or other reports of discrimination of terminated employees or students, including the following:
  - a) a copy of all written reports, and a narrative of all verbal reports, of incidents involving allegations of discrimination of any kind raised by terminated employees or students;
  - b) a narrative of all actions taken in response to the reports by University personnel, including any written documentation;
  - c) a copy of any and all disciplinary sanctions issued for violations of the University's revised nondiscrimination policies and procedures referenced in item #2;
  - d) if applicable, documentation demonstrating any interim and/or remedial efforts offered and provided to the complainant, the accused and/or witnesses of the incident(s), such as counseling or other appropriate services; and
  - e) if applicable, a narrative of all action taken to prevent recurrence of any discriminatory incident(s), including any written documentation.

**REPORTING REQUIREMENT:** By July 1, 2016 and July 1, 2017, the University will provide to OCR copies of the documentation referenced in this item for the 2015-16 and 2016-17 academic years, respectively.

### **TRAINING OF UNIVERSITY PERSONNEL**

- 4) By March 1, 2016, and annually thereafter, the University will require all University administrators, faculty, and staff responsible for recognizing and reporting incidents of discrimination to complete effective training relating to the policies and procedures adopted pursuant to Items #1 and 2. At a minimum the training will encompass the following:

- a) A reminder of the University's commitment to equal opportunity in employment decisions and educational programs and activities, in compliance with all applicable federal and state law, for all individuals without regard to race, color, national origin, sex, disability, and age and to having an environment free from discrimination, and an explanation of what University personnel should do if they believe students or employees have been subjected to discrimination, including their duty to immediately report all allegations of possible discrimination and of the potential for discipline of employees who fail to report such incidents.
- b) A general overview of the Age Discrimination Act, Title VI, Section 504 of the Rehabilitation Act, Title II of the American with Disabilities Act, and Title IX including how the laws' nondiscrimination provisions apply to students and employees, the names and contact information for the designated staff member(s) to whom students or others may report allegations of discrimination, where to locate the University's nondiscrimination policies and procedures on the University's website, and the existence of OCR and its authority to enforce the aforementioned laws.
- c) An explanation of the University's nondiscrimination policies and procedures, including an explanation of what constitutes discrimination, the role of the Office of Equity, Diversity, and Global Outreach, as well as disciplinary sanctions related to findings of violations of the University's nondiscrimination policies and procedures, including the University's policy prohibiting retaliation and intimidation.
- d) An explanation of the prohibition against retaliation contained in the Age Discrimination Act, Title VI, Section 504 of the Rehabilitation Act, Title II of the American with Disabilities Act, and Title IX, and examples of conduct that may constitute retaliation.
- e) The University will provide effective training described in Item #4 to any administrators, faculty, staff or responsible employees identified in Item #4 who are hired after August 31, 2015, within 90 business days of the new employee's date of hire.

At the conclusion of the training for any administrators, faculty, staff or responsible employees described in Item #4, the University will administer a written quiz, consistent with University practice, to the employees who participated in the training to ensure their understanding and retention of the key concepts discussed in the training, including the University's policies and procedures.

**REPORTING REQUIREMENT:** By March 31, 2016, the University will provide OCR with documentation that it has provided the training referenced in this item, including the dates of the training, the names and titles of the trainer(s), a copy of any materials used or distributed during the training, a summary of the quiz results, and a list of University employees who successfully completed the training.

- 5) By March 1, 2016, the University will provide effective training to all employees who are directly involved in processing, investigating and/or resolving complaints or other reports of discrimination. Additionally, in the event that the University hires independent investigators and/or hearing officers, the University will provide effective training to the hearing officer before they are allowed to resolve any complaint or report of discrimination. The training will review the University policies and procedures referenced in Items # 1 and 2 of this Agreement and include instructions on how to conduct and document adequate, reliable, and impartial investigations, including the appropriate legal standards to apply in such investigations.

The University will continue to provide the training described in Item #5 to any employees who are directly involved in processing, investigating and/or resolving complaints or other reports of discrimination, and any independent investigators and/or hearing officers handling cases involving discrimination annually or within 90 business days of any significant changes to the University's nondiscrimination policies or procedures.

Between 60 and 90 days from the date of the training described in Item #5, the University will conduct written evaluations of all employees and/or independent investigators and/or hearing officers who participated in the training to ensure their understanding and retention of best practices in conducting and documenting adequate, reliable, and impartial investigations, including the appropriate legal standards to apply in such investigations. In addition, to ensure these individuals' understanding and retention of University's policies and procedures, the University will administer the same written quiz administered to other University employees under Item 4, consistent with University practice.

**REPORTING REQUIREMENT:** By March 31, 2016, the University will provide OCR with documentation that it has provided appropriate University employees and independent investigators and/or hearing officers with the training referenced in this item, including the dates of the training, the names and titles of the trainer(s), a copy of any materials used or distributed during the training, a summary of the quiz results, and a sign-in sheet with the names and titles of the University staff who attended the training.

### **REMEDIES SPECIFIC TO THE COMPLAINANT**

- 6) By June 1, 2015, the University will inform the Complainant in writing of the results of the University's investigation into her initial complaint of disability discrimination and of her option to appeal the University's determination within 10 working days, consistent with NDSU Policy 156, subparagraph 4.1.<sup>1</sup>

**REPORTING REQUIREMENT:** By June 30, 2015, the University will provide documentation to OCR that it has implemented this item of the Agreement including a copy of the written notice provided to the Complainant.

The University understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, the University understands that, during the monitoring

---

<sup>1</sup> <http://www.ndsu.edu/fileadmin/policy/156.pdf>.

of this Agreement, the OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for the OCR to determine whether the University has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 and Title II regulations, at 34 C.F.R. §104.7(b) and 28 C.F.R. Part 35.107(b), respectively, which were at issue in this complaint.

The University understands that the OCR will not close the monitoring of this Agreement until OCR determines that the University has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 and Title II regulations, at 34 C.F.R. §104.7(b) and 28 C.F.R. Part 35.107(b), respectively, which were at issue in this complaint.

The University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement, OCR shall give the University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

Approved and agreed to on behalf of North Dakota State University.

\_\_\_\_\_  
For the University

\_\_\_\_\_  
Date