University Policy 1065

Sexual Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking

Effective Date

April 2014

Last Revision Date

July 2019

Responsible Party

Office of Institutional Compliance and Ethics, (208) 426-1258

Scope and Audience

This policy applies to all University employees, students, and visitors to the University as well as anyone participating in a University sponsored activity (collectively “Members of the University Community”).

Additional Authority

- Title VII of the Civil Rights Act of 1964
- The Pregnancy Discrimination Act
- Title IX of the Education Amendments of 1972
- The Age Discrimination in Employment Act of 1976
- The Equal Pay Act of 1963
- The Americans with Disabilities Act of 1990 as amended
- The Genetic Information Nondiscrimination Act of 2008
- The Vietnam Era Veterans’ Readjustment Assistance Act
1. Policy Purpose

To detail the University’s commitment to providing an employment, learning and campus-living environment free from sex and gender-based discrimination, harassment, and violence.

2. Policy Statement

Boise State University is committed to maintaining a working and learning environment that is free from Discrimination, Sexual Harassment, and violence in which all Members of the University Community are treated with dignity and respect. The University strives to create an environment that supports, encourages and rewards career and educational advancement on the basis of ability and performance. Accordingly, Boise State prohibits, to the extent permitted by applicable law, discrimination on the basis of sex, sexual orientation, gender, gender identity and pregnancy. The University also prohibits Sexual Harassment, including but not limited to, Sexual Misconduct, Domestic/Dating Violence, and Stalking.

The University will promptly and fairly investigate allegations of Discrimination or Sexual Harassment in accordance with this policy.

3. Definitions

3.1 Coercion

To force one to act based on fear of harm to self or others. Means of coercion may include, but are not limited to, pressure, threats, emotional intimidation, or the use of physical force.

3.2 Complainant

An individual who is reported to have experienced conduct prohibited by this policy, regardless of whether the individual makes a report or seeks disciplinary action. When the University believes an individual represents an ongoing threat to the University community, but the
Complainant does not want to pursue a complaint, the University may assume the role of Complainant.

### 3.3 Confidential Resources

Gender Equity Center and University Health Services medical and counseling staff who learn of a potential violation of this policy while performing services in scope of their employment as licensed clinicians. Confidential Resources are not Responsible Employees as defined by this policy but are still reporters for Clery purposes.

### 3.4 Consent

Voluntary, informed and freely-given agreement, which may be withdrawn at any time, to engage in a course of conduct. Consent is demonstrated through words or actions creating clear permission of willingness to engage in mutually agreed-upon sexual activity. Neither silence, the absence of resistance, nor the existence of a prior consensual sexual relationship are sufficient to indicate consent. A person who is incapacitated by alcohol or illegal or prescription drugs, unconscious, or asleep cannot give consent. Agreement to engage in a course of conduct shall not be considered as freely given, and shall not constitute consent, when it is obtained through harassment, coercion, threats, or other forcible conduct. A person under 16 years of age cannot give consent for sexual activity; those who are 16 or 17 may only consent to sexual encounters with partners who are less than 3 years older.

### 3.5 Discrimination

Treating an individual or group differently or less favorably on the basis of their sex, gender, sexual orientation, or pregnancy. Discrimination on basis of race, color, religion, age, national origin, physical or mental disability, veteran status, genetic information, or any other status protected under applicable federal, state, or local law is addressed in University Policy 1060.

### 3.6 Domestic/Dating Violence

Sexual Harassment that is intended to harm, threaten, intimidate, or control another person in a relationship of a romantic or intimate nature, regardless of whether that relationship is ongoing or has concluded or the number of interactions between the individuals involved. This often takes the form of abuse, whether physical, sexual, verbal, emotional, or technological.

### 3.7 Hostile Environment

An environment created through conduct that is so severe, pervasive, or persistent that it creates an environment that would cause a reasonable person substantial emotional distress and
undermine their ability to work, study, learn, or otherwise participate in University programs or services, and actually does cause the harassed person(s) these difficulties. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a Hostile Environment, particularly if the harassment is physical. A single or isolated incident of sex or gender-based harassment or discrimination may create a Hostile Environment if the incident is sufficiently severe.

3.8 Incapacitation

The physiological and/or cognitive inability, temporarily or permanently, to make informed, rational judgments and decisions including giving consent. States of incapacitation may include unconsciousness, sleep and blackouts. An individual is incapacitated if it is demonstrated that the individual was unaware at the time of the incident where they were, how they got there, or why or how they became engaged in a sexual interaction. Where alcohol or other drugs are involved, incapacitation is determined by how a Complainant’s decision-making capacity, awareness of consequences, and ability to make informed judgments are impacted.

A determination of Incapacitation does not turn on technical or medical definitions, but instead focuses on whether a Complainant has the ability to make informed, rational judgments and decisions including giving Consent. Common and obvious warning signs which indicate that a person may be incapacitated or approaching Incapacitation may include: slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may be unable to accurately respond to one or more of the following questions: “Do you know where you are?”, “Do you know how you got here?”, “Do you know what is happening?”, “Do you know who you are with?”

For purposes of this policy, when alcohol is involved, Incapacitation is a state beyond drunkenness or intoxication, and when drug use is involved, Incapacitation is a state of beyond being under the influence or impaired by use of the drug. A person is not incapacitated merely because they have been drinking or using drugs. Alcohol and drug use impact each individual differently, and determining whether an individual is incapacitated requires an individual determination. In evaluating whether a person was incapacitated for purposes of determining whether Consent was present, the University considers: (1) Did the person initiating sexual activity know that the other individual was incapacitated? If not, (2) Would a sober, reasonable person in the same situation have known that the other individual was incapacitated? If the answer to either of these questions is “yes,” then the person was incapacitated, and Consent was absent.

A Respondent’s intoxication is never an excuse for or a defense to conduct prohibited by this policy and does not diminish their responsibility to determine whether Consent is present.
3.9 Members of the University Community

University employees, students, contractors, vendors, customers, or visitors and anyone participating in a university sponsored activity.

Quid Pro Quo – When submission to any form of Sexual Misconduct is made either explicitly or implicitly a condition of an individual’s 1) employment conditions, including, for example, hiring, firing, promotion, or pay; or 2) academic advancement, including evaluations, grades or progression.

3.10 Quid Pro Quo

When submission to any form of Sexual Misconduct is made either explicitly or implicitly a condition of an individual’s 1) employment conditions, including, for example, hiring, firing, promotion, or pay; or 2) academic advancement, including evaluations, grades or progression.

3.11 Reporter

An individual who reports alleged prohibited conduct but who is not the individual who is alleged to have experienced the prohibited conduct.

3.12 Respondent

The individual, individuals or group alleged to have engaged in conduct prohibited by this policy.

3.13 Responsible Employees

All University employees except those defined as Confidential Resources. Responsible Employees are mandatory reporters for purposes of this policy.

Responsible Employees are not required to report information disclosed (1) at public awareness events (e.g., Take Back the Night, candlelight vigils, protests, survivor speak-outs, or other public forums in which individuals may disclose conduct prohibited by this policy), or (2) during an individual’s participation as a subject in an Institutional Review Board-approved human subjects research project. The University may provide information about Title IX rights and available resources at public awareness events, however, and Institutional Review Boards may, as they deem appropriate, require researchers to provide such information to all subjects of approved projects.

With the exception of student employees, students are not mandatory reporters, but are encouraged to report suspected violations of this policy.
3.14 Retaliation

Adverse treatment of an individual because that individual opposed discrimination or harassment, made a complaint pursuant to this policy, or conducted or participated in an investigation conducted pursuant to this policy.

3.15 Sexual Harassment

Unwanted conduct on the basis of sex, sexual orientation, gender or gender identity, whether actual or perceived. This includes, but is not limited to:

- Attempting to coerce an unwilling person into a sexual relationship;
- Sexual Misconduct, as defined in this policy;
- Dating or Domestic Violence, as defined in this policy;
- Repeatedly subject a person to unwelcome sexual attention, unwanted comments, or communications or jokes of a sexual nature or about their sexual experiences or orientation;
- Punishing a refusal to comply with a sexual request;
- Conditioning a benefit on submitting to sexual advances;
- Stalking, as defined in this policy, on the basis of sex or gender;
- Threatening or committing sexual violence; or
- Bullying someone on the basis of sex or gender. This includes bullying someone for exhibiting what is perceived as a stereotypical characteristic for their sex, or for failing to conform to stereotypical notions of masculinity and femininity. This may include repeated use of degrading words, gestures, or sounds to describe a person.

Sexual Harassment may be committed by any person upon any other person regardless of the sex, gender, sexual orientation, and/or gender identity of those involved. To be a violation of this policy, Sexual Harassment must create a Hostile Environment or be Quid Pro Quo.
3.16 Sexual Misconduct

A form of sexual harassment which includes any of the following:

3.16.1 Nonconsensual Sexual Contact (or attempts thereof)

Any intentional non-penetrating sexual contact, whether with a body party or a foreign object, by one person upon another, performed without consent. Examples of sexual contact include:

- Contact with the breasts, buttocks, groin, or genitals, or touching of another with any of these body parts;

- Making a person touch themselves or another person with or on the breasts, buttocks, groin, or genitals; and

- Bodily contact in a sexual manner, though not involving contact with breasts, buttocks, groin, genitals, mouth, or other orifice.

3.16.2 Nonconsensual Sexual Intercourse (or attempts thereof):

Vaginal or anal penetration by a penis, object, tongue or finger or mouth to genital or anal contact, no matter how slight the penetration or contact, in which one party has not given Consent, whether or not it is performed through force.

3.16.3 Sexual Exploitation

Nonconsensual or abusive sexual behavior which does not fit within one of the other Sexual Misconduct definitions. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;

- Prostituting of a member of the university community;

- Nonconsensual recording of any form of a sexual activity;

- Duplication, distribution, or publication of a consensually made recording of a sexual activity without the consent of all parties involved in the recorded sexual act;
• Going beyond the boundaries of consent, including letting someone else watch a consensual sex act while hiding;

• Knowingly viewing, photographing, or filming another person without that person’s knowledge and consent, while the person being viewed, photographed, or filmed person is in a place where there is a reasonable expectation of privacy;

• Knowingly transmitting a sexually transmitted infection to a member of the university community; or

• Exposing one’s genitals or inducing another to expose their genitals in nonconsensual circumstances.

Sexual Misconduct may be committed by any person upon any other person regardless of the sex, sexual orientation, gender, and/or gender identity of those involved.

3.17 Stalking

Stalking is a form of Sexual Harassment. Stalking is a course of conduct directed at a specific person that would cause a reasonable person to feel fear or substantial emotional distress. For the purpose of this definition, a course of conduct is defined as two or more incidents. Stalking behaviors may include, but are not limited to:

• Nonconsensual communication including, in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of images or information on websites, written letters or notes, gifts, or any other communications that are undesired and/or place another person in fear;

• Following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by the person being targeted;

• Surveillance and other types of observation, whether by physical proximity or electronic means;

• Trespassing;

• Vandalism;
• Nonconsensual touching;

• Direct physical and/or verbal threats against a person being targeted or that person’s friends, family members, or animals;

• Gathering of information about a person from that person’s family, friends, co-workers, or classmates;

• Manipulating and controlling behaviors such as threats to harm oneself or threats to harm someone close to the target of the behaviors; or

• Defamation or slander of the person being targeted.

3.18 Third Party

An individual who is not a University student, faculty member or staff member (e.g. vendors, alumni/ae or visitors).

3.19 Witness

An individual who may have information relevant to a report of prohibited conduct. A witness may be a student, an employee, or a third party.

4. Responsibilities and Procedures

4.1 General Responsibilities

All Members of the University Community are responsible for following this policy to create a campus environment free from prohibited sex and gender-based discrimination, harassment, and violence. The University expects all Members of the University Community to avoid any behavior or conduct that could reasonably be interpreted as sex or gender-based discrimination or harassment.

4.2 Specific Responsibilities

4.2.1 Title IX Coordinator

The Title IX Coordinator is responsible for overseeing Boise State’s Title IX compliance efforts, including but not limited to (1) the review, investigation and resolution of complaints alleging violations of this policy by or against Members of the University Community, and (2) identifying
and addressing patterns or systemic problems that are identified during the review of these complaints. The Title IX Coordinator is also responsible for the periodic review and assessment of this policy and related policies and procedures.

4.2.2 Responsible Employees

Responsible Employees who observe or otherwise become aware of sex or gender-based discrimination, harassment or other sexual misconduct that may violate this policy must report such conduct in accordance with this policy as soon as practical after learning of the potential violation. All other Members of the University Community are encouraged to promptly report possible or actual violations of this policy.

4.2.3 Confidential Resources

Confidential Resources will collect general aggregate data about potential violations of this policy including the nature and general location of the incidents. Aggregate data must be reported to the Title IX Coordinator at the end of each semester.

4.2.4 Campus Security Authorities (CSAs) Required Reporting

Faculty and staff designated as Campus Security Authorities for the purpose of Clery Act compliance must also report alleged Clery crimes to the Clery Compliance Officer. For more information, please see http://security.boisestate.edu/csa/.

4.2.5 Members of the University Community

Members of the University Community must cooperate with the University in any investigation of allegations under this policy.

4.3 Resources for Victims

_In an emergency, call Public Safety at (208) 426-6911, activate a blue emergency phone on campus, or call 911._

4.3.1 Confidential Resources

Victims of Sexual Misconduct, Domestic Violence, Dating Violence or Stalking seeking confidential University support may contact one of the following:

- Gender Equity Center – (208) 426-4259
- University Health Services – (208) 426-1259
University Counseling Services – (208) 426-1601

Additional options for community based confidential resources in Boise and for other campus locations are listed in Appendix A.

4.3.2 Preserving Evidence

It is important to preserve evidence of any offense as it may be helpful when seeking a protection order or to prosecute the offender. For additional information regarding what to do if you are a victim of sexual assault, please visit the FACES of Hope Victim Center.

4.4 Complaint Procedures

4.4.1 Authority

Boise State has authority to investigate alleged violations of this policy:

a. That occurred on or may have a continuing effect on campus;

b. That occurred in the context of an official Boise State University program or activity, regardless of location;

c. Where both Complainant and Respondent are Members of the University Community; or

d. Where the Respondent is a student, member of the faculty, staff, or an administrator of Boise State University.

- Where the Respondent is affiliated with Boise State University, but is not a student, faculty or staff member, procedures of the affiliated institution may apply to the investigation and disciplinary process.

4.4.2 Respondent is Unknown or not a Member of the University Community

Where the Respondent is unknown or not a Member of the University Community, the Title IX Coordinator will assist individuals in identifying appropriate on and off campus resources and, at the individual’s request, the Title IX Coordinator can assist in contacting law enforcement. In addition, Boise State may take other actions such as providing interim measures or accommodations to protect the individual and the campus community.

4.4.3 Reporting Options

Complaints of conduct that may violate this policy should be filed through one of the following:
4.4.4 Reports to Law Enforcement

Any individual who believes they have been a victim of a crime is encouraged to report the crime to law enforcement. Individuals can reach the Boise Police Department on campus by calling (208) 426-6911 or may report anonymously by calling (208) 343-COPS or online at https://secureforms.boisestate.edu/security.

4.4.5 Rights of Complainant

A Complainant has the right to:

a. Be treated in accordance with the University’s Shared Values.

b. Be fully informed of and participate in all steps in the grievance process.

c. Report conduct prohibited under this policy to local law enforcement but not file a complaint with the University.

d. Report conduct prohibited under this policy to local law enforcement and file a complaint with the University. (If an alleged policy violation is also the subject of a law enforcement investigation, the University may suspend its investigation for a period not to exceed 10 days to avoid interfering with law enforcement’s investigation.).

e. File a complaint only with the University and request that the University investigate the matter.

f. File a complaint only with the University but request that the University not take any action other than to provide support services.

If the University believes that a Respondent presents an ongoing threat to the University community, it may determine that its obligation to safeguard the University community overrides the Complainant’s wishes not to commence a formal investigation. If the University determines this to be the case, the Title IX Coordinator will notify the
Complainant in advance of commencing a formal investigation. In such a case, the Complainant is not obligated to participate in the investigation. If a Complainant elects not to participate, the University will assume the role of Complainant.

When weighing requests not to commence a formal investigation, the Title IX Coordinator will consider a number of factors, including but not limited to:

(i.) The seriousness of the alleged prohibited conduct
(ii.) The respective ages and roles of Complainant and Respondent
(iii.) Whether there have been other complaints or reports of harassment or misconduct against Respondent
(iv.) Whether circumstances suggest there is an increased risk of Respondent committing additional acts of sexual violence or other violence
(v.) Whether Respondent has a history of arrests or records from a prior school indicating a history of violence
(vi.) Whether Respondent threatened further sexual violence or other violence against Complainant or others
(vii.) Whether the sexual violence was committed by multiple perpetrators
(viii.) Whether the circumstances suggest there is an increased risk of future acts of sexual violence under similar circumstances
(ix.) Whether the sexual violence was perpetrated with a weapon
(x.) Whether the institution possesses other means to obtain relevant evidence (e.g., security cameras or personal, physical evidence)

In all other cases, the University will obtain the Complainant’s consent before commencing an investigation.

g. Request that the Title IX Coordinator seek an informal resolution to a complaint. If a Complainant initially elects to participate in an informal resolution process, the Complainant retains the right to withdraw from the informal resolution process before it is complete and request a formal investigation.

h. Have an advisor of the Complainant’s choice accompany Complainant to all meetings, interviews and proceedings as outlined in Section 4.4.7., below.
i. Have a complaint alleging a violation of this policy processed in accordance with this policy.

j. Have an equal opportunity to provide information, names of witnesses and other evidence to the investigator.

k. Review and respond to the investigator’s written summary of information provided by other parties to the complaint.

l. Access University academic and support services and receive referrals to external support resources (for example, the Employee Assistance Program). For additional information about support services, see Appendix B.

m. Request interim measures including but not limited to:

   (i.) A University-based no contact order, limiting Respondent’s ability to communicate with, or otherwise contact, Complainant either directly or through a third party.

   (ii.) Academic accommodations, such as course withdrawals or incompletes.

   (iii.) For university employees, work assignments, work schedule, supervisory responsibilities, or work location changes.

   (iv.) For students, altering housing assignments, dining arrangements, or other university services for Complainant and/or Respondent.

   (v.) Campus security escorts.

   When granted, interim measures will remain in place until: 1) the investigation is complete and the investigator determines no policy violation occurred; 2) the investigator determines a policy violation occurred and the sanctioning process is completed; or 3) the Title IX Coordinator notifies Complainant and Respondent in writing that the interim measures are no longer in effect.

n. Request a review or modification of interim measures. Such requests should be submitted to the Office of Institutional Compliance at (208) 426-1258 or reportdiscrimination@boisestate.edu.

o. Be free from retaliation.

p. Be informed in writing of the findings of fact and outcome of the complaint.

q. Be informed of and have an equal right of appeal.
4.4.6 Rights of Respondent

A respondent has the right to:

a. Be treated in accordance with the University’s Shared Values.

b. Be fully informed of and participate in all steps in the grievance process.

c. Have an advisor of the Respondent’s choice accompany them to all meetings, interviews and proceedings as outlined in Section 4.4.7, below.

d. Access University academic and support services and receive referrals to external support resources (for example, the Employee Assistance Program). For additional information about support services, see Appendix B.

e. Respondents who are not employed by the University may decline to participate in an investigation. If a non-employee Respondent declines to participate in an investigation, the investigator will make a determination as to whether a policy violation has occurred based on other information gathered in the course of the investigation.

f. Decline to participate in the informal resolution of a complaint in favor of a formal investigation. A Respondent also retains the right to withdraw from the informal resolution process before it is complete and request a formal investigation.

g. Have an equal opportunity to provide information, names of witnesses and other evidence to the investigator.

h. Review and respond to the investigator’s written summary of information provided by other parties to the complaint.

i. Request interim measures including but not limited to:

   (i.) A University-based no contact order, limiting Complainant’s ability to communicate with, or otherwise contact, Respondent either directly or through a third party.

   (ii.) Academic Accommodations, such as course withdrawals or incompletes.

   (iii.) For University employees, work assignments, work schedule, supervisory responsibilities, or work location changes.
(iv.) For students, altering housing assignments, dining arrangements, or other campus services for Complainant and/or Respondent.

(v.) Campus security escorts.

When granted, interim measures will remain in place until: 1) the investigation is complete and the investigator determines no policy violation occurred; 2) the investigator determines a policy violation occurred and the sanctioning process is completed; or 3) the Title IX Coordinator notifies Complainant and Respondent in writing that the interim measures are no longer in effect.

j. Request a review or modification of interim measures. Such requests should be submitted to the Title IX Coordinator at (208) 426-1258 or reportdiscrimination@boisestate.edu.

k. Be informed in writing of the findings of fact and outcome of the investigation.

l. Be informed of and have an equal right of appeal.

4.4.7 Advisors of Choice

Both Complainant and Respondent have the right to be accompanied by an advisor of their choice when attending any meeting, interview or proceeding that takes place pursuant to this policy. An advisor may take notes and quietly confer with the party being advised, but may not speak on behalf of the party or in any way disrupt any meeting or proceeding. Advisors who fail to adhere to these requirements will be asked to leave the meeting or proceeding. Witnesses or other parties involved in the investigation or adjudication process are not permitted to serve as advisors and are not entitled to advisors.

Complainant or Respondent may choose to retain an attorney or other paid professional to act as an advisor in this process. However, each party shall be solely responsible for paying any fees charged by the advisor. All advisors are required to adhere to the requirements above regardless of whether they are being compensated.

The University has several trained advisors who can be appointed at the request of the Complainant or Respondent.

4.4.8 Support Services

Both Complainant and Respondent will be given information regarding support services, including confidential counseling for students and/or employees. The Director of Equity and
Inclusion will assist both parties to ensure that they have access to all available resources. For additional information about support services, see Appendix B.

4.4.9 Confidentiality

When a complaint alleging a violation of this policy is investigated, all parties to the investigation, including witnesses, will be notified of the University’s expectation of confidentiality. The University will only release information obtained in the course of an investigation on a “need to know” basis to the extent permitted by this policy and applicable law and consistent with the University’s thorough investigation of the complaint.

Investigation records are maintained in accordance with Idaho law and the Family Educational Rights and Privacy Act of 1974 ("FERPA"), as well as other applicable laws or regulations (collectively “privacy laws”). Any public release of information, including that to comply with the timely warning provisions of the Clery Act, will not include the name of a Complainant or information that could easily lead to a Complainant’s identification.

Breaches of confidentiality will be reviewed and may be considered a violation of this policy subject to disciplinary action.

4.4.10 Alcohol and Drug Amnesty

Because the University seeks to encourage individuals to report potential violations of this policy and fully participate in the investigation of potential violations of this policy, individuals will not, on the basis of evidence they provide in the course of an investigation, be charged with drug or alcohol violations under applicable University policies for offenses that occurred contemporaneously with the incident(s) under investigation.

4.4.11 Investigation Process

4.4.11A Intake

Once a complaint alleging that this policy has been violated is received by the Office of Institutional Compliance and Ethics, an investigator will meet with the Complainant or Reporter to gather information about the allegations and determine whether the alleged behavior constitutes a potential violation of this policy. If so, the investigator will commence an investigation.

4.4.11B Notice

The investigator will notify Respondent of the nature of the allegations by issuing a formal notice of allegations, typically sent by email. The notice will include: (a) information regarding
the allegations of conduct prohibited under this policy including the date, location and a
description of the conduct alleged to violate this policy; (b) the name of the Reporter and/or the
Complainant; (c) a clear statement of the interim measures being implemented at the time of the
notice, if any; (d) the University’s policy prohibiting retaliation against individuals who file
discrimination complaints or cooperate in the University’s investigation of discrimination
complaints; (e) information regarding the investigation process; (f) information regarding
investigation timelines; (g) notice of Respondent’s rights under this policy, including the right to
an advisor of Respondent’s choice at all stages of the process; and (h) information regarding
support services.

If the notice is delivered in person, Respondent will be instructed to schedule an initial interview
at a later date in order to allow Respondent sufficient time to secure an advisor and fully
consider and understand the information provided in the notice.

In order to help ensure that investigations are completed within the stated timeframes,
Respondent has three (3) University business days from receipt of the notice to contact the
Office of Institutional Compliance and Ethics to schedule a meeting to discuss the allegations
set forth in the notice. If the notice is sent via email, the notice will be considered received on
the date that it is sent. If a notice is sent via certified mail, it is considered received three (3)
University business days after the date it is mailed. If a student Respondent does not respond
within seven (7) University business days of receiving the notice, the investigator may proceed
with the investigation without input from the Respondent. If an employee Respondent does not
respond within seven (7) University business days of receiving the notice, the University may
initiate disciplinary action.

4.4.11C No Contact Order and Other Interim Measures

The investigator may issue a University-based no contact order and implement other interim
measures at the time the notice is issued. Either party may request interim measures, but interim
measures will not disproportionately impact the Complainant or be used as a means of
retaliation for filing a complaint.

A violation of a no contact order is a separate violation of this policy and should be immediately
reported to the investigator to determine whether it will result in an additional charge of
retaliation under this policy. In that event, the retaliation charge may, at the discretion of the
Director of Equity and Inclusion, be added to an ongoing investigation, or it may result in a new
complaint under this policy being initiated.

The violation of a no contact order may be considered when determining sanctions or
disciplinary action.
4.4.11D Informal Resolution

Informal resolutions may be useful for addressing concerns when a Complainant does not want an investigation; when a formal process would not result in a satisfactory resolution; when conditions exist that do not violate the policy but nonetheless are impacting Complainant; or when education and training, mediation, or other cooperative processes are appropriate to resolve the matter.

At the discretion of the investigator, in consultation with the Title IX Coordinator, informal processes may be used at any time during the investigation process. Informal processes include but are not limited to facilitated dialogue, mediation, and restorative justice. In all cases, informal processes may only be used when both Complainant and Respondent voluntarily agree to pursue an informal or alternative resolution. Informal or alternative resolutions must be consistent with the University’s obligations under federal and state law, the Student Code of Conduct and other applicable University policies.

Before allowing parties to use an informal resolution process, the investigator and the Title IX Coordinator must determine that an informal or alternative approach is consistent with the University’s obligations under the law, institutional policies, and institutional values – to stop inappropriate behavior, end discrimination or harassment, prevent discrimination or harassment from happening again, and address or remedy its effects. If both parties agree to an informal resolution process, then the formal process will generally be placed on hold for a reasonable period of time to determine whether an informal resolution process will be successful.

If parties do not reach an agreement in an informal or alternative process, the Complainant may pursue whatever formal process was initially available to them. In other words, Complainants do not waive their right to pursue formal resolution simply by participating in an informal or alternative process. If informal or alternative resolution is successful, both parties will be provided with appropriate notification as to the resolution achieved.

Once a complaint has been resolved informally and the matter has been closed, the Complainant may not request a formal resolution/investigation of the same matter.

4.4.11E Formal Investigation

Reports of alleged misconduct in violation of this policy will be investigated in a fair, impartial, thorough, and prompt manner. The investigator serves in a non-advocacy role as a neutral finder of fact. In the course of the investigation, each party will have the opportunity to provide information, including witnesses and evidence (including but not limited to emails, written documents, photographs, social media posts), relevant to the allegations set forth in the notice.
The investigator may need to meet with Complainant and Respondent more than once in order for each party to have an adequate opportunity to respond to new information obtained in the course of the investigation.

**4.4.11F External Investigator**

The Title IX Coordinator may retain an investigator from outside the University to investigate any complaint under this policy.

**4.4.11G Investigation Summary**

The investigator will prepare an investigation summary which will include relevant information from each interview conducted by the investigator and any other evidence gathered in the course of the investigation. Information regarding the parties’ medical/mental health issues that are not relevant to the complaint will not be included in the summary. Both Complainant and Respondent will be sent a written copy of the investigation summary on the same date, and each party will be given a reasonable period of time (generally not to exceed 5 University business days) to submit a written response to the investigation summary to the investigator.

The investigator will consider the written responses provided by each party when drafting the investigation report, noting any discrepancies as appropriate. Both parties’ responses will be incorporated into the report as attachments.

Any effort, by either party, to distribute, reproduce, alter, post, or otherwise circulate the investigative summary may result in a charge of a violation of this policy and may result in a policy violation determination and sanctions pursuant to the processes outlined in this policy.

**4.4.11H Investigation Timeline**

The time required to complete a formal investigation will vary based on the nature and complexity of the allegations. The Office of Institutional Compliance and Ethics will use its best efforts to complete the investigation within forty-five (45) business days from receipt of the complaint. Delays in the process will be communicated by the investigator to both Complainant and Respondent in a timely manner.

**4.4.11I Final Investigation Report**

The investigator will draft an investigation report with findings of fact and a determination of whether, based on a preponderance of the evidence, this policy has been violated. The Title IX Coordinator will review the draft investigation report before it is finalized to determine if the findings of facts support the investigator’s determination regarding whether this policy was violated. The Title IX Coordinator will then either (1) approve the draft report becoming the
final investigation report (if the policy violation determination is supported by the findings of facts); or (2) find that the investigator’s determination regarding whether there was a violation of this policy is not supported by the findings of fact and reach a different determination concerning the alleged policy violation, which will be set forth in an addendum to the final investigative report; (3) direct the investigator to conduct additional fact finding following the same investigation process outlined in this policy. In such a case, the investigator will submit another draft investigation report at the conclusion of the additional fact finding. The draft investigation report will then be reviewed by the Title IX Coordinator following the same process and criteria outlined above before issuing the final investigative report.

If the Title IX Coordinator acts as the investigator, the Director of Equity and Inclusion or AVP for Campus Operations will fulfill the Title IX Coordinator’s review responsibilities outlined in this section.

4.4.11J Outcome Notice

The Complainant and Respondent will be informed, in writing, of the investigator’s findings of fact and Title IX Coordinator’s determination regarding whether there was a violation of this policy in an outcome notice issued in accordance with applicable privacy laws. As nearly as possible, both parties will be informed of the outcome simultaneously.

4.4.11K Policy Violation

If an investigation results in the determination that this policy was violated, the final investigation report will, for student Respondents, be forwarded to the Office of the Dean of Students to determine appropriate sanctions, or for employee Respondents, to Human Resources for disciplinary action as outlined in Section 4.4.12 or Section 4.4.18, respectively.

4.4.11L Student Complainant or Respondent Right to File Complaint

If a student Complainant or Respondent believes the University has failed to investigate the alleged policy violation in accordance with law or policy, a complaint may be filed with:

U.S. Department of Education
Office of Civil Rights, Region 10
810 3rd Avenue #750
Seattle, WA 98104
https://ocrportal.hhs.gov/portal/lobby.jsp
1-800-368-1019
4.4.11M Employee Complainant or Respondent Right to File Complaint

An employee Complainant or Respondent may file a complaint with either of the following:

Idaho Human Rights Commission
317 West Main Street
Boise, ID 83702
https://humanrights.idaho.gov
(208) 334-2664

Equal Employment Opportunity Commission
(206) 220-6850
www.eeoc.gov

4.4.11N Appeal of Policy Violation Determination – Students

If the Title IX Coordinator determines that the findings of fact do not support a violation of this policy, Complainant may appeal this determination to an Appellate Board as outlined in Section 4.4.17. If the Title IX Coordinator determines that the findings of fact do support the determination of a violation of this policy, Respondent may appeal this determination to an Appellate Board after the Title IX Sanctioning Board issues a sanction decision.

4.4.12 Sanctions – Students

In cases where the Respondent is a student and a policy violation occurred, a copy of the final investigation report will be sent to a Student Conduct Administrator (SCA) in the Office of the Dean of Students. The SCA will convene a Title IX Sanctioning Board to determine appropriate sanctions.

The information below is a summary of the Title IX Sanctioning Board process. Detailed information about the Title IX Sanctioning Board and the Title IX sanctioning process may be found here (hyperlink). The Title IX Sanctioning Board will use their best efforts to complete the sanctioning process within thirty (30) days from the time the final investigation report is received.

4.4.12A Title IX Sanctioning Board

The SCA will convene the Title IX Sanctioning Board and set a date for a Sanctioning Conference. The Title IX Sanctioning Board will consist of 3-5 University faculty or staff members who receive annual training on Title IX matters. A minimum of three (3) Title IX Sanctioning Board members is required to conduct a Sanctioning Conference.
4.4.12B Notice of Sanctioning Conference

The SCA will send a copy of the final investigation report and Notice of Sanctioning Conference to Complainant and Respondent via email no later than ten (10) business days prior to the Sanctioning Conference date. Complainant and Respondent are notified in the Notice of Sanctioning Conference that they have an opportunity to meet individually with the SCA for a Pre-Sanctioning Conference meeting.

a. The Notice of Sanctioning Conference will include the names of the Title IX Sanctioning Board members.

b. Each party has two (2) business days from the date the Notice of Hearing is emailed to challenge any of the Title IX Sanctioning Board members on the ground of perceived bias. To challenge a Title IX Sanctioning Board member, a party must submit a concise written statement (no more than one page) stating the reason(s) for the challenge and why the Title IX Sanctioning Member is perceived to be biased against the party. The SCA will review any challenges received and determine if the challenged Title IX Sanctioning Board member needs to be replaced.

4.4.13 Pre-Sanctioning Conference Procedures

a. Each party may contact the Office of the Dean of Students to arrange a Pre-Sanctioning Conference meeting with the SCA. The non-redacted Final Investigation Report may be viewed in person by either party at their Pre-Sanctioning Conference meeting.

b. Both parties may submit a written impact statement to the Title IX Sanctioning Board, due at least five (5) business days prior to the day of the Sanctioning Conference.

c. A Pre-Sanctioning Conference packet will be made available to both parties and the Title IX Sanctioning Board members at least three (3) days prior to the scheduled Sanctioning Conference.

4.4.14 Advisors

Each party is permitted one (1) advisor to accompany the party at the Sanctioning Conference. No less than two (2) business days prior to the Sanctioning Conference, each party intending to have an advisor present at the Sanctioning Conference must submit to the SCA written notice identifying who will accompany them as their advisor. The role of advisors is limited, in accordance with University Policy 2020 and the applicable provisions of this policy.
4.4.15 Sanctioning Conference

a. Participation in the Sanctioning Conference is voluntary for both Complainant and Respondent. The Sanctioning Conference will proceed with or without participation of the parties.

b. Each party present will have an opportunity to make a brief (no more than ten (10) minutes) verbal statement to the Title IX Sanctioning Board.

c. The Title IX Sanctioning Board may ask questions of each party present at the Sanctioning Conference.

d. Parties will not be in the Sanctioning Conference room at the same time. When a party is not in the Sanctioning Conference room, that party will be able to listen to the Sanctioning Conference proceedings via phone from a separate room.

e. The Title IX Sanctioning Board will deliberate regarding the appropriate sanction(s) for the violation of this policy. Sanctions may include, but are not limited to, educational activities or experiences, loss of privileges, restorative justice measures, service projects, substance abuse and/or mental health care referrals, suspension or expulsion. Decisions of the Title IX Sanctioning Board are determined by a simple majority vote. The SCA may provide the Title IX Sanctioning Board with University precedent in similar cases, as well as Respondent’s history of conduct and prior sanctions, if any.

4.4.16 Sanctioning Decision

Within ten (10) business days after the Sanctioning Conference, the Title IX Sanctioning Board chair will notify the SCA in writing of the sanctions imposed by the Title IX Sanctioning Board. The SCA will then notify the parties via email of the Title IX Sanctioning Board’s Decision within two (2) business days of receiving such notification from the Title IX Sanctioning Board.

4.4.17 Appeals - Students

Appeals of decisions made by the Title IX Sanctioning Board may be made to an Appellate Board via the Office of the Dean of Students. When an appeal is filed, sanctions may be placed in pending status by the Student Conduct Administrator until the appeal process has been exhausted. Select sanctions may remain implemented pending the outcome of the appeals process to ensure the safety and well-being of members of the University community or preservation of University property.
4.4.17A Complainant and Respondent Appeal of Policy and/or Corresponding Sanction Determination

a. Both Complainant and Respondent have the right to file an appeal of determination of a violation of this policy and/or a corresponding sanction. The University reserves the right to determine the appropriate sanctions and educational outcomes for Respondents. Decisions made by an Appellate Board are final and cannot be appealed.

b. All appeals must be submitted in writing, signed by the appealing party, to the Office of the Dean of Students no later than ten (10) days after the date printed on the Notice of Outcome (for Complainants appealing a determination of no policy violation) or on the Notice of Sanctioning Decision (for Respondents appealing the policy violation determination and/or sanctioning decision, or for Complainants appealing the sanctioning decision). Any exceptions to the appeal deadline are made at the discretion of the Student Conduct Administrator or designee.

c. Appeals will be considered only when the appealing party alleges, in a concise written statement, at least one of the following:

(i.) A substantive procedural error occurred that significantly impacted the outcome of the investigation. Examples of a substantive procedural error may include substantiated bias by the investigator or material deviation from the investigation procedures set forth in this policy. A mere deviation from investigation procedures required by this policy is not a basis for considering an appeal unless significant prejudice is alleged to have resulted.

(ii.) The investigator erred when determining whether or not the findings of act constitute a violation of this policy.

(iii.) New evidence is available, which was unavailable during the investigation or sanctioning process, which could substantially impact either the determination of whether a violation of this policy occurred or the severity of the sanction.

(iv.) The sanctions imposed are substantially disproportionate to the severity of the policy violation.

d. Within ten (10) business days of submitting an appeal to the Office of the Dean of Students, Complainant and Respondent will receive Notice of Appeal Consideration.

e. The Student Conduct Administrator or designee will determine whether the appeal meets the criteria for consideration. A decision is made based on the grounds indicated above as
documented in the party’s written appeal statement. If an appeal is determined to not meet the criteria for consideration, the matter will be considered final and binding for all involved and the Notice of Appeal Consideration will reflect that decision. When the written appeal statement meets one or more of the criteria for consideration, the Student Conduct Administrator will convene an Appellate Board to review the appeal.

4.4.17B Review of Appeal by Appellate Board

a. The review of an appeal by an Appellate Board will occur in closed session, with no parties, witnesses, or members of the Title IX Sanctioning Board allowed to be present. With the exception of appeals alleging new information, the Appellate Board will limit itself to reviewing the written appeal, Final Investigation Report, documents used by the Title IX Sanctioning Board, and the recording of the Sanctioning Conference.

b. The Appellate Board will review only the grounds determined to meet the criteria for consideration and will make a determination on each such ground of appeal. The Appellate Board will base its decisions on the information presented and make a determination based on the preponderance of the evidence. Recommendations regarding appeals require a simple majority vote of the Appellate Board members.

c. If an appeal is determined to meet the criteria for consideration, the Appellate Board will review and discuss all pertinent aspects of the matter. The Appellate Board will then recommend to the Vice President for Student Affairs or his/her designee one of the following actions:

(i.) Uphold the original policy violation decision and sanctions;

(ii.) Uphold the original policy violation decision and amend the sanctions;

(iii.) Reverse the original determination of a policy violation or no-violation and:

   • Send the case to the Title IX Sanctioning Board to determine sanctions as outlined in Section 4.4.12A., or

   • Determine that the findings of fact do not constitute a policy violation. This decision will be final, binding, and a conclusion to the appeals process.

(iv.) Send the matter back to the Title IX Coordinator for correction of a substantial procedural error in the investigation process. The Appellate Board will include in its decision agreed-upon sanctions should a policy violation be sustained by the Title IX Coordinator after
d. The Vice President for Student Affairs, or their designee, will carry out the recommendations of the Appellate Board unless a recommendation is significantly different from University precedent for similar appeals.

4.4.17C Notice of Appeal Outcome

The Student Conduct Administrator will send both parties a Notice of Appeal Outcome within ten (10) business days of the Appellate Board convening, in accordance with applicable privacy laws. Both parties will be informed of the appeal outcome as simultaneously as possible. The Notice of Appeal Outcome is considered final and may not be appealed further at the University.

4.4.17D Review and Decision on Appeals during Summer Session and University Breaks

During the summer session or during University breaks, appeals may be reviewed and decided upon by an appeal body that includes one student, one faculty member, and one university official, each to be appointed by the Vice President for Student Affairs.

4.4.18 Sanctions/Discipline – Employees

In cases where the Respondent is a University employee and the investigator determines a policy violation occurred, a summary of findings will be provided to the AVP for Human Resources (or designee) and the Respondent’s hiring authority, who will together, in consultation with the Title IX Coordinator, determine whether disciplinary action is warranted.

If disciplinary action is proposed, Human Resources will assist the hiring authority in initiating the applicable disciplinary process. Disciplinary and appeal processes for University employees are addressed in the following policies:

a. Classified employees – Boise State Policy 7430, Classified Employee Disciplinary Action

b. Professional employees and faculty – Boise State Policy 7310, Non-Classified Employees – Due Process Procedure and Appeals

4.4.19 Notification to Grant Funding Agencies – Employees

If an employee serves as the Principal Investigator (PI) or co-PI on a grant sponsored by a governmental entity that requires the University to report any finding/determination that a
PI or co-PI has been found to have violated this policy, the University must report such finding(s) to the funding agency in accordance with grant requirements.

4.5 Protection against Retaliation

a. Title IX and Boise State University prohibit Members of the University Community from retaliating against anyone who has, in good faith, filed a complaint under or conducted or cooperated in an investigation an alleged violation of this policy. The University will take all reasonable steps to prevent retaliation or to remedy the effects if it does occur.

b. Members of the University Community who retaliate against any party to an investigation, including the investigator, conducted pursuant to this policy will be subject to appropriate disciplinary action, up to and including termination from employment and/or sanctions pursuant to the Student Code of Conduct.

c. Complaints of retaliation should be promptly reported to the Title IX Coordinator.

4.6 Training and Educational Programming and Notification of Services

The University will provide primary prevention and awareness programming to all incoming students and new employees and will provide ongoing prevention and awareness campaigns throughout the year. Specific elements of the programming are described more fully in the Annual Security Report available at https://security.boisestate.edu/annual-security-reports/. Programming will, at a minimum, include the following:

a. Information on all aspects of this policy and its application at Boise State University.

b. A statement of the University’s prohibition of domestic violence, dating violence, sexual assault and stalking, consent, and definitions of each, as they are defined under Idaho law and also how they are defined in University policy (set forth in full in the Definitions section at the beginning of this policy).

c. Bystander intervention training, covering safe and positive options for intervention that may be carried out by a bystander to prevent harm when there is a risk of domestic violence, dating violence, sexual assault, or stalking occurring. Programs will also offer information on risk reduction including how to recognize warning signs of abusive behavior and how to avoid potential attacks.
d. Information for victims of sex offenses, domestic violence, dating violence, and/or stalking including services and assistance available to victims, how to report an offense, the importance of preserving evidence, and the rights of victims.

5. Related Information

5.1 Contact Offices and Contact Information

Title IX Coordinator  
Office of Institutional Compliance and Ethics  
Administration Building, Suite 305  
1910 University Drive, Boise, ID 83725  
Email: ReportDiscrimination@boisestate.edu  
Phone: (208) 426-1258

Gender Equity Center  
1910 University Drive (Student Union Building, Second Floor)  
Email: genderequirycenter@boisestate.edu  
http://genderequity.boisestate.edu/support-2/  
Phone: (208) 426-4259

Office of the Dean of Students  
Student Conduct Administrator  
Norco 116  
1910 University Drive, Boise ID 83725  
Email: deanofstudents@boisestate.edu  
http://deanofstudents.boisestate.edu  
Phone: (208) 426-1527

Department of Public Safety  
2245 University Drive  
Boise, ID 83725  
Email: policeuniversitysecurity@boisestate.edu  
Phone: (208) 426-6911
5.2 Support Services

5.2.1 Ada County Community Services

Medical Attention/Examination:

FACES, located at 417 S. 6th Street, Boise, (208) 577-4400, is a specialized facility close to campus with experienced nurses and physicians trained to conduct sexual assault forensic exams. The emergency rooms at St. Alphonsus or St. Luke’s (Boise and Meridian) hospitals; both have response teams specially trained to assist victims of sexual assault, domestic violence, and dating violence.

Counseling/Support:

In addition to the Gender Equity Center and the Title IX Coordinator, there are many services available on campus and in the community to support students and employees in crises, including counseling, health, mental health, victim advocacy, legal assistance, and other services. Students and employees may call Boise State Counseling Services at (208) 426-1601 and Boise State Health Services at (208) 426-1459 (confidential services) during weekday business hours. In the Boise area, there is also a confidential 24-hour rape crisis line (208) 345-7273 and a confidential 24-hour domestic violence crisis hotline (208) 343-7025 operated by the Women’s and Children’s Alliance (WCA) and is available to respond to concerns and provide referral information.

5.2.2 Mountain Home Community Services

Medical Attention/Examination:

- St. Luke’s Elmore County, located at 895 N. 6th E Street, Mountain Home, (208) 587-8401, providing emergency medical services, forensic and physical exams and preventative care.

- Mountain Home Air Force Base Urgent Care and Women’s Health Clinic 90 Hope Drive Bldg. 6000, Mountain Home AFB, ID 83648, (208) 828-7900
Counseling/Support:

The Elmore County Domestic Violence Council at (208) 587-9091 for support services and referral to local counseling options.

5.2.3 Twin Falls Community Services

Medical Attention/Examination:

St. Luke’s Magic Valley Medical Center, 212 3rd Ave. S, Twin Falls, Idaho (208) 732-3000, providing emergency medical services, forensic and physical exams and preventative care.

Counseling/Support:

The Crisis Center of Magic Valley, 244 2nd Ave. E, Twin Falls, (208) 733-0100, or the Mini-Cassia Shelter for Women & Children, 123 S. C Street, Rupert, (208) 436-0987 for support services and referral to local counseling options.

5.2.4 Coeur d’Alene Community Services

Medical Attention/Examination:

Kootenai Health, located at 2003 Kootenai Health Way, Coeur d’Alene, Idaho (208) 625-4000, providing emergency medical services, forensic and physical exams and preventative care.

Counseling/Support:

The North Idaho Violence Prevention Center, 850 N. 4th Street, Coeur d’Alene, (208) 664-9303 or the Post Falls Police Department OASIS Program, 1717 E. Polston Ave, Post Falls (208) 773-3517 for support services and referral to local counseling options.
5.2.5 Lewiston Community Services

Medical Attention/Examination:

St. Joseph Regional Medical Center 1250 Idaho St., Lewiston (208) 799-5533, providing emergency medical services, forensic and physical exams and preventative care.

Counseling/Support:

Please contact the YMCA of Lewiston-Clarkston, 300 Main Street, Lewiston, (208) 734-1535 for support services and referral to local counseling options.

Revision History
March 2015; February 2017; October 2017; July 2019