



Idaho State University

POLICIES AND PROCEDURES

Policy on Equal Opportunity, Harassment and Non-discrimination

ISUPP 3100

POLICY INFORMATION

Policy Section: *Governance/Legal*

Policy Title: *Policy on Equal Opportunity, Harassment and Non-discrimination*

Responsible Executive (RE): *Student Affairs*

Sponsoring Organization (SO): *Office of Equity and Inclusion*

Dates: *Effective Date August 14, 2020*

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I. INTRODUCTION

Idaho State University (“University or ISU or recipient”) is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws¹ and regulations and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, ISU has developed internal policies and procedures that provide a prompt, fair and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. ISU values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

¹ Titles VI and VII of the Civil Rights Act (1964); Title IX of the Education Amendments Act (1972); Age Discrimination in Employment Act (1976); Equal Pay Act (1963); Section 503 and 504 of the Rehabilitation Act (1973); Americans with Disability Act (1990) as amended by the Americans with Disabilities Act Amendments Act (2008); Title II Genetic Information Nondiscrimination Act (2008); Vietnam Era Veteran’s Readjustment Assistance Act; Executive Order 11246; Executive Order 13672; Idaho Code Sections 18-7902, 18-7905, 18-7906; Idaho Human Rights Act; Idaho State Board of Education Governing Policies and Procedures

II. POLICY STATEMENTS

A. Applicable Scope

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using ISU's "Process A" or "Process B", as determined by the Title IX Coordinator as detailed below.

When the Respondent is a member of the University community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the University community. This community includes, but is not limited to students², student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, contractors, subcontractors, conference and camp attendees. All vendors serving the University through third-party contracts are subject to these policies and procedures to which their employer has agreed to be bound by their contracts. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

B. Jurisdiction of the University

1. This policy applies to the education program and activities of the University, to conduct that takes place on campus or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by University's recognized student organizations.
2. The Respondent must be a member of the University's community in order for its policies to apply.
3. This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to the University's educational program. The University may also extend jurisdiction to off-campus and/or to online conduct with the Title IX Coordinator determining that the conduct affects a substantial University interest.

² For the purpose of this policy, the University defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the University.

4. A substantial University interest includes:
 - a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violation of any local, state, or federal law;
 - b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
 - c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
 - d. Any situation that is detrimental to the educational interests or mission of the University.
5. When the Respondent is not a member of the University's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

III. AUTHORITY AND RESPONSIBILITIES

- A. Title IX Coordinator has the primary responsibility for coordinating the University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.
- B. Independence and Conflict of Interest
 1. The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents generally.
 2. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Director of the Office of Equity and Inclusion. Concern of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.
 3. Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Director of the Office of Equity and Inclusion. Reports of

misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

IV. DEFINITIONS

- A. **Advisor** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing if any.
- B. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- C. **Complaint (formal)** means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation. See section V.B.
- D. **Confidential Resource** means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- E. **Day** means a business day when the University is in normal operation.
- F. **Directly Related Evidence** is evidence connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.
- G. **Education program or activity** means locations, events, or circumstances where ISU exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- H. **Final Determination:** A conclusion by the preponderance of the evidence that the alleged conduct occurred and whether it did or did not violate policy.
- I. **Finding** A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged.
- J. **Formal Grievance Process** means "Process A", a method of formal resolution designated by the University to address conduct that falls within the policies included below and which complies with the requirements of the Title IX regulations (34 CFR Part 106.45).

- K. Grievance Process Pool** includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- L. Hearing Decision-Maker or Panel** refers to those who have decision-making and sanctioning authority within the University's Formal Grievance process.
- M. Investigator** means the person or persons charged by the University with gathering facts about an alleged violation of this policy, assessing relevance and credibility (if applicable), synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- N. Mandatory Reporter** means an employee of the University who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Office of Equity and Inclusion.³
- O. Notice** means that an employee, student, or third party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- P. Notification means a decision, outcome, or information from a hearing or decision-making hearing/meeting** will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official ISU records, or emailed to the parties' ISU-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.
- Q. Officials with Authority (OWA)** means an employee of the Recipient explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the Recipient.
- R. Parties** include the Complainant(s) and Respondent(s), collectively.
- S. Process A** means the Formal Grievance Process detailed below and defined above.
- T. Process B** means the administrative resolution procedures detailed in "Process B" that apply only when Process A does not, as determined by the Title IX Coordinator. Process B is for all other non-Title IX protected class harassment and discrimination.
- U. Reasonable person** means a reasonable person under similar circumstances and with similar identities to the party (Respondent or Complainant).

³ Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

- V. Relevant Evidence** is evidence that tends to prove or disprove an issue in the complaint.
- W. Remedies** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent a recurrence, and restore access to the University's educational program.
- X. Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- Y. Resolution** means the result of an informal or Formal Grievance process.
- Z. Sanction** means a consequence imposed by the University on a Respondent who is found to have violated this policy.
- AA. Sexual Harassment** is the umbrella category including the offense of sexual harassment, sexual assault, stalking, and dating violence, and domestic violence. See Section 12.e for greater detail.
- BB. Title IX Coordinator** is at least one (1) official designated by the University to ensure compliance with Title IX and the University's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- CC. Title IX Team** refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

V. NOTICE/COMPLAINTS OF DISCRIMINATION, HARASSMENT, AND/OR RETALIATION

- A. Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:
1. File a complaint with or give verbal notice to the Title IX Coordinator, the Director of Equity and Inclusion, or member of the Title IX Team. Such a report may be made at any time (including during non-business hours) by using the telephone number or e-mail address, or by mail to the office address listed below.

Title IX Coordinator
Office of Equity and Inclusion
Rendezvous 151C
(208) 282-1439
Email: millmeli@isu.edu
Web: <https://www.isu.edu/title-ix/>

2. Report online, using the [reporting form](#) and also available on the ISU Title IX webpage at <https://www.isu.edu/title-ix/>. Anonymous reports are accepted, and may result in the need for an investigation. Such reports do complicate the university's ability to provide the supportive measures to all complainants, therefore, whenever possible, the university encourages complainants to report on the record. Reporting carries no obligation to initiate a formal complaint.
3. ISU has determined that the following administrators are Officials with Authority to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Team members listed above, these Officials with Authority listed below may also accept notice or complaints on behalf of the Recipient.

Officials with Authority:

- University President
 - University Provost and Executive Vice-President
 - University Vice Presidents
 - Athletic Director
 - Director of Human Resources
 - Chief Security Officer
 - Office of Equity and Inclusion staff
 - Dean of Students
4. ISU has also classified most employees as Mandatory Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. See Section XV.

B. Formal Complaint

1. A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the University investigate the allegation(s). As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for the purpose by the University) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.

VI. SUPPORTIVE MEASURES

- A. ISU will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.
- B. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the University's education program or activity, including measures designed to protect the safety of all parties or the University's educational environment, and/or deter harassment, discrimination and/or retaliation.
- C. Violations of no contact orders will be referred to the appropriate student or employee conduct processes for enforcement.

VII. EMERGENCY REMOVAL

- A. The University can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Behavioral Intervention Team, also known as the CARE Team, using its standard objective violence risk assessment procedures.
- B. In all cases in which emergency removal is imposed, the Respondent(s) will be given notice of the action and the option to request to meet with the Title IX Coordinator and Representative from the Behavioral Intervention Team (CARE) prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.
 - 1. This meeting is not a hearing on the merits of the allegation(s), but rather an administrative process to determine solely whether the emergency removal is appropriate.
 - 2. If the meeting is not requested within 2 days of notice being given, objections to the emergency removal will be deemed waived.
- C. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX.
- D. There is no appeal process for emergency removal decisions.
- E. A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given

access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

- F. The Title IX Coordinator has the sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.
- G. The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authoring an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics. At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

VIII. PROMPTNESS

- A. All allegations are acted upon promptly by ISU once it has received notice or a formal complaint. Complaints can take sixty-to-ninety (60-90) business days to resolve, typically.
- B. Any time the general timeframe for resolution outlined in ISU procedures will be delayed, ISU will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.
- C. When notice/complaint is affected by a significant time delay, the University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of the notice/complaint.

IX. PRIVACY

Every effort is made by the University to preserve the privacy of reports⁴. ISU will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

The University reserves the right to designate which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to FERPA.

Please note that Title IX regulations require that the identity of the Complainant be shared with the Respondent during a formal grievance process.

X. ONLINE HARASSMENT AND MISCONDUCT

- A. University policies are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education program and activities or use of University networks, technology, or equipment.
- B. Members of the community are encouraged to be good digital citizens and to refrain from online misconduct or violations of law, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or

⁴ For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of University employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the University's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with FERPA as outlined in the University's FERPA policy. The privacy of employee records will be protected in accordance with Human Resource policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The University has designated individuals who have the ability to have privileged communications as Confidential Resources. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource may not reveal the information to any third party unless an applicable law or court order requires or permits disclosure of such information. Non-identifiable information may be shared by Confidential Resources for statistical tracking as required by the federal Clery Act. Other information may be shared as required by law.

anonymity of the internet or other technology to harm another member of the University community.

- C. Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the University's control (e.g., not on University networks, websites, or between University email accounts) will only be subject to this policy when such online conduct can be shown to meet the definitions of harassment as defined in this policy and in accordance with applicable law.

Communications protected by the First Amendment are not subject to this policy, though in some cases supportive measures may be provided to a Complainant.

Online harassment or misconduct by employees may be subject to University policy or other applicable law.

XI. POLICY ON NONDISCRIMINATION

- A. The University adheres to all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education.
- B. ISU does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of: race, color, religion, gender, age, national origin, ethnicity, physical or mental disability, veteran status, genetic information, sexual orientation, gender identity or any other status protected under applicable federal, state, local law, or ISU policy. This includes protections for those participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.
- C. This policy covers nondiscrimination in both employment and access to educational opportunities. Any member of the University community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of the University community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the University policy on nondiscrimination.
- D. When brought to the attention of the University, any such discrimination will be promptly and fairly addressed and remedied by the University according to the appropriate grievance process described below.

XII. POLICY ON DISABILITY DISCRIMINATION AND ACCOMMODATION

- A. ISU is committed to full compliance with the Americans with Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.
- B. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.
- C. The ADA also protects individuals who have a record of substantially limiting impairment or who are regarded as disabled by the University, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.
- D. The Director of Equity and Inclusion has been designated as the University's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.
- E. Grievances related to disability status and/or accommodations will be addressed using the procedures below.
- F. Students with Disabilities
 - 1. ISU is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of the University.
 - 2. All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Office of Disability Services, who coordinates services for students with disabilities.
 - 3. The Office of Disability Services reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s).
- G. Employees with Disabilities
 - 1. Pursuant to the ADA, ISU will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to the University.

2. An employee with a disability is responsible for submitting a request for an accommodation to Disability Services and providing necessary documentation. Disability Services staff will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

XIII. POLICY ON DISCRIMINATORY HARASSMENT

- A. Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. ISU's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that includes germane, but controversial or sensitive subject matters protected by academic freedom.
- B. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under ISU policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of the ISU policy, though supportive measures may be offered to those impacted.
- C. ISU reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.
- D. Discriminatory Harassment
 1. Discriminatory harassment constitutes a form of discrimination that is prohibited by ISU policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.
 2. ISU does not tolerate discriminatory harassment of any employee, student, visitor, or guest. ISU will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment."
 3. A **hostile environment** is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.⁵ This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive and objectively offensive.

⁵ This definition of hostile environment is based on Federal Register/Vol. 59, No. 47/ Thursday, March 10, 1994: Department of Education Office of Civil Rights, Racial Incidents and Harassment Against Students at Educational Recipients Investigative Guidance

4. When discriminatory harassment rises to the level of creating a hostile environment, ISU also may impose sanctions on the Respondent through the application of the appropriate grievance process below.
5. ISU reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or that (2) is of a generic nature and not based on a protected status. Such conduct may be addressed through conversation, remedial actions, education, Alternative Resolution, and/or other informal resolution mechanisms.
 - a. For assistance with Alternate Resolution and other informal resolution techniques and approaches, employees should contact the Director of Human Resources, and students should contact the Dean of Students.

E. Sexual Harassment

1. The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Idaho regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.
2. ISU has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.
3. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.
4. Sexual Harassment, as an umbrella category, includes offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as conduct on the basis of sex that satisfies one or more of the following:
 - a. **Quid Pro Quo** defined as an employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct; and/or
 - b. **Sexual Harassment** defined as unwelcome conduct determined by a reasonable person to be so severe and pervasive and objectively offensive, that it effectively denies a person equal access to the University's education program or activity.⁶

⁶ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the

- c. **Sexual assault**, defined as:
- i. **Sex offenses—Forcible** is defined as any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
 1. **Forcible Rape** defined as penetration no matter how slight of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
 2. **Forcible Sodomy** defined as oral or anal sexual intercourse with another person forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.⁷
 3. **Sexual Assault with an Object** defined as the use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 4. **Forcible Fondling** defined as the touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances which the Complainant is incapable of giving consent because of age or because of temporary or permanent or physical incapacity.
 - ii. **Sex offenses—Non-forcible** is defined as unlawful, non-forcible sexual intercourse.
 1. **Incest** defined as non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by the state of Idaho law.

Complainant”), including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

⁷ See Idaho Code § 18-6101. Per state law.

2. **Statutory Rape** defined as non-forcible sexual intercourse with a person who is under the statutory age of consent in accordance with state law.⁸
- d. **Dating Violence** defined as violence on the basis of sex committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition –
 - ii. Dating violence includes but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.
- e. **Domestic Violence** defined as violence on the basis of sex committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state of Idaho or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the state of Idaho.
- f. **Stalking** defined as engaging in a course of conduct on the basis of sex directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others, or suffer substantial emotional distress. For the purposes of this definition:
 - i. **Course of conduct** means two (2) or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

⁸ See Idaho Code § 18-6101.

<https://www.google.com/url?q=https://legislature.idaho.gov/statutesrules/idstat/title18/t18ch61/sect18-6101/&sa=D&ust=1596041257666000&usg=AFQjCNEeHGswRJCKkVbdOH48oqtth-6z4g>

- ii. **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the Complainant.
- iii. **Substantial emotional distress** means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

F. Force, Coercion, Consent and Incapacitation

1. As used in the offenses above, the following definitions and understandings apply.
2. **Force** is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.
 - a. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.
3. **Coercion** is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent.
4. **Consent** is clear, knowing, and voluntary permission by word or action to engage in sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.
 - a. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied.
5. **Incapacitation:** A person cannot consent if they are unable to understand what is happening or disorientated, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.
 - a. Incapacitation negates consent. An individual cannot give consent when mentally or physically incapacitated, when the incapacity is known or based on the circumstances should reasonably have been known to be incapacitated.
 - b. Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent

(e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

- c. Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
- d. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

G. Other Civil Rights Offenses

- 1. In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, ISU additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class.
- 2. Violation of any other ISU policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or education access, benefits or opportunities.
- 3. Sanctions for the below listed Civil Rights Offenses range from reprimand through expulsion/termination.
 - a. **Sexual Exploitation** defined as taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
 - i. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts without consent of the person being observed)
 - ii. Invasion of sexual privacy
 - iii. Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as disseminating sexual pictures without the photographed person’s consent), including the making or posting of revenge pornography
 - iv. Prostituting another person

- v. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection
 - vi. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual activity
 - vii. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
 - viii. Forcing a person to take an action against that person's will by threatening to show, post or share information, video, audio, or an image that depicts the person's nudity or sexual activity
 - ix. Knowingly soliciting a minor for sexual activity
 - x. Engaging in sex trafficking
 - xi. Creation, possession, or dissemination of child pornography
- b. **Threatening** or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person.
 - c. **Discrimination** defined as actions that deprive, limit, or deny other members of the community of education or employment access, benefits, or opportunities.
 - d. **Intimidation** defined as implied threats or acts that cause an unreasonable fear of harm in another.
 - e. **Hazing** defined as acts likely to cause physical or psychological harm or social ostracism to any person within the ISU community, when related to the admission, initiation, pledging, joining, or any other group affiliation activity.

XIV. RETALIATION

- A. Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

- B. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator or Director of Equity and Inclusion and will be promptly investigated. ISU is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.
- C. It is prohibited for any member of the University community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, 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 this policy and procedure.
- D. Charges against an individual for code of conduct or policy violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.
- E. Charging an individual with a code of conduct or policy violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

XV. MANDATORY REPORTER POLICY

- A. All university employees (faculty and staff) are required to immediately report actual or suspected discrimination or harassment to the Office of Equity and Inclusion. All university employees have a duty to report violations of this policy unless they fall under the "Confidential Employees" designation. Reports should include sufficient information (names, locations, dates, specific facts) to allow the Office of Equity and Inclusion to investigate, if necessary.
- B. Certain campus officials - those deemed Campus Security Authorities - include student affairs/student conduct staff, Public Safety, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities. Individuals may be both Mandatory Reports and Campus Security Authorities. Campus Security Authorities have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a. All “primary crimes”, which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
 - b. Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
 - c. VAWA - based crimes, which include sexual assault, domestic violence, dating violence and stalking; and
 - d. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.
- C. Employees who work for the Counseling and Testing Center, health care professionals who have a practitioner/client relationship, and faculty in the Health Sciences or Counseling Department(s) who oversee clinical operations involving patients are exempt from the Mandatory Reporter Policy, if violations are identified during the scope of work or are otherwise covered by confidentiality requirements.

XVI. WHEN A COMPLAINANT DOES NOT WISH TO PROCEED

- A. If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.
- B. The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.
- C. The Title IX Coordinator’s decision should be based on the results of the violence risk assessment that show a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. ISU may be compelled to act on alleged employee misconduct irrespective of a Complainant’s wishes.
- D. The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University’s ability to pursue a Formal Grievance Process fairly and effectively.

- E. When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.
- F. When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.
- G. Note that the University's ability to remedy and respond to notice may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.
 - 1. In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University will offer informal resolution options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.
- H. If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University, and to have the incidents investigated and properly resolved through these procedures.

XVII. FEDERAL TIMELY WARNING OBLIGATIONS

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, ISU must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

ISU will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

XVIII. FALSE ALLEGATIONS AND EVIDENCE

Deliberately false and/or malicious 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 may be subject to discipline under ISU policy.

XIX. RELATED POLICIES

- A. ISUPP 3060 Sexual Orientation and Gender Identity Policy
- B. ISUPP 3090 Grievance Procedure for Non-Classified Employees
- C. ISUPP 4041 Grievance Procedures for Institutional Faculty
- D. ISUPP 3160 Classified Employees Problem-Solving, Due Process and Appeal Procedure
- E. ISUPP 5000 Student Conduct Code

XX. ADDITIONAL RESOURCES

- A. Inquiries may be made externally to:
 - Office for Civil Rights (OCR)
 - U.S. Department of Education
 - 400 Maryland Avenue, SW
 - Washington D.C. 20202-1100
 - Customer Service Hotline #: (800) 421-3481
 - Email: OCR@ed.gov
 - Web: <http://www.ed.gov/ocr>

XXI. COPYRIGHT LICENSE

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PROCESS A: TITLE IX GRIEVANCE PROCESS

1. OVERVIEW

ISU will act on any formal or informal notice/complaint of a violation of the policy on Equal Opportunity, Harassment, and Non-discrimination (“the Policy”) that is received by the Title IX Coordinator, Director of Equity and Inclusion, trained designee, or any other Official with Authority by applying these procedures, known as “Process A.”

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrators, or faculty members.

If other policies are invoked, such as policies on protected class harassment or discrimination above, please see “Process B” for a description of the procedures applicable to the resolution of such offenses.

Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in ISUPP 5000, Student Conduct Code, and/or through the employee conduct process through the Office of Human Resources.

2. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, ISU initiates a prompt initial assessment to determine the next steps the University needs to take.

The University will initiate at least one of three responses:

- A. Offering supportive measures because the Complainant does not want to proceed formally; and/or
- B. An informal resolution; and/or
- C. A Formal Grievance Process including an investigation and a hearing.

The investigation and grievance process will determine whether or not the Policy has been violated. If so, the University will promptly implement effective remedies designed to ensure that

it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator⁹, or trained designee engages in an initial assessment. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
 - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
 - If an informal resolution option is preferred, the Title IX Coordinator assesses which informal mechanism may serve the situation best or is available and may seek to determine if the Respondent is also willing to engage in informal resolution.
 - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:

⁹ If circumstances require, the Director of Equity and Inclusion or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate issue, based on the nature of the complaint.
- If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply and refers the matter for resolution under Process B. Dismissing a complaint under Title IX is procedural, and does not limit the University’s authority to address a complaint with an appropriate process and remedies.

a. Violence Risk Assessment

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Behavioral Intervention Team (CARE Team) as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of an immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer Recipient about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning or Trespass order is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat. A VRA authorized by the Title IX Coordinator should occur in collaboration with the CARE team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

b. Dismissal (Mandatory and Discretionary)¹⁰

The University must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy hereinabove, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the University.

The University may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by the University; or
- 3) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. A Complainant who decides to withdraw a complaint prior to the Title IX Coordinator's dismissal of the complaint may later request to reinstate it or refile it.

4. Counterclaims

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

¹⁰ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after the resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator or trained designee. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

5. Right to an Advisor

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. In addition to advising the party throughout the process, the Advisor will perform all questioning for cross-examination during a hearing. The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.¹¹ A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Advisors are a resource and serve in a supportive role in the investigative and administrative resolution process. Advisors are not to speak on or act on behalf of either party. Each party is responsible for presenting their own statements and acting on their own behalf throughout the process. If a party does not choose an Advisor, the university may select an individual to serve in this role for the limited purpose of conducting the cross-examination.

Choosing an Advisor who is also a witness in the process creates a potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

Please see the Advisor's Procedures and Responsibilities for the roles and expectations of an advisor.

6. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with ISU policy. While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have the discretion to share their own knowledge and evidence with others if they so choose. ISU encourages parties to discuss this with their Advisors before doing so.

¹¹ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Informal Resolutions

Informal Resolutions can include three different approaches:

- Alternate Resolution is when the parties agree to resolve the matter through an alternate resolution mechanism
- Respondent Accepts Responsibility - when the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
- Negotiated Resolution which includes the Title IX Coordinator may negotiate or mediate a resolution with the consent of both parties; or
- Supportive Measures - when the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent may initiate an Informal Resolution, by contacting the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.

The University will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

a. Alternate Resolution

Alternate Resolution is an informal process by which a mutually agreed-upon resolution of an allegation is reached. All parties must consent to the use of Alternate Resolution.

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Alternate Resolution are not appealable.

b. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violation(s) at any point during the resolution process. If the Respondent indicates an intent to accept

responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria in that section above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the University are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of ISU policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed-upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused and any admissions made by the Respondent may be considered in the hearing by the Decision-maker(s).

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

c. Negotiated Resolution

The Title IX Coordinator or trained designee, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the University. Negotiated Resolutions are not appealable.

7. Grievance Process Pool

The Formal Grievance Process relies on a pool of individuals (“the Pool”) to carry out the process. Members of the Pool can be found by contacting the Title IX Coordinator. In necessary situations due to conflict of interest or a lack of adequate pool membership, the University may choose to use external trained third-party neutral professionals to serve as investigators, hearing facilitator, or hearing decision-maker.

a. Pool Member Roles

Members of the Pool are trained annually, and can serve in in the following roles, at the direction of the Title IX Coordinator or trained designee:

- To act as an Advisor to the parties
- To serve in a facilitation role in informal resolution or Alternate Resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices)
- To perform or assist with initial assessment

- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

b. Pool Member Training

All Pool members are required to attend annual trainings. The materials used to train all members of the Pool are publicly posted here: <https://www.isu.edu/aaction/>

c. Pool Membership

The University will designate a three or five member panel from the Pool or use an external trained third party, at the discretion of the Title IX Coordinator. One of the panel members will be appointed as Chair by the Title IX Coordinator. The internal pool is composed of faculty and staff who are trained to serve as adjudicators. The member panel may be expanded to include students at the discretion of the Title IX Coordinator. The composition of the panel chosen may be affected by the time of year at which the hearing occurs and the availability of pool members at times that are suitable for the parties.

8. Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator or trained designee will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent, including the identity of the Complainant, upon commencement of the Formal Grievance Process. This notification facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

9. Resolution Timeline

ISU will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

10. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints

Pool members to conduct the investigation.

11. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Decision-maker(s)] may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Director of the Office of Equity and Inclusion.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

12. Investigation Timeline

Investigations are completed expeditiously, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

13. Delays in the Investigation Process and Interactions with Law Enforcement

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health

conditions. ISU will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, ISU will implement supportive measures as deemed appropriate.

University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

14. Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Title IX Coordinator (“Coordinator”) and/or Investigator(s) conduct, but are not limited to, the following actions, if not already completed in the complainant/grievance process:

- Coordinator
 - Coordinator will initiate or assist with any necessary supportive measures
 - Coordinator will identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
 - Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
 - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing, present for all meetings attended by the party
 - Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including the evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) business days

- The final report is shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report
- Investigators
 - Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
 - Meet with the Complainant to finalize their interview/statement, if necessary
 - Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
 - Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
 - When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
 - Interview all available, relevant witnesses and conduct follow-up interviews as necessary
 - Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
 - Complete the investigation promptly and without unreasonable deviation from the intended timeline
 - Provide regular status updates to the parties throughout the investigation
 - Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
 - The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
 - The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period

- The Investigator(s) shares the report with the Title IX Coordinator for their review and feedback
- The Investigator(s) will incorporate any relevant feedback, and submit the final report

15. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of the University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

16. Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

17. Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

18. Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline. The hearing will convene at a time determined by the Chair or designee.

19. Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

After post-hearing deliberation, the Decision-maker(s) renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

21. Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of the term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the sixty-to-ninety (60-90) business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

22. Alternative Hearing Participation Options

Live hearings may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants to see and hear each other. If a party or parties prefer not to attend or cannot attend the hearing in person, the party

should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing.

Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

23. Pre-Hearing Preparation

The Chair, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator or trained designee concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator or trained designee will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator or trained designee as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

24. Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with university legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

25. Hearing Procedures

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within this policy.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or an organizational representative when an organization is the Respondent), Advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and will then be excused.

26. Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

27. The Order of the Hearing

A. Introductions and Explanation of Procedure

1. The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.
2. The Chair AND/OR hearing facilitator then conducts the hearing according to ISU standard hearing process. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; the flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

B. Investigator Presents the Final Investigation Report

1. The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.
2. Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be

disregarded.

C. Testimony and Questioning

1. The parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”). At the request of either party, the Chair will provide for the cross-examination to occur in separate rooms with technology enabling the Decision maker and parties to simultaneously see and hear the parties asking and answering questions.
2. All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.
3. The Chair may explore arguments regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.
4. The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has the final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with university legal counsel on any questions of admissibility. The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the advisors on relevance once the Chair has ruled on a question.
5. If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with university legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

28. Refusal to Submit to Cross-Examination and Inferences

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) may rely on any relevant evidence available

through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant and may rely on any relevant statements.

If a party's Advisor of choice refuses to comply with the University's established rules of decorum for the hearing, the University may require the party to use a different Advisor. If a University-provided Advisor refuses to comply with the rules of decorum, the University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

29. Recording Hearings

Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

30. Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

The Decision-maker(s) will review any pertinent conduct history provided by the Title IX Coordinator or trained designee and will recommend the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator and or trained designee, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and recommend any sanctions.

This report typically will be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is

granted, the Title IX Coordinator will notify the parties.

31. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within three (3) business days of receiving the Decision-maker(s)' deliberation statement. The Notification of Outcome will then be shared with the parties simultaneously.

32. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

a. Student Sanctions

The sanctions for students may be found in ISUPP 5000.

b. Employee Sanctions

Responsive actions for an employee who is determined to have engaged in harassment, discrimination, and/or retaliation may include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*

- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Reassignment*
- *Delay of Tenure Track Progress*
- *Assignment to a New Supervisor*
- *Demotion/Denial of Pay increase*
- *Loss of Pay Grade*
- *Restriction of stipends, research, and/or professional development resources*
- *Enhanced supervision, observation, or review*
- *Transfer*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

33. Withdrawal or Resignation While Charges Pending

Students: If a student has an allegation pending for violation of the Policy on Equal Opportunity, Harassment, and Non-discrimination, the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process ends, as the University no longer has disciplinary jurisdiction over the withdrawn student.

However, the University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University without conferring with the Title IX Coordinator and may be subject to additional university policies before reenrollment is permitted. Such exclusion applies to all campuses of University. A hold will be placed on their ability to be readmitted. They may also be barred from University property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not

permitted to return to ISU unless and until all sanctions have been satisfied.

During the resolution process, the University may put a hold on a responding student's transcript or place a notation on a responding student's transcript or dean's disciplinary certification that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee.

Investigatory findings and reports by the Title IX Coordinator will be included in the personnel file of an employee who resigns from the university.

34. Appeals

Any party may file a request for appeal ("Request for Appeal"). It must be submitted in writing to the Title IX Coordinator within seven (7) business days of the delivery of the Notice of Outcome.

A three-member appeal panel chosen from the Pool will be designated by the Title IX Coordinator. No appeal members will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a. Grounds for Appeal

- A) Appeals are limited to the following grounds:
- B) Procedural irregularity that affected the outcome of the matter;
- C) New evidence that was not reasonably available to the appellant at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- D) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Chair, and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in three (3) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses will be shared with the Appeal Panel and the panel will render a decision in no more than three (3) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard through a majority vote.

The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

b. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

ISU may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

c. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Panel may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- When appeals result in no change to the finding or sanction, that decision is final.
- In rare cases where an appealable error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status.

35. Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by the University to the Respondent to ensure no effective denial of educational access.

The University will reasonably maintain the privacy of any long-term remedies/actions/measures in accordance with applicable law and to the extent privacy does not impair the University's ability to provide these remedies/actions/measures.

36. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension or expulsion from the University. Suspension or expulsion will be noted on a student's official transcript. Employees may receive additional sanctions from Human Resources up to and including termination.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator or trained designee.

37. Recordkeeping

ISU will maintain for a period of seven (7) years, or to the extent required by applicable law, records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process.
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to the University's education program or activity; and
 - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

ISU will also maintain any and all records in accordance with state and federal laws and ISU

policy regarding suspensions and expulsions.

38. Disabilities Accommodations in the Resolution Process

ISU is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process.

Anyone needing such accommodations or support should contact the Director of Disability Services, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

39. Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation and will be reviewed and updated annually by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective August 14, 2020.

PROCESS B: NON TITLE IX RESOLUTION PROCESS

- Process B is applicable when the Title IX Coordinator determines Process A is inapplicable, or offenses subject to Process A have been dismissed. Process B is the administrative resolution procedure that applies only when Process A does not, as determined by the Title IX Coordinator and/ or University Administrator.
- If Process A is applicable, Process A must be applied in lieu of Process B.
- VAWA Section 304 requirements apply to Process B or any alternative process for reports that fall under VAWA.
- Title IX requirements outside of Section 106.30 (based on the original 1975 regulations, the 2001 Revised Guidance, etc.) may also be applicable to Process B.
- All references herein to a Title IX Coordinator or Administrator include the Title IX Coordinator, Administrator within the Office of Equity and Inclusion, designee of the Director of Office of Equity and Inclusion and/or a designee of the Title IX Coordinator.

ISU will act on any formal or informal allegation or notice of violation of the policy on Equal Opportunity, Harassment and Non-discrimination that is received by the Title IX Coordinator or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy above.

The procedures described below apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, faculty members, or third parties

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing or discriminatory conduct (e.g., vandalism, physical abuse of another, etc). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective ISUPP 5000, Student Conduct Code, and/or through the employee conduct process through the Office of Human Resources.

1. Initial Assessment

Following intake, receipt of notice, or a complaint of an alleged violation of the University's nondiscrimination Policy, the Title IX Coordinator engages in an initial assessment. The steps in an initial assessment can include:

- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Parties to provide resources for an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive response or an Administrative Resolution.
 - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. The Administrative Resolution process is not initiated, though the Complainant can elect to initiate it later, if desired.
 - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
 - If Administrative Resolution is preferred, the Title IX Coordinator initiates the investigation process and determines whether the scope of the investigation will address:
 - Incident, and/or
 - A potential pattern of misconduct, and/or
 - A culture/climate issue.
- In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the CARE Team as part of the initial assessment.

If the initial assessment finds the complaint is not based on protected class, the matter may be referred to Human Resources, Student Affairs, Academic Affairs or Internal Audit for further review.

Based on the initial assessment, the University will initiate one of two responses:

- Informal Resolution – typically used for less serious offenses and only when all parties agree to Alternate Resolution, or when the Respondent is willing to accept responsibility for violating policy. This can also include a remedies-only response.
- Administrative Resolution – investigation of policy violation(s) and recommended finding, subject to a determination by the Title IX Coordinator or Decision-maker and the opportunity to appeal to an Appeal Panel/Appeal Decision-maker.

The Administrative Resolution process determines whether the Equal Opportunity, Harassment and Non-discrimination policy has been violated. If so, the University will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

The process followed considers the preference of the parties but is ultimately determined at the

discretion of the Title IX Coordinator. At any point during the initial assessment or formal investigation, if the Title IX Coordinator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

2. Counterclaims

Counterclaims by the Respondent may be made in good faith but are also sometimes made for purposes of retaliation. The University is obligated to ensure that any process is not abused for retaliatory purposes.

The University permits the filing of counterclaims, but uses the initial assessment, described above in the Policy section, to assess whether the allegations are made in good faith. If they are, the allegations will be processed using the resolution procedures below, typically after resolution of the underlying allegation.

A delay in the processing of counterclaims is permitted, accordingly. Occasionally, allegations and counterclaims can be resolved through the same investigation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this Policy.

3. Advisors

The University encourages the use of advisors in the investigation and resolution process. However, advisors are not required under Process B. Each party may choose an Advisor¹² who is eligible and available¹³ to accompany them throughout the process. The Advisor can be anyone, including an attorney, but should not be someone who is also a witness in the process. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout.

The parties are expected to inform the Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Investigator(s) and/or the Title IX Coordinator if they change Advisors at any time.

¹² This could include an attorney, advocate, or support person. Witnesses are not entitled to Advisors within the process, though they can be advised externally.

¹³ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Upon written request of a party, the University will copy the Advisor on all communications between the University and the party. The Advisor may be asked to sign a non-disclosure agreement (NDA) regarding private, sensitive records.

Advisors serve as a supportive role in the investigative and administrative resolution process. Advisors are not to speak on or act on behalf of either party. Advisors are there to serve as a resource to their party. Each party is responsible for presenting their own statements and acting on their own behalf throughout the process.

4. Resolution Options

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with ISU Policy.

While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose but are encouraged to discuss with their Advisors first before doing so.

The following related policies will be used as the resolution process and appeal practices to appeal disciplinary action taken against an employee or student for Process B dependent upon the classification of the Respondent:

- ISUPP 3090 Grievance Procedure for Non-Classified Employees
- ISUPP 4041 Grievance Procedures for Institutional Faculty
- ISUPP 3160 Classified Employees Problem-Solving, Due Process and Appeal Procedure
- ISUPP 5000 Student Conduct Code

5. Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The University aims to complete all investigations within a sixty-to-ninety (60-90) business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate.

Once the decision is made to commence an investigation, the Title IX Coordinator appoints Pool members to conduct the investigation.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias.

The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Title IX Coordinator, concerns should be raised with the Director of the Office of Equity and Inclusion.

The University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

The University may undertake a short delay in its investigation (several days to weeks) when criminal charges based on the same behaviors that invoke the University's resolution process are being investigated by law enforcement. The University will promptly resume its investigation and resolution process once notified by law enforcement that the initial evidence collection process is complete. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, though the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence, on the record.

The Title IX Coordinator (“Coordinator”) and/or Investigator(s) conduct, but are not limited to, the following actions, if not already completed in the complainant/grievance process:

- Coordinator
 - Initiate or assist with any necessary supportive measures
 - Conduct an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy.
 - If there is insufficient evidence to support reasonable cause, the process is closed with no further action.
 - Prepare the initial Notice of Investigation and Allegation (NOIA) on the basis of the initial assessment. Notice may be one step or multiple steps, depending on how the investigation unfolds, and potential policy violations may be added or dropped as more is learned.
 - Notice should inform the parties of their right to have an Advisor of their choosing present for all meetings attended by the advisee.
 - Provide parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, and recommended finding(s).
 - Provide each party with a full and fair opportunity to respond to the report in writing within five (5) business days and incorporate that response into the report.
- Investigators
 - Meet with the Complainant to finalize their interview/statement, if necessary
 - Provide the parties and witnesses with an opportunity to review and verify the Investigator’s summary notes from interviews and meetings with that specific party or witness.
 - Interview all relevant individuals and conduct follow-up interviews as necessary
 - Allow each party the opportunity to suggest questions they wish the Investigator(s) to ask of the other party witnesses
 - Complete the investigation promptly and without unreasonable deviation from the intended timeline
 - Write a comprehensive investigation report fully summarizing the investigation and all evidence
 - Provide the final report to the Title IX Coordinator and include in the report a recommendation to the Title IX Coordinator/Decision-maker on a determination, based on a preponderance of the evidence, whether a policy violation is more likely than not to have occurred

6. Determination

The Title IX Coordinator, Administrator, or a trained, designated Decision-maker reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence.

If the record is incomplete, the Title IX Coordinator/Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

The recommendation of the investigation should be strongly considered but is not binding on the Title IX Coordinator/Decision-Maker.

The Title IX Coordinator then provides the parties with a written Notice of Outcome to include findings, any recommendations, and a detailed rationale, delivered simultaneously (without undue delay) to the parties. If the Respondent is an employee, the outcome is given to the supervisor and Human Resources for sanctioning. If the Respondent is a student, the outcome is given to the Student Conduct Office for sanctioning.

7. Additional Details of the Investigation Process

a. Witness responsibilities Witnesses (as distinguished from the parties) who are faculty or staff of the University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of a witness to cooperate with and/or participate in the investigation or resolution process constitutes a violation of Policy and may be subject to discipline.

b. Remote processes Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) or Decision-maker determine that timeliness or efficiency dictates a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal. Where remote technologies are used, the University makes reasonable efforts to ensure privacy, and that any technology does not work to the detriment of any party or subject them to unfairness.

c. Recording No unauthorized audio or video recording of any kind is permitted during the resolution process. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

d. Evidence Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct. The

process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

e. Sexual history/patterns Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties); or (3) the character of the parties.

f. Previous allegations/violations While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Title IX Coordinator with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s) according to the progressive discipline system.

g. Character witnesses Neither the Title IX Coordinator nor the Investigator(s) meet with character witnesses.

h. Notification of outcome If the Respondent admits to the violation(s), or is found in violation, the Title IX Coordinator, Administrator, or Decision-Maker, recommends sanction(s) and/or responsive actions, which are reviewed and final sanctions are implemented by the appropriate administrators in order to effectively to stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

The Title IX Coordinator provides notification to the parties of the determination, ideally simultaneously, but without significant time delay between notifications.

The notice will detail when the determination is considered final and will detail any changes that are made prior to finalization.

Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notification of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings.

8. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct

- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

a. Student Sanctions The sanctions for students may be found in ISUPP 5000.

b. Employee Sanctions Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation may include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Reassignment*
- *Delay of Tenure Track Progress*
- *Assignment to a New Supervisor*
- *Demotion/Denial of Pay increase*
- *Restriction of stipends, research, and/or professional development resources*
- *Enhanced supervision, observation, or review*
- *Involuntary Transfer*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

9. Withdrawal or Resignation While Charges are Pending

Students: If a student has an allegation pending for violation of the Policy, the University may

take any actions, including supportive measures and continued investigative actions if the student withdraws from the University before completion of the process. The University may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the resolution process to be completed.

Employees: Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status. Investigatory findings and reports by the Title IX Coordinator will be included in the personnel file of an employee who resigns from the University.

10. Appeals

- a. Following the conclusion of the investigative process and after the investigative report has been completed and a Notice of Outcome has been communicated to each party, either party has the right to appeal the findings of the investigative report.
- b. All requests for appeal must be submitted in writing to the Office of Equity and Inclusion within five (5) business days after the written finding of the Title IX Coordinator or Decision-maker. Any party may appeal the findings only under the grounds described below
 - i. A procedural error or omission that significantly impacted the outcome.
 - ii. To consider new evidence, unknown or unavailable to the appellant during the original investigation. A summary of new evidence must be included.
- c. When any party requests an appeal, the Title IX Coordinator will share the appeal request with the other party(ies) or other appropriate persons such as the Investigator(s), who may file a response within five (5) business days. The other party may also bring their own appeal on separate grounds.
- d. If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within five (5) business days. These responses or appeal requests will be shared with each party. The Appeal Chair/Panel will review the appeal request(s) within five (5) business days of completing the pre-appeal exchange of materials. If grounds are not sufficient for an appeal, or the appeal is not timely, the Appeal Chair/Panel dismisses the appeal.
- e. When the student is a respondent:
 - i. If the Appellate Panel upholds a finding of “not responsible” from the Investigative Report and Title IX Coordinator or Administrator the process is completed.
 - ii. If the Appellate Panel upholds a finding of “responsible” from the Investigative Report and Title IX Coordinator, the case proceeds to the policy and procedures outlined in ISUPP 5000, Student Code of Conduct.

- f. When the employee is a respondent:
 - i. If the Appellate Panel upholds a finding of “not responsible” from the Investigative Report and Title IX Coordinator or Administrator, the process is completed.
 - ii. If the Appellate Panel upholds a finding of “responsible” from the Investigative Report and Title IX Coordinator or Administrator, the case proceeds to Human Resources and/or the Respondent’s supervisor for resolution in accordance with appropriate disciplinary or grievance procedures available to the party.

11. Long-Term Remedies/Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence.

At the discretion of the Title IX Coordinator, long-term remedies may also be provided to the Complainant even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedial requirements owed by the University to the Respondent.

12. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions

All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Title IX Coordinator, Administrator or Decision-maker.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/responsive/corrective action(s), including suspension, expulsion, and/or termination from the University and may be noted on a student’s official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

13. Recordkeeping

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept indefinitely, or as required by state or federal law or institutional policy, by the Title IX Coordinator in the Title IX case database.

14. Disabilities Accommodation in the Resolution Process

ISU is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process at ISU. Anyone needing such accommodations or support should contact the Director of Disability Services, who will review the request and, in consultation with the person requesting the accommodation, and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

15. Revision

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.

The Title IX Coordinator may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

The Title IX Coordinator may also vary procedures materially with notice (on the University website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred.

Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution unless the parties' consent to be bound by the current policy.

If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This policy and procedure was implemented on **August, 14, 2020**.

ADVISORS PROCEDURES AND RESPONSIBILITIES

Advisor means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.

Right to an Advisor

The parties may each have an Advisor¹⁴ of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.¹⁵

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

a. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the University, the Advisor will be trained by the University and be familiar with the University's resolution process.

If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with ISU policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

¹⁴ This could include an attorney, advocate, or support person. The law permits one Advisor for each party [witnesses are not entitled to Advisors within the process, though they can be advised externally].

¹⁵ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

b. Advisors in Hearings/University-Appointed Advisor

Under U.S. Department of Education regulations applicable to Title IX (Process A), cross-examination is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct cross-examination, the University will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

c. Advisor's Role

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney.

d. Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and ISU's policies and procedures.

e. Advisor Violations of University Policy

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address University officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

f. Sharing Information with the Advisor

The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor. Doing so may help the parties participate more meaningfully in the resolution process.

The University also provides a consent form that authorizes the University to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before ISU is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, the University will comply with that request at the discretion of the Title IX Coordinator.

g. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by ISU. ISU may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

h. Expectations of an Advisor

The University generally expects an Advisor to adjust their schedule to allow them to attend ISU meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

i. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

j. Assistance in Securing an Advisor

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>)
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

STATEMENT OF RIGHTS OF THE PARTIES

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to University officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by University officials.
- The right to have ISU policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by University officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
- The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by University authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by University law enforcement and/or other University officials.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; healthcare; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
- The right to a University-implemented no-contact order when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such

changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available.

- The right to have the University maintain such actions for as long as necessary and for supportive measures to remain private in accordance with applicable law, provided privacy does not impair the University's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
- The right not to have irrelevant prior sexual history or character admitted as evidence.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.

- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefore delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
- The right to a fundamentally fair resolution as defined in these procedures.

ATIXA 2020 MODEL POLICY AND PROCEDURES

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PRESIDENTIAL CERTIFICATION:	
Approved: <u>Kevin Satterlee</u>	Date: <u>10/22/2021</u>
<i>Kevin Satterlee</i> President, Idaho State University	