BOISE STATE UNIVERSITY

University Policy 1067

Sexual Harassment and Sexual Misconduct (University Jurisdiction)

Effective Date

May 27, 2026

Last Revision Date

N/A

Responsible Party

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

Scope and Audience

This policy applies to allegations of Sexual Harassment and sexual misconduct that do not meet the jurisdictional requirements under Title IX as outlined in University Policy 1065. Specifically, this policy applies when:

1. The Complainant and the Respondent are both Members of the University Community; and

2. The alleged activity has a significant impact on or interferes with the Complainant's equal access to the University's Educational Programs or Activities; and

3. The alleged activity did not occur on property owned or controlled by Boise State University, or in building controlled by the University's recognized student organizations, or

4. The alleged activity occurred outside the United States.

All Members of the University Community are covered under this policy including employees, students, affiliates, affiliate faculty, volunteers, contractors, vendors, customers, visitors to the University, and participants in a University-sponsored program or activity.

Employee allegations of Sexual Harassment are subject to different standards under Title IX and Title VII. Therefore, the Assistant Vice President for Compliance and Ethics, and/or Title IX Coordinator, will conduct an analysis based on the severity, pervasiveness, and objective offensiveness of the allegations, when assumed true, to determine which policy and/or policies apply. The alleged conduct may be investigated under multiple policies and/or referred to Human Resources and Workforce Strategy based on this analysis.

Retaliation complaints made under and utilizing the definition of Retaliation in this policy will be processed following the procedures under University Policy 1060 and will not be entitled to a hearing.

Additional Authority

- The Pregnancy Discrimination Act of 1978
- The Americans with Disabilities Act of 1990, as amended (ADA)
- The Violence Against Women Act of 1994, as reauthorized in 2000, 2005, and 2013 (VAWA)
- The Family Educational Rights and Privacy Act of 1974 (FERPA)
- Idaho Code Chapter 59, Title 67 (The Idaho Human Rights Act)
- The Higher Education Act of 1965 as amended by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
- Idaho Code § 18-918 (Domestic Violence)
- Idaho Code § 18-1506 (Sexual Abuse of a Child Under the Age of Sixteen Years)
- Idaho Code § 18-1508 (Lewd Conduct with a Minor Child Under Sixteen)
- Idaho Code § 18-1601 (Compounding Felony or Misdemeanor)
- Idaho Code § 18-6101 (Rape Defined)
- Idaho Code § 18-6604 (Forcible Penetration by Use of a Foreign Object)

- Idaho Code § 18-7905 (Stalking in the First Degree)
- Idaho Code § 18-7906 (Stalking in the Second Degree), and
- Idaho Code § 39-6303 (Domestic Violence Crime Prevention – Definitions)
- University Policy 2020 (Student Code of Conduct)
- University Policy 3200 (Registration and Transcript Holds)

1. Policy Purpose

To delineate the University's commitment to providing an employment, learning, and campus-living environment free from sex and gender-based Discrimination, Sexual Harassment, and violence.

2. Policy Statement

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

The University will promptly and fairly investigate allegations of Sexual Harassment in accordance with this policy. Discrimination, as defined under University Policy 1060, may also be investigated pursuant to this policy at the discretion of the Assistant Vice President for Compliance and Ethics, or designee, as provided below. Boise State values the equal dignity of all members of its community and strives to balance the rights of the Parties. The Assistant Vice President for Compliance and Ethics has the authority to investigate and address patterns of conduct or issues identified in campus climate surveys.

Nothing in this policy shall be construed to abridge academic freedom and inquiry, principles of free speech, or the University's education mission.

3. Definitions

3.1 Advisor

A person who is chosen by a Party or appointed by the University to accompany and advise the Party throughout the Resolution process. During any live hearing, each Party must have an Advisor present to ask the questions. If a Party does not have an Advisor during live questioning, the University will appoint one.

3.2 Coercion

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

3.3 Complainant

An individual who reports, or is reported to have experienced conduct prohibited under this policy.

3.4 Confidential Resources

The Student Connections and Support Center and University Health Services medical and counseling staff who learn of a potential violation under this policy while performing services in the scope of their employment as licensed clinicians, and graduate students in Counselor Education who are acting as counselors in a practicum course. Confidential Resources are not Mandatory Reporters as defined by this policy; however, they must still aggregate anonymized data to provide to the Assistant Vice President for Compliance and Ethics at the end of each semester.

3.5 Consent

Voluntary, informed, and freely-given agreement which may be withdrawn at any time to engage in a course of conduct. Consent is demonstrated through words or actions creating clear permission of willingness to engage in mutually agreed-upon sexual activity. Neither silence, the absence of resistance, nor the existence of a prior consensual sexual relationship are sufficient to indicate Consent.

A person who is Incapacitated by alcohol or illegal or prescription drugs, unconscious, or asleep cannot give Consent. Agreement to engage in a course of conduct shall not be considered as freely given and shall not constitute Consent when it is obtained through harassment, Coercion, threats, or other forcible conduct.

An individual under sixteen (16) years of age cannot give Consent for sexual activity. Those individuals who are sixteen (16) or seventeen (17) years of age may only Consent to sexual encounters with partners who are less than three (3) years older.

3.6 Discrimination

Treating an individual or group differently or less favorably on the basis of a protected class as defined by University Policy 1060 (Non-discrimination and Anti-harassment).

3.7 Educational Program or Activities

For purposes of this policy, any operation, service, event, or environment—whether academic, co-curricular, social, or administrative—that is offered, funded, sponsored, facilitated, or otherwise supported by the University, regardless of the physical location.

3.8 Force

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 (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want."). Force is a type of Coercion.

3.9 Formal Complaint

A document filed by a Complainant or signed by the Assistant Vice President for Compliance and Ethics or designee alleging Sexual Harassment against a Respondent and requesting that the University conduct an investigation. When filed by a Complainant, the Formal Complaint must have a physical or digital signature, or otherwise indicate that the Complainant is filing a Formal Complaint. A Formal Complaint must be filed before a formal or informal resolution may be sought.

3.10 Finding(s)

A conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged.

3.11 Formal Grievance Process

A method of formal resolution designated by the University to address conduct that falls under this policy.

3.12 Good Faith

Intention to be open and honest with no deliberate intention to deceive or defraud.

3.13 Hearing Decision-maker (and/or Panel)

Those who have decision-making and Sanctioning authority within the University's Formal Grievance Process. The University reserves the right to hire external, neutral experts to serve this function when necessary.

3.14 Incapacitation

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

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

For purposes of this policy, when alcohol is involved, Incapacitation is a state beyond drunkenness or intoxication, and when drug use is involved, Incapacitation is a state beyond being under the influence or impaired by use of the drug. A person is not Incapacitated merely because they have been drinking or using drugs. Alcohol and drug use impact each individual differently, and determining whether an individual is Incapacitated requires a case-by-case determination.

In evaluating whether a person was Incapacitated for purposes of determining whether Consent was present, the University considers:

a. Did the person initiating sexual activity know that the other individual was Incapacitated? If not,

b. Would a sober, reasonable person in the same situation have known that the other individual was Incapacitated?

If the answer to either of these questions is "yes," then the person was Incapacitated, and Consent was absent.

A Respondent's intoxication is never an excuse for or a defense to conduct prohibited under this policy, and it does not diminish their responsibility to determine whether Consent was present.

3.15 Investigator

The person or persons charged to impartially gather facts about an alleged violation under this policy, compile evidence into an investigation report, and create a file of related evidence.

The Assistant Vice President for Compliance and Ethics may retain an external Investigator to investigate any Formal Complaint under this policy. Any external Investigator must follow the same process as an internal Investigator pursuant to this policy.

3.16 Mandatory Reporter

All University employees, except those defined as Confidential Resources, are Mandatory Reporters for purposes of this policy.

Mandatory Reporters are not required to report information disclosed (1) at public awareness events (e.g., Take Back the Night, candlelight vigils, protests, survivor speak-outs, or other public forums in which individuals may disclose conduct prohibited under this policy), or (2) during an individual's participation as a subject in an Institutional Review Board-approved human subjects research project.

The University may provide information about this policy and available resources at public awareness events, and Institutional Review Boards may, as they deem appropriate, require researchers to provide such information to all subjects of approved projects.

With the exception of student employees, students are not Mandatory Reporters but are encouraged to report suspected violations of this policy.

3.17 Members of the University Community

University employees, students, affiliates, affiliate faculty, volunteers, contractors, vendors, customers, visitors, and participants in a University-sponsored program or activity.

3.18 Officials with Authority

An employee of the University explicitly vested with the responsibility to implement corrective measures for Sexual Harassment, Discrimination, and/or Retaliation on the basis of sex on behalf of the University. A list of Officials with Authority can be found in Appendix G of this policy.

3.19 Notice

When an employee, student, or third party informs the Assistant Vice President for Compliance and Ethics, or other Official with Authority, of the alleged occurrence of harassing, Discriminatory, and/or Retaliatory conduct.

3.20 Party/Parties

Refers to a Complainant(s), Respondent(s), or both Complainant and Respondent collectively.

3.21 Remedies

Post-Finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University's Educational Program or Activities.

3.22 Reporter

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

3.23 Respondent

The individual or group who is participating in or attempting to participate in an Educational Program or Activity and is alleged to have engaged in conduct prohibited under this policy.

3.24 Resolution

The result of an informal or Formal Grievance Process.

3.25 Retaliation

An adverse action against a person based on (1) their Good Faith report or disclosure of alleged conduct prohibited by this policy to a university employee; or (2) their Good Faith participation in, refusal to participate in, or assistance with the investigation, reporting, remedial, or disciplinary processes provided for in this policy.

An adverse action is conduct that would discourage a reasonable person from reporting conduct prohibited by this policy or participating in a process provided for by this policy, such as intimidation, threats, and/or coercion. There must be a causal relationship between the retaliatory conduct, adverse action, or threat of adverse action and the protected activity. Good Faith actions pursued in response to a report of allegations prohibited in this policy (such as gathering evidence or identifying witnesses), are not Retaliation.

3.26 Sanction

A consequence imposed by the University on a Respondent who is found to have violated this policy.

3.27 Sexual Harassment

Conduct on the basis of sex that satisfies one or more of the following:

a. An employee of the University conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct. This is commonly referred to as a quid pro quo.

b. 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 Educational Program or Activities. 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 Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. A non-inclusive list of examples can be found in Appendix B of this policy.

c. Conduct constituting Sexual Assault, Dating Violence, Domestic Violence, or Stalking, as defined in this policy.

d. Where an allegation is brought by a University employee, it is necessary to analyze Sexual Harassment under Title VII of the Civil Rights Act of 1964 as well, as that legislation prohibits conduct that is so severe, pervasive, or persistent that it creates an environment that (1) would cause a reasonable person substantial emotional distress and undermine the person's ability to work, study, learn, or otherwise participate in University programs or services; and (2) actually does cause the harassed person(s) any of these difficulties.

3.28 Sexual Assault

Sexual Assault is a form of Sexual Harassment which includes the following forcible and non-forcible sex offences:

3.28.1 Sex Offenses, Forcible

Any sexual act directed against another person, without the Consent of the Complainant(s), including instances in which the Complainant is not able to give Consent.

3.28.1A Criminal Sexual Contact

- The intentional touching of the clothed or unclothed body parts without Consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
- The forced touching by the victim of the actor's clothed or unclothed body parts, without Consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
- This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication.

3.28.1B Forcible Rape

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.

3.28.1C Forcible Sodomy

Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly 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 Incapacitation.

3.28.1D Sexual Assault with an Object

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 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 Incapacitation.

3.28.1E Forcible Fondling

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 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 Incapacitation.

3.28.2 Sex Offenses, Non-forcible

Sexual Offenses, Non-forcible include:

3.28.2A Incest

Non-forcible sexual intercourse, between two persons who are related to each other, within the degrees wherein marriage is prohibited by Idaho state law.

3.28.2B Statutory Rape

Non-forcible sexual intercourse, with a person who is under the statutory age of Consent in the state of Idaho.

3.29 Dating Violence

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. The existence of such a relationship shall be determined based on the available evidence 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, Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.

3.30 Domestic Violence

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 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 Idaho.

3.31 Stalking

Engaging in a course of conduct, on the basis of sex, directed at a specific person, which would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress. For purposes of this definition, course of conduct means two or more acts. A list of examples of Stalking are included in Appendix B of this policy.

3.32 Support Measures

Non-disciplinary, non-punitive individualized services offered free to Complainants or Respondents regardless of whether a Formal Complaint has been filed. These measures are designed to restore or preserve equal access to an Educational Program or Activities without unduly burdening the other Party.

These measures include, but are not limited to counseling, extensions of deadlines or other course-related adjustments, modification of work or class schedules, campus escort services, mutual no contact orders between Parties, change in work, parking, or housing locations, leaves of absence, increased security and monitoring in certain areas of campus, and other similar measures. Slight modifications to class schedules, housing, parking, etc. may be necessary to impose if no other solutions are practicable in rare situations to ensure equal access to the Educational Program and Activities.

3.33 University Business Days

Monday through Friday, excluding weekends, official University holidays, and University closures.

3.34 Witness

An individual who may have information relevant to a report of prohibited conduct.

4. General Responsibilities

All Members of the University Community are responsible for following this policy to create a campus environment free from prohibited sex and gender-based Discrimination and Sexual Harassment. The University expects all Members of the University Community to avoid any

behavior or conduct that could reasonably be interpreted as sex or gender-based Discrimination or Sexual Harassment.

5. Specific Responsibilities

5.1 Assistant Vice President for Compliance and Ethics

a. The Assistant Vice President for Compliance and Ethics if responsible for ensuring compliance with this policy including: (1) the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent Discrimination, Sexual Harassment, and Retaliation prohibited under this policy by or against any Member of the University Community, and (2) identifying and addressing patterns or systemic problems that are identified during the review of these complaints.

b. The Assistant Vice President for Compliance and Ethics is responsible for the periodic review and assessment of this policy and any related policies and procedures.

5.1.1 Independence and Conflict of Interest

a. The Assistant Vice President for Compliance and Ethics and any person involved in the Formal Grievance Process must act with independence and authority free from bias and any conflicts of interest.

b. Concerns of bias, or a potential conflict of interest, misconduct, or Discrimination by any other person involved in the Formal Grievance Process should be raised with the Assistant Vice President for Compliance and Ethics.

5.2 Mandatory Reporters

a. All employees, except those identified as Confidential Resources, are Mandatory Reporters under this policy. All other Members of the University Community are encouraged to promptly report possible or actual violations of this policy.

b. When a Mandatory Reporter observes or otherwise becomes aware of allegations of Sexual Harassment, the Mandatory Reporter must notify the Assistant Vice President for Compliance and Ethics of the conduct in accordance with this policy as soon as practical after learning of the potential violation.

c. All other Members of the University Community are encouraged to promptly report possible or actual violations of this policy.

5.3 Confidential Resources

Confidential Resources will collect general aggregate data about potential violations of this policy including the nature and general location(s) of the incidents. Aggregate data must be reported to the Assistant Vice President for Compliance and Ethics at the end of each semester.

5.4 Campus Security Authorities (CSAs) Required Reporting

Faculty and staff designated as Campus Security Authorities for Clery Act compliance must also report alleged Clery crimes to the Clery Compliance Officer. For more information, visit the Campus Security Services website.

5.5 Members of the University Community

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

6. Disability-Related Accommodations

This Policy does not alter any institutional obligations under federal disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Assistant Vice President for Compliance and Ethics or designee at any point before or during any process in this policy, provided the accommodations will not fundamentally alter the process. The Assistant Vice President for Compliance and Ethics or designee will coordinate the provision of requested accommodations in a timely manner.

7. Resources for Complainants

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

7.1 Confidential Resources

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

- Student Connections and Support Center – (208) 426-4259

- University Health Services – (208) 426-1259
- University Counseling Services – (208) 426-1601

Additional options for community-based Confidential Resources in Boise and for other campus locations are listed in Appendix A of this policy.

7.2 Preserving Evidence

Preserving evidence for an offense may be helpful when seeking a protection order or prosecuting an offender. Information for victims of Sexual Assault can be found on Ada County Victim Services Center.

8. Complaint Procedures

8.1 Authority

a. Alleged violations of this policy will be investigated when a Formal Complaint has been filed and:

- The Complainant and the Respondent are both Members of the University Community; and
- The alleged activity has a significant impact on or interferes with the Complainant's equal access to the University's Educational Programs or Activities, and
- The alleged activity did not occur on property owned or controlled by Boise State University, or in buildings controlled by the University's recognized student organizations, or
- The alleged activity occurred outside the United States.

b. Employee allegations of Sexual Harassment are subject to different standards under Title IX and Title VII. Therefore, the Assistant Vice President for Compliance and Ethics, and/or Title IX Coordinator, will conduct an analysis based on the severity, pervasiveness, and objective offensiveness of the allegations, when assumed true, to determine which policy and/or policies apply. The alleged conduct may be investigated under multiple policies and/or referred to Human Resources and Workforce Strategy based on this analysis.

c. If the Respondent is unknown, or is not a Member of the University Community, the Assistant Vice President for Compliance and Ethics will assist the Complainant in identifying appropriate campus and local resources and support options; and/or when criminal conduct is alleged, in contacting local law enforcement or the Department of Public Safety if the individual chooses to file a police report.

8.2 Rights of the Parties

The rights of the Parties are detailed in Appendix A of this policy.

8.3 Reporting Options

Complaints of conduct that may violate this policy should be filed through one of the following:

- Assistant Vice President for Compliance and Ethics at (208) 426-1258; or
- Reporting online: https://boise-advocate.symplicity.com/titleix_report/index.php/pid183577? ; or
- By email to: mailto:reportdiscrimination@boisestate.edu; or
- EthicsPoint Hotline toll-free at 1-855-863-1299, or https://secure.ethicspoint.com/domain/media/en/gui/37887/index.html

8.4 Reports to Law Enforcement

Any individual who believes they have been a victim of a crime is encouraged to report the crime to law enforcement. Individuals can reach the Boise Police Department on campus by calling (208) 426-6911 or report anonymously by calling (208) 343-COPS or online at: https://www.boisestate.edu/publicsafety-security/policies-and-forms/367-2/. Reporting to the University does not notify the Boise Police Department or start a police investigation.

8.5 Timing of Reporting

a. There is no time limitation on providing Notice/Formal Complaints to the Assistant Vice President for Compliance and Ethics. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide Remedies may be more limited or impossible.

b. Acting on Notice/Formal Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the

Assistant Vice President for Compliance and Ethics, who may document allegations for future reference, offer supportive measures and/or Remedies, and/or engage in informal or formal action, as appropriate.

c. When a Notice/Formal Complaint is affected by a significant time delay, the University will apply the policy in place at the time of the alleged incident(s).

8.6 Confidentiality

a. When a Formal Complaint alleging a violation of this policy is investigated, the Parties and Witnesses to the investigation will be notified of the University's request for the parties to use discretion when talking about the allegations. The University does not restrict the Parties from discussing the allegations or gathering evidence, provided this conduct is not Retaliation, or from disclosing information about the outcomes. The University prohibits the Parties or others participating in the Formal Grievance process from disclosing evidence that has been collected and exchanged between the Parties and any investigative reports, summaries, etc. that pertain to evidence.

b. The University will only release information obtained in the course of an investigation on a "need to know" basis to the extent permitted under this policy, any applicable law, and consistent with the University's thorough investigation of the Formal Complaint.

c. Investigation records are maintained in accordance with FERPA, Idaho law, and any other applicable laws or regulations (collectively "privacy laws"). Any public release of information, including a release to comply with the timely warning provisions of the Clery Act, will not include the name of a Complainant or information that could reasonably lead to a Complainant's identification.

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

8.7 Alcohol and Drug Amnesty

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

8.8 Promptness

The University will act promptly on all allegations once it has received Notice or a Formal Complaint.

8.9 Protection against Retaliation

a. Boise State University prohibits Members of the University Community from retaliating against anyone who has in Good Faith filed a Formal Complaint under, or conducted or cooperated in an investigation of an alleged violation under this policy. The University will take all reasonable steps to prevent Retaliation or to remedy the effects, if it does occur.

b. Members of the University Community who Retaliate against anyone who has participated in an investigation conducted under this policy, including the Investigator, will be subject to appropriate disciplinary action up to and including dismissal from employment for an employee, or Sanctions up to and including expulsion for a student (see University Policy 2020 - Student Code of Conduct).

c. Complaints of Retaliation should be promptly reported to the Assistant Vice President for Compliance and Ethics.

d. The exercise of rights protected under the First Amendment does not constitute Retaliation.

9. Investigative Process

9.1 Notice and/or Formal Complaint

a. Upon receipt of a Formal Complaint, or Notice to the Assistant Vice President for Compliance and Ethics of an alleged violation under this policy, the University will perform an initial assessment to determine the next steps, which may include:

- Offering supportive measures because the Complainant does not want to proceed formally; and/or
- Seeking an informal resolution, where both Complainant and Respondent agree to do so; and/or
- Investigating fully and going through the Formal Grievance Process including an investigation and a hearing.

b. The investigation and Formal Grievance Process will determine if this policy was violated. The University will promptly implement effective Remedies for any policy violation.

9.2 Initial Assessment

Following receipt of Notice, or a Formal Complaint of an alleged violation of this policy, the Assistant Vice President for Compliance and Ethics, or designee, will perform an initial assessment. The steps in an initial assessment can include:

- If Notice is given, the Assistant Vice President for Institutional Compliance and Ethics will seek to determine if the individual impacted wishes to make a Formal Complaint and will assist them as needed;

- If the Complainant does not wish to make a Formal Complaint, the Assistant Vice President for Institutional Compliance and Ethics will determine if a Formal Complaint should be initiated with a violence risk assessment under Section 8.3 indicates a compelling threat to the impacted person's health and/or safety;

- If a Formal Complaint is received, the Assistant Vice President for Institutional Compliance and Ethics will assess the Formal Complaint's sufficiency and will work with the Complainant to make sure it is completed correctly;

- The Assistant Vice President for Institutional Compliance and Ethics will reach out to the Complainant to offer Support Measures;

- The Assistant Vice President for Institutional Compliance and Ethics will work with the Complainant to ensure they are aware of their right to have an Advisor; and/or

- The Assistant Vice President for Institutional Compliance and Ethics will work with the Complainant to determine if the Complainant prefers a supportive and remedial response, an informal resolution option, or the Formal Grievance Process.

9.2.1 Supportive and Remedial Response

If a supportive and remedial response is preferred by the Complainant, the Assistant Vice President for Institutional Compliance and Ethics will work with the Complainant to gain an understanding of what outcome they are seeking and will then work to facilitate implementation of their desired outcome, as appropriate. While no Formal Grievance Process is initiated when a

supportive and remedial response is preferred, the Complainant can elect to initiate one later, if desired.

9.2.2 Informal Resolution

If an informal resolution option is preferred, the Assistant Vice President for Institutional Compliance and Ethics will assess whether the Formal Complaint is suitable for informal resolution, which informal mechanism may serve the situation best, and may seek to determine if the Respondent is also willing to engage in informal resolution. A Respondent always has the right to decline any informal resolution and request a Formal Grievance Process.

9.2.3 Formal Grievance Process

a. If a Formal Grievance Process is preferred, the Assistant Vice President for Compliance and Ethics will determine if the alleged misconduct falls under the scope of this policy.

b. If the alleged misconduct falls under the scope of this policy, the Assistant Vice President for Compliance and Ethics will initiate the formal investigation and Formal Grievance Process directing the investigation to address the following:

- An incident; and/or
- A pattern of alleged misconduct; and/or
- A culture/climate issue based on the nature of the complaint.

c. If the alleged misconduct does not fall under the scope of this policy, and the Assistant Vice President for Compliance and Ethics determines that this policy does not apply, the Formal Complaint will be "dismissed." The Assistant Vice President for Compliance and Ethics will subsequently assess if any other policies may apply to the incident and will refer the matter accordingly. A determination that a Formal Complaint does not fall under the jurisdiction of this policy does not limit the University's authority to address the Formal Complaint under any other applicable University policy.

9.3 Violence Risk Assessment (VRA)

In some cases, the Assistant Vice President for Compliance and Ethics may determine that a VRA should be conducted by the University either internally or externally. A Respondent who refuses to cooperate when a VRA is required by the Assistant Vice President for Compliance and Ethics may be charged with failure to comply under the appropriate student or employee

conduct process. The results of a VRA must be reported to the Assistant Vice President for Compliance and Ethics. A VRA may consider, but is not limited to:

- Implementing the emergency removal of a Respondent on the basis of immediate threat to the physical health/safety of Complainant;
- Assessing whether the Assistant Vice President for Compliance and Ethics should pursue/sign a Formal Complaint absent a willing/able Complainant;
- Assessing whether to put the investigation on the footing of incident and/or pattern and/or climate;
- Identifying potential predatory conduct;
- Assessing/identifying grooming behaviors;
- Assessing whether it is reasonable to try to resolve a Formal Complaint through informal resolution, and what modality may be most successful;
- Assessing whether to permit a voluntary withdrawal by the Respondent;
- Assessing whether to impose a transcript notation or communicate with a transfer university about a Respondent;
- Assessing appropriate Sanctions/Remedies (to be applied post-hearing); and/or
- Assessing whether a Clery Act Timely Warning/Trespass order/Persona non grata is needed.

9.4 Emergency Removal or Administrative Leave

a. The University may remove a Respondent entirely or partially from its Educational Program or Activities on an emergency basis. Removal may only occur when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student, or any other individual, justifies removal.

b. The emergency situation must arise from the alleged conduct that could constitute Sexual Harassment under this policy.

c. The safety and risk analysis is performed through a University VRA under Section 9.3. Once the VRA is complete, the VRA recommendation is presented to the Assistant Vice President

for Compliance and Ethics. If the Respondent's actions pose an immediate and identified threat, but do not arise from the alleged Sexual Harassment, the University is free to respond under any other applicable University policies and in accordance with any applicable laws.

d. The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns.

e. A non-student employee Respondent may be placed on administrative leave with pay pending the Resolution of the Formal Grievance Process.

f. In all cases in which an emergency removal is imposed, the Respondent will be given written notice of the action and the option to request to meet with the Assistant Vice President for Compliance and Ethics as soon as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. Any objections to the emergency removal must be raised within three (3) University Business Days of receiving the Notice or it will be deemed waived. Subsequent to the show cause meeting with the Assistant Vice President for Compliance and Ethics, there is no appeal process for emergency removal decisions pending the outcome of the Formal Grievance Process.

9.5 Mandatory Dismissal of Formal Complaint

If the Investigator determines that the allegations, if true, would not constitute a policy violation, or otherwise are outside of the authority of this policy, the University must dismiss the Formal Complaint for purposes of Sexual Harassment under this policy.

a. If the allegations must be dismissed under this policy, the University will simultaneously issue both Parties an amended Notice of Investigation in writing that explains that the University is dismissing the allegation under this policy, and will indicate whether it is pursuing an investigation of the alleged conduct under any other University policy.

b. Where the Complainant is a University employee, the Assistant Vice President for Compliance and Ethics will consider whether the allegations, if so, would constitute a violation of University Policy 1060 (Non-discrimination and Anti-harassment) and, if so, will direct that the allegations be investigated pursuant to that policy.

9.6 Permissive Dismissal of Formal Complaint

a. The University may dismiss a Formal Complaint, or any allegations therein if:

- At any time during the investigation or hearing a Complainant notifies the Assistant Vice President for Compliance and Ethics in writing that they would like to withdraw the Formal Complaint or any allegations therein;

- The Respondent is no longer enrolled at, or employed by, the University; or

- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint and the allegations therein.

b. If a Formal Complaint, or any allegations therein are dismissed, the University will promptly send written notice of the dismissal to all Parties simultaneously. This dismissal decision is appealable by any Party under the procedures for appeal (see Section 11).

9.7 Counterclaims

a. The University is obligated to ensure that the Formal Grievance Process is not abused for Retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment (see Section 8.2) to assess whether the allegations in the counterclaim are made in Good Faith. Counterclaims made with retaliatory intent will not be permitted.

b. At the discretion of the Assistant Vice President for Compliance and Ethics or designee, Counterclaims determined to have been reported in Good Faith will be processed using the Formal Grievance Process under Section 9.4 Investigation of such claims may take place after Resolution of the underlying initial allegation, in which case a delay may occur, or they may also be resolved through the same investigation as the underlying allegation. When counterclaims are not made in Good Faith, they will be considered Retaliatory and may constitute a violation of this policy.

9.8 When a Complainant Does Not Wish to Proceed

a. If a Complainant does not wish for their name to be shared, and does not wish to engage in either an informal resolution or the Formal Grievance Process, they may make such a request to the Assistant Vice President for Compliance and Ethics 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 Assistant Vice President for Compliance and Ethics has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so.

c. As a part of this decision, the Assistant Vice President for Compliance and Ethics will consider:

- 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 University 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.

- Whether the allegation has been made against an employee that would impact their fitness for duty.

- 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.

d. When moving forward with a Formal Complaint in such circumstances, the Assistant Vice President for Compliance and Ethics will sign the Formal Complaint themselves; this does not make the Assistant Vice President for Compliance and Ethics the Complainant in the Formal Grievance Process.

e. If a 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 the procedures under this policy.

9.9 Notice of Investigation

a. The Assistant Vice President for Compliance and Ethics will notify the Respondent of the nature of the allegations by issuing a notice of investigation, typically sent by email upon commencement of the Formal Grievance Process. A copy of the notice of the investigation will also be simultaneously sent to the Complainant.

b. The notice will include the allegations of Sexual Harassment including, if known at the time of the notice:

- A summary of the allegations of conduct prohibited under this policy including the date, location, and a description of the conduct alleged to violate this policy;

- The name of the Reporter and/or the Complainant;
- A clear statement on whether a mutual no-contact order is being implemented at that time;
- The prohibition on Retaliation for individuals who report in Good Faith or who cooperate during an investigation;
- Information regarding the investigation and grievance process;
- Information regarding investigation timelines;
- Notice of the Respondent's rights under this policy, including the right to an Advisor of the Respondent's choice at all stages of the Formal Grievance Process;
- Notice that Respondent is presumed not responsible, and that the determination of responsibility will be reached at the end of the Formal Grievance Process;
- That the University Student Code of Conduct, Section E (Act of Dishonesty) and this policy prohibit knowingly making false statements, or knowingly submitting false information during the Formal Grievance Process;
- The right to inspect and review evidence gathered in the course of the investigation;
- Information regarding Support Measures;
- Information about the potential Sanctions and/or responsive actions that could result;
- Information about the privacy of the Formal Grievance Process;
- Information on how a Party may request disability accommodations during the Formal Grievance Process;
- The name of the Investigator;
- Information on how to report any suspected conflicts of interest that the Investigator(s) may have; and
- Instructions to preserve any evidence that is related to the allegations.

c. The notice will be made in writing to help ensure a timely investigation. Respondent has five (5) University Business Days from receipt of the notice to contact the Office of Compliance

and Ethics to schedule a meeting to discuss the allegations set forth in the notice. While scheduling the meeting, the Respondent will be provided a reasonable amount of time before being interviewed to secure an Advisor and prepare for the interview. If the notice is sent via email, the notice will be considered received on the date that it is sent. If a notice is sent via certified mail, it is considered received three (3) University business days after the date it is mailed. If a student Respondent does not respond within seven (7) University Business Days of receiving the notice, the Investigator may proceed with the investigation without input from the Respondent. If an employee Respondent does not respond within seven (7) University Business Days of receiving the notice, the University may initiate disciplinary action.

d. If, in the course of an investigation, it is determined that there are additional allegations that should be investigated which were not included in the initial notice of investigation, the University will provide an amended notice of investigation in writing to both Parties.

9.10 Advisors of Choice

a. Both Complainant and Respondent have the right to be accompanied by an Advisor of their choice when attending any meeting, interview, or proceeding that takes place pursuant to this policy. Choosing an Advisor who is also a Witness or other Party involved in the investigation or adjudication process is allowed, but creates the potential for bias and conflicts of interests. During the investigation, an Advisor may take notes and quietly confer with the Party being advised, but may not speak on behalf of the Party or in any way disrupt any meeting or proceeding. Each Advisor is required to adhere to these requirements or they will be asked to leave the meeting or proceeding. 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).

b. Complainant or Respondent may choose to retain an attorney or other paid professional to act as an Advisor. However, each Party will be solely responsible for paying any fees charged by the Advisor. All Advisors are required to adhere to the requirements above regardless of their professional qualifications. The University cannot guarantee equal advisory rights, meaning, for example, that if one Party selects an Advisor who is an attorney, and the other Party requests that the University appoint an Advisor, there is no obligation for the University to appoint an Advisor who is an attorney.

c. The Assistant Vice President for Compliance and Ethics will appoint a trained Advisor for any Party who requests one during the investigation stage, and for any Party that does not have an Advisor at the hearing stage. All Advisors appointed by the Assistant Vice President

for Compliance and Ethics will be trained by the University regarding the Formal Grievance Process.

9.10.1 Advisors in Hearings/University-Appointed Advisor

a. Live questioning of both Parties is required during the hearing, but must be conducted by the Parties' Advisors. A Party cannot serve as their own Advisor. If a Party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting questioning on that Party's behalf.

b. If the Party's Advisor will not conduct live questioning, the University will appoint an Advisor who will do so, regardless of the participation or non-participation of the Party during the hearing.

9.10.2 Sharing Information, Privacy, and Expectations

a. 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.

b. 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 the University. The University 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. These restrictions could include but are not limited to removing an Advisor from the investigative process or hearing. If an Advisor is removed, the University will appoint a new Advisor, or the Party may choose a new one.

c. The Parties are expected to provide timely notice to the Assistant Vice President for Compliance and Ethics if they change Advisors at any time. If either Party elects to change Advisors, the Party must notify the Assistant Vice President for Compliance and Ethics at least two (2) University Business Days prior to the next meeting, hearing, etc. The Assistant Vice President for Compliance and Ethics reserves the right to reschedule a hearing when necessary due to any unforeseen circumstances.

9.11 Support Measures

a. Both Complainant and Respondent will promptly be offered appropriate and reasonable Support Measures upon notice of the alleged Sexual Harassment, and/or Retaliation,

including complimentary confidential counseling for students and/or employees. The Assistant Vice President for Compliance and Ethics will assist both Parties to ensure they have access to all available resources. These Support Measures are non-disciplinary, non-punitive, individualized services offered without charge to the Parties to restore or preserve access to the University's Educational Program or Activities.

b. The University will maintain a Party's privacy while providing Support Measures, provided it does not impair the University's ability to provide the measures. The University will act to ensure that Support Measures have the least academic impact possible and do not unreasonably burden either Party.

c. Support Measures may include interim measures, including mutual University-based no contact orders between the Parties which may be applied when the notice of investigation is issued, or at any time thereafter during the course of the investigation.

d. A violation of a no contact order is a separate violation of this policy and should be immediately reported to the Investigator to determine whether it will result in an additional charge of Retaliation under this policy. In that event, the Retaliation charge may, at the discretion of the Assistant Vice President for Compliance and Ethics, be added to an ongoing investigation, or it may result in a new complaint under this policy being initiated.

e. The violation of a no contact order may be considered when determining Sanctions or disciplinary action.

f. Support Measures also may necessitate an emergency removal.

g. For additional information about support services and a list of examples, see Appendix C.

9.12 Resolution Timeline

a. The University will make a Good Faith effort to complete the resolution process within sixty to ninety (60-90) University Business Days, including appeals, which can be extended as necessary for appropriate cause by the Assistant Vice President for Compliance and Ethics. The Assistant Vice President for Compliance and Ethics 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 Formal Grievance Process.

b. 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.

c. The University 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.

9.13 Ensuring Impartiality

a. Any individual materially involved in the administration of the resolution process - including the Assistant Vice President for Compliance and Ethics, Investigator(s), and Decision-maker(s) – must be free from relevant conflicts of interest and biases.

b. The Parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Assistant Vice President for Compliance and Ethics will determine whether the concern has merit. If so, the individual with the conflict or bias will be removed from the process.

c. 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 under the Formal Grievance Process.

9.14 Witnesses

a. 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 this policy and may warrant discipline or corrective action.

b. Though not preferred, Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s). If a Witness does not present themselves for cross examination at the live hearing, their interview statements or written statements may not be used as evidence by the Decision-maker(s).

9.15 Recording of Interviews

During the Formal Grievance Process, Investigators will record interviews with Parties and Witnesses to ensure accuracy. Parties will be provided with a copy of the recording or with a transcript of the recording. Parties and Witnesses are not permitted to make their own audio or video recordings of interviews.

10. Resolution Processes

Resolution proceedings are considered confidential. All persons present at any time during the resolution process are expected to maintain the confidentiality of the proceedings to the extent possible. If a Party chooses to share their own knowledge and evidence with others, the University encourages the Party to discuss this with their Advisor before doing so.

10.1 Informal Resolution

a. If both Parties wish to resolve the matter through an informal resolution after the Formal Complaint is filed, the Assistant Vice President for Compliance and Ethics, or designee, will explain to the Parties that an informal resolution is not mandatory and that they will not be pressured to participate in the informal process. If an informal resolution is reached, it will become binding once both Parties have voluntarily signed the agreement.

b. Types of informal resolutions can include but are not limited to facilitated dialogue, mediation, negotiated resolutions, and restorative justice. The Assistant Vice President for Compliance and Ethics, or designee, will make the ultimate determination of whether an informal resolution option is available in a given case.

c. Any Party participating in informal resolution can stop the process at any time before the informal resolution is signed and can begin or resume the Formal Grievance Process.

d. The Assistant Vice President for Compliance and Ethics maintains records of any Resolution that is reached. Failure to abide by the resolution agreement freely entered into may result in appropriate responsive/disciplinary/corrective actions.

e. Results of informal resolutions are not appealable after both Parties have signed the Resolution.

10.2 Respondent Accepts Responsibility for Alleged Violations

a. The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the Formal Grievance Process will be paused.

b. If an informal resolution is appropriate, the Assistant Vice President for Compliance and Ethics will determine whether all Parties and the University are able to agree on responsibility, Sanctions, and/or Remedies. If so, the Assistant Vice President for Compliance and Ethics will implement the accepted Finding that the Respondent is in violation of University policy and will implement agreed-upon Sanctions and/or Remedies in coordination with other appropriate administrator(s), as necessary.

c. 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.

10.3 Grievance Process Pool

a. The Formal Grievance Process relies on a pool of administrators to carry out the process. These administrators are listed on the Office of Compliance and Ethic's website. Additionally, the University reserves the right to hire external consultants to perform these functions.

b. Pool members are trained annually (see Appendix G of this policy) and can serve in any of the following roles at the discretion of the Assistant Vice President for Compliance and Ethics.

- Facilitation role in informal resolution or Alternate Resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices, etc.)
- Hearing facilitator
- Hearing Decision-maker
- Appeal decision-maker

10.4 Formal Grievance Process - Investigation

a. After both Parties have received copies of the notice of allegations, the Assistant Vice President for Compliance and Ethics, or designee, will appoint at least one Investigator. The

Investigator will then set up interviews with both the Complainant and Respondent after providing both Parties with enough time to prepare for the investigation process.

b. The University will make a Good Faith effort to complete investigations in a timely fashion and will communicate with the Parties to update them on the progress and timing of the investigation.

c. The Investigator serves in a non-advocacy role as a neutral finder of fact. In the course of the investigation, each Party will have the opportunity to provide information, including Witnesses and evidence (e.g., text messages, emails, written documents, photographs, social media posts), relevant to the allegations set forth in the notice. The Investigator may need to meet with Complainant and Respondent more than once for each party to have an adequate opportunity to respond to new information obtained in the course of the investigation. The Investigator must not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally-recognized privilege, unless the person holding such privilege has waived it.

d. The investigation does not consider: 1) incidents not directly related to the possible violation, unless they demonstrate 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.

10.5 Investigation Summary

a. The Investigator will prepare an investigation summary, which will include relevant information from each interview conducted by the Investigator and any other evidence gathered in the course of the investigation. Information regarding the Parties' medical/mental health issues that are not relevant to the complaint will not be included in the investigation summary. As nearly as possible, both Complainant and Respondent will be sent a written copy of the investigation summary simultaneously and will be given an opportunity to review all evidence collected. Each Party will be given ten (10) calendar days to submit a written response to the investigation summary to the Investigator.

b. After receiving the response from both Parties, the Investigator 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.

c. The final investigation report is then shared with all Parties and their Advisors through secure electronic transmission or hard copy at least ten (10) calendar days prior to the live hearing. The Parties will be provided with a file of any directly-related evidence that was not included in the report.

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

10.6 Live Hearing

a. The hearing will take place at least ten (10) calendar days after the conclusion of the investigation –when the final investigation report is transmitted to the Parties and the Hearing Decision-maker - unless all Parties and the Hearing Decision-maker agree to an expedited timeline.

b. Any evidence that the Hearing 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 the incident(s) demonstrate 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.

c. 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.

d. Live hearings shall utilize the preponderance of the evidence standard for determining whether a policy has been violated.

e. Additional procedures and protocols for the Live Hearing can be found in Appendix G of this policy.

10.6.1 Notice of Hearing

a. No less than ten (10) calendar days prior to the hearing, the Assistant Vice President for Compliance and Ethics, or the Hearing Decision-maker, will send notice of the hearing to the Parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

b. The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential Sanctions/responsive actions that could result;
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other University activities;
- Any technology that will be used to facilitate the hearing;
- Information about the option for the live hearing to occur with the Parties in separate rooms using technology that enables the Hearing Decision-maker(s) and Parties to see and hear a Party or Witness answering questions. Such a request must be raised with the Assistant Vice President for Compliance and Ethics at least five (5) University Business Days prior to the hearing;
- A list of all individuals attending the hearing, along with an invitation to object to any Hearing Decision-maker on the basis of demonstrated bias. This must be raised with the Assistant Vice President for Compliance and Ethics at least three (3) University Business Days prior to the hearing;
- Information on how the hearing will be recorded and how Parties can access the recording after the hearing;
- A statement that if any Party or Witness does not appear at the scheduled hearing, the hearing may be held in their absence;
- Notice that for compelling reasons, the Hearing Decision-maker may reschedule the hearing;

- Notification that the Parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present to ask any questions on their behalf. The Party must notify the Assistant Vice President for Compliance and Ethics if they do not have an Advisor, and the University will appoint one. Each Party must have an Advisor present. There are no exceptions;

- A copy of all the materials provided to the Hearing Decision-maker(s) about the matter, unless they have been provided already. The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing;

- An invitation to each Party to submit an impact statement to the Assistant Vice President for Compliance and Ethics. The Assistant Vice President for Compliance and Ethics will supply these statements to the Hearing Decision-maker at the conclusion of the hearing to be opened only if a policy violation is found. The Hearing Decision-maker will review the impact statements prior to working with the Dean of Students or Human Resources and Workforce Strategy on any Sanction determination;

- An invitation to contact the Assistant Vice President for Compliance and Ethics to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) University Business Days prior to the hearing; and

- That the Parties cannot bring mobile phones/devices into the hearing

c. Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this policy) that are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed. This will ensure the resolution timeline is followed by the University and remains within the goal of a timely resolution.

d. If a student is found in violation of policy and an appeal is pending, the University reserves the right to put a temporary hold into place.

10.6.2 Hearing Decision-maker

a. The University will designate a single Hearing Decision-maker to chair the hearing. The University may choose to use a three (3)-member panel from the Grievance Process Pool or a single Hearing Decision-maker for the hearing, at the discretion of the Assistant Vice President for Compliance and Ethics. When a panel is used, one of the three (3) members will be appointed to chair the hearing and act as the Hearing Decision-maker by the

Assistant Vice President for Compliance and Ethics. The Hearing Decision-maker will rule on the relevance of questions raised during the live hearing by the Parties.

b. The Hearing Decision-maker(s) must not have had any previous involvement with the investigation. The Assistant Vice President for Compliance and Ethics may elect to have an alternate from the Grievance Process Pool sit in throughout the resolution process if a substitute is needed for any reason.

c. Those who have served as Investigators may not serve as Hearing Decision-makers. Those who are serving as Advisors for any Party may not serve as Hearing Decision-makers in that matter.

d. The Assistant Vice President for Compliance and Ethics may not serve as a Hearing Decision-maker in the matter, but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Hearing Decision-maker.

10.7 Notice of Outcome

a. Using the deliberation statement, the Assistant Vice President for Compliance and Ethics will work with the Hearing Decision-maker to prepare a notice of outcome. The Assistant Vice President for Compliance and Ethics will then share the letter, including the Findings, rationale, and any applicable Sanction(s) with the Parties and their Advisors within seven (7) University Business Days of receiving the Hearing Decision-maker(s)' deliberation statement.

b. The notice of outcome will then be shared with the Parties simultaneously. Notification 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 University records, or emailed to the Parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

c. The notice of outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section(s), and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the Parties, interviews with Parties and Witnesses, site visits, methods used to obtain evidence, and hearings held.

d. The notice of outcome will specify the Finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any Sanctions issued which the University is permitted to share according to state or federal law; and any Remedies provided to the Complainant designed to ensure access to the University's Educational Program or Activities, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

e. The notice of outcome will also include information on appeal rights and Assistants timelines.

f. If an appeal is not filed by the deadline, the results of the Formal Grievance Process are considered final.

11. Sanctions

a. 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 Sexual Harassment and/or Retaliation;
- The need for Sanctions/responsive actions to prevent the future recurrence of Sexual Harassment and/or Retaliation;
- The need to remedy the effects of the Sexual Harassment and/or Retaliation on the Complainant and the community;
- The impact on the Parties; and
- Any other information deemed relevant by the decision-maker(s)

b. The Sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal, or upon the expiration of the appeal request window.

c. 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.

d. For a list of possible student and employee Sanctions, see Appendix E in this policy.

12. Appeals

a. Any Party may file an appeal which must be submitted in writing to the Assistant Vice President for Compliance and Ethics within five (5) University Business Days of the delivery of the notice of outcome. When a Party submits an appeal, notice will be provided to the other Party.

b. There will be a single appeal decision-maker. The appeal decision-maker will not have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

c. The request for appeal will be forwarded to the appeal decision-maker for consideration to determine if the request meets the grounds for appeal (a review for standing).

d. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the requirements for an appeal to be considered, including timeliness.

12.1 Grounds for Appeal

a. Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination of responsibility or dismissal was made that could affect the outcome of the matter; and
- The Assistant Vice President for Compliance and Ethics, Investigator(s), or Hearing 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.

b. If the appeal does not include at least one of these grounds the appeal will be automatically denied by the appeal decision-maker. The Parties and their Advisors will be notified in writing of the denial and the rationale.

c. If any of the grounds in the request for appeal do not meet the grounds in this section 11.1, the request will be denied by the appeal decision-maker and the Parties and their Advisors will be notified in writing of the denial and the rationale.

d. If any of the grounds in the request for appeal meet the grounds in this section 11.1, then the appeal decision-maker will notify the other Party(ies) and their Advisors, the Assistant Vice President for Compliance and Ethics, and, when appropriate, the Investigator(s), and/or the original appeal decision-maker(s).

e. The other Party(ies) and their Advisors, the Assistant Vice President for Compliance and Ethics, and, when appropriate, the Investigator(s), and/or the original Hearing Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request, which will include the approved grounds, and will then be given five (5) University Business Days to submit a response to the approved portion of the appeal. All responses will be forwarded by the appeal decision-maker for all Parties to review and comment.

f. The non-appealing Party (if any) may also choose to raise a new ground for appeal at this time, which will be reviewed for standing by the appeal decision-maker and either denied or approved. If approved, it will be forwarded to the Party who initially requested an appeal, the Investigator(s), and/or the original Hearing Decision-maker(s) who will submit their responses within five (5) University Business Days, which will be circulated for review and comment by all Parties.

g. Neither Party may submit any new requests for appeal after this time period. The appeal decision-maker will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses. The appeal decision-maker will render a decision within no more than five (5) University Business Days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

h. To the extent possible, a notice of appeal outcome will be sent to all Parties simultaneously, including the decision on each approved ground and rationale for each decision. The notice of appeal outcome will specify the Finding on each ground for appeal, any specific

instructions for remand or reconsideration, and the rationale supporting the essential Findings to the extent the University is permitted to share under state or federal law.

i. Notification 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 institutional records, or emailed to the Parties' University-issued email addresses or otherwise approved accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

12.2 Sanctions Status during the Appeal

a. Any Sanctions imposed resulting from the hearing are delayed until the end of the appeal process. Support Measures may be reinstated, subject to the Support Measures procedures established earlier in this policy.

b. If any of the Sanctions must be implemented immediately post-hearing, such as a removal or partial removal from the University, there must be an opportunity for a show cause meeting with the Assistant Vice President for Compliance and Ethics (see Emergency Removal under Section 8.4).

c. The University may place holds on official transcripts, diplomas/degrees, commencement activities, and course registration pending the outcome of an appeal when the original Sanctions included separation.

12.3 Appeal Considerations

a. Appeal decision-makers should show deference to the judgment of the Hearing Decision-makers, 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.

b. Appeals are not intended to provide for a full, complete (de novo) re-hearing 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.

c. The appeal decision-makers may consult with the Assistant Vice President for Compliance and Ethics on questions of procedure, rationale, or clarification, if needed.

d. Once an appeal is decided, the outcome is final and any further appeals of that decision are not permitted. Any issues that arise on remand before the hearing panel are subject to the same appeals rights as the initial proceeding.

e. In rare cases where a procedural or substantive error cannot be cured by the original Hearing Decision-maker(s) (as in cases of bias), the appeal decision-maker may order a new hearing with a new Hearing Decision-maker(s).

f. The Hearing Decision-maker's Finding, after reconsideration (remand) due to an appeal, is not subject to an appeal.

g. The results of a new hearing can be appealed once for any of the three available appeal grounds.

h. For cases in which the appeal results in Respondent's reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some lost opportunities may be irreparable in the short term.

13. Long-Term Remedies/Other Actions

a. Following the conclusion of the resolution process, and in addition to any Sanctions implemented, the Assistant Vice President for Compliance and Ethics may implement additional long-term Remedies or Support Measures with respect to the Parties and/or the University community that are intended to stop the Sexual Harassment and/or Retaliation, remedy the effects, and prevent reoccurrence.

b. These Remedies/actions may include, but are not limited to:

- Referral to counseling and/or health services;
- Referral to the Employee Assistance Program;
- Education to the individual and/or the community;
- Permanent alteration of a housing assignment;
- Permanent alteration of work arrangements for an employee;

- Provision of campus safety escorts;
- Climate surveys;
- Policy modification and/or training;
- Provision of transportation accommodations;
- Implementation of long-term contact limitations between the Parties; and/or
- Implementation of adjustments to academic deadlines, course schedules, etc.

c. At the discretion of the Assistant Vice President for Compliance and Ethics, certain long-term support or measures may also be provided to the Parties even if no policy violation is found.

d. When no policy violation is found, the Assistant Vice President for Compliance and Ethics will address any Remedies owed by the University to the Respondent to ensure no effective denial of educational access.

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

a. 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 decision-maker/Panel).

b. 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, expulsion, and/or dismissal in employment from the University and may be noted on a student's official transcript.

c. A suspension will only be lifted when compliance is achieved to the satisfaction of the Assistant Vice President for Compliance and Ethics.

14. Recordkeeping

The following will be maintained by the University for a period of at least seven (7) years and/or in accordance with state or federal law:

a. Each Sexual Harassment investigation including any determination of responsibility and any audio or audiovisual recording or transcript;

b. Any disciplinary Sanctions imposed on the Respondent;

c. Any Remedies provided to the Complainant designed to restore or preserve equal access to the University's Educational Program or Activities;

d. Any appeal and its result;

e. Any informal resolution and its result;

f. Any materials used to train the Assistant Vice President for Compliance and Ethics, Investigators, decision-makers, and any person who facilitates an informal resolution process. The University will make these training materials publicly available on the University's website.; and

g. Any actions, including any Support Measures, taken in response to a report or Formal Complaint of Sexual Harassment, including:

- The basis for all conclusions that the response was not deliberately indifferent; and
- Any measures designed to restore or preserve equal access to the University's Educational Program or Activities.

15. Employee Complainant or Respondent Right to File Complaint

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

Idaho Human Rights Commission
317 West Main Street
Boise, ID 83702
(208) 334-2873
Toll Free: (888) 249-7025
humanrights.idaho.gov

Equal Employment Opportunity Commission
Seattle Field Office
909 1st Avenue, Suite 400

Seattle, WA 98104-1061
1-800-669-4000
(206) 576-3000220-6850
www.eeoc.gov

16. Training and Educational Programming and Notification of Services

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

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

b. A statement of the University's prohibition of Domestic Violence, Dating Violence, Sexual Assault and Stalking, Consent, and definitions of each, as they are defined under Idaho law and in University policy (see Section 3 of this policy).

c. Bystander intervention training covering safe and positive options for intervention that may be carried out by a bystander to prevent harm when there is a risk of Domestic Violence, Dating Violence, Sexual Assault, or Stalking occurring. Programs will also offer information on risk reduction including how to recognize warning signs of abusive behavior and how to avoid potential attacks.

d. Information for victims of sex offenses, Domestic Violence, Dating Violence, and/or Stalking, including services and assistance available to victims, how to report an offense, the importance of preserving evidence, and the rights of victims.

17. Related Information

Contact Offices and Contact Information

Assistant Vice President for Compliance and Ethics
Office of Compliance and Ethics
960 S. Broadway Avenue, Suite 250
Boise, ID 83706
Email: ReportDiscrimination@boisestate.edu
(208) 426-1258

Student Connections and Support Center
Student Union Building, Second Floor
1910 University Drive
Boise, ID 83725
Email: genderequitycenter@boisestate.edu
(208) 426-4259
https://www.boisestate.edu/genderequity/

Office of the Dean of Students
Student Conduct Administrator
2100 University Drive – Campus School, Suite 120
1910 University Drive
Boise, ID 83725
Email: deanofstudents@boisestate.edu
(208) 426-1527
http://www.boisestate.edu/deanofstudents/

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

18. Appendices

18.1 Appendix A: Statement of the Rights of the Parties

The Parties each have the right to:

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

b. An equitable investigation and Resolution of all credible allegations of prohibited Sexual Harassment made in Good Faith to University officials.

c. 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.

d. 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.

e. Be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.

f. Not to have any personally identifiable information released to the public without their Consent, except to the extent permitted by law.

g. Have the University policies and procedures followed without material deviation.

h. Be free from pressure to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.

i. To report Sexual Harassment or Discrimination to both on-campus and off-campus authorities.

j. 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 includes the right not to be pressured to report.

k. Have allegations of violations of this policy responded to promptly.

l. Be informed of available interim actions and Support Measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.

m. To request a 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.

n. Be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of Discrimination, Sexual Harassment, and/or retaliation, if such changes are reasonably available. No Formal Complaint or investigation needs to occur before this option is available.

o. Have the University maintain such actions for as long as necessary and for Support Measures to remain private so long as this does not impair the University's ability to provide the Support Measures.

p. Ask the Investigator(s) and Hearing Decision-maker(s) to identify and question relevant Witnesses.

q. Provide the Investigator(s)/Hearing Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Hearing Decision-maker, may be asked of any Party or Witness.

r. Access relevant and directly-related evidence obtained and to respond to that evidence.

s. Provide the Investigator(s) with their account of the alleged misconduct and have that account be conveyed to the Hearing Decision-maker(s).

t. Receive a copy of the investigation report, including all facts, policy, 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) calendar days to review the report prior to the hearing.

u. 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.

v. Be informed of the names of all Witnesses whose information will be used to make a Finding, in advance of that Finding, when relevant.

w. Regular updates on the status of the investigation and/or Resolution.

x. Have reports of alleged policy violations addressed by Investigator(s), the Assistant Vice President for Compliance and Ethics, and Hearing Decision-maker(s) who have received relevant annual training.

y. Preservation of privacy, to the extent possible and permitted by law.

z. Meetings, interviews, and/or hearings that are closed to the public.

aa. Petition that any University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.

bb. Have an Advisor of their choice to accompany and assist the Party in all meetings and/or interviews Assistants with the resolution process.

cc. Have the University compel the participation of faculty and staff Witnesses in the investigation.

dd. Be present, including via remote technology, during all testimony given and evidence presented during any formal grievance hearing.

ee. Have an impact statement be considered by the Hearing Decision-maker(s) following a determination of responsibility for any allegation, but prior to Sanctioning.

ff. 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 (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the Parties.

gg. Be informed in writing when a decision by the University is considered final and any changes to the Sanction(s) that occur before the decision is finalized

hh. 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.

ii. A fundamentally fair Resolution as defined in this policy and its procedures.

18.2 Appendix B: Examples of Unwelcome Conduct

Unwelcome conduct, as referenced in Section 3.28 above, may include, but is not limited to:

a. Attempting to coerce an unwilling person into a sexual relationship;

b. Repeatedly subjecting a person to unwelcome sexual attention, unwanted comments, or communications or jokes of a sexual nature or about their sexual experiences or orientation;

c. Punishing a refusal to comply with a sexual request;

d. Conditioning a benefit on submitting to sexual advances;

e. Threatening sexual violence;

f. Bullying someone on the basis of sex or gender. This includes bullying someone for exhibiting what is perceived as a stereotypical characteristic for their sex, or for failing to conform to stereotypical notions of masculinity and femininity. This may include repeated use of degrading words, gestures, or sounds to describe a person; or

g. Sexual Exploitation on the basis of sex and/or gender. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting a member of the University community;
- Nonconsensual recording of a sexual activity; in any form or format;
- Duplication, distribution, or publication of a consensually made recording of a sexual activity without the Consent of all Parties involved in the recorded sexual act;
- Going beyond the boundaries of Consent, including letting someone else watch a consensual sex act while hiding or without the other person's knowledge;
- Knowingly viewing, photographing, or filming another person without that person's knowledge and Consent, while the person being viewed, photographed, or filmed is in a place where there is a reasonable expectation of privacy;
- Knowingly transmitting a sexually transmitted infection to a Member of the University Community; or
- Exposing one's genitals or inducing another to expose their genitals in nonconsensual circumstances.

h. Stalking behaviors may include, but are not limited to:

- Nonconsensual communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant

messages, postings of images or information on websites, written letters or notes, gifts, or any other communications that are undesired and/or place another person in fear;

- Following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other location(s) frequented by the person being targeted;
- Surveillance and other types of observation, whether by physical proximity or electronic means;
- Trespassing;
- Vandalism;
- Nonconsensual touching;
- Direct physical and/or verbal threats against a person being targeted or that person's friends, family members, or animals;
- Gathering of information about a person from that person's family, friends, co-workers, or classmates;
- Manipulating and controlling behaviors such as threats to harm oneself or threats to harm someone close to the target of the behaviors; or
- Defamation or slander of the person being targeted.

18.3 Appendix C: Support Measures

Support Measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services;
- Referral to the Employee Assistance Program;
- Referral to community-based service providers;
- Visa and immigration assistance;
- Student financial aid counseling;
- Education to the community or community subgroup(s);

- Altering campus housing assignment(s);
- Altering work arrangements for employees or student employees;
- Safety planning;
- Providing campus safety escorts;
- Providing transportation accommodations;
- Implementing contact limitations (no contact orders) between the Parties;
- Academic support, extensions of deadlines, or other course/program-related adjustments;
- Timely warnings;
- Class schedule modifications, withdrawals, or leaves of absence;
- Increased security and monitoring of certain campus areas; and/or
- Any other actions deemed appropriate by the Assistant Vice President for Compliance and Ethics

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

18.4 Appendix D: Support Services

Ada County Community Services

Medical Attention/Examination

Ada County Victim Services Center
417 S 6th Street
Boise, ID 83702
(208) 577-4400

Specialized facility close to campus with experienced nurses and physicians trained to conduct Sexual Assault forensic exams. The emergency rooms at St. Alphonsus or St. Luke's (Boise and Meridian) hospitals; both have response teams specially trained to assist victims of Sexual Assault, Domestic Violence, and Dating Violence.

FACES of Hope
209 West Main Street
Boise, Idaho 83702
208) 986-HELP (4357)

or

1850 South Eagle Road, Ste 100
Meridian, Idaho 83642
(208) 986-HELP (4357)

Serves men and women experiencing Domestic Violence, Sexual Assault, or human trafficking through stabilizing crisis intervention services including:

- Safety planning, protection orders, and legal aid
- Short-term counseling and support groups
- Classes and case management
- Emergency assistance with food, gas, shelter, clothing, diapers, car seats, transportation to flee, lock changes, pepper spray, cell phones, and other basic necessities
- Referrals to community resources, including financial literacy classes, employment assistance, job training, food stamps, food banks, crime victims' compensation, and other public assistance programs.

Women and Children's Alliance (WCA)
720 West Washington Street
Boise, Idaho 83702
(208) 343-3688
(208) 343-7025 (24-hour domestic abuse hotline)
TDD/TTY: 800-377-3529

Provides a comprehensive and secure emergency and transitional shelter program, in confidential locations with round-the-clock staff assistance. The shelters have private rooms and common living facilities for women and children who are fleeing domestic and/or Sexual Assault.

Counseling/Support

In addition to the Student Connections and Support Center and the Assistant Vice President for Compliance and Ethics, there are many services available on campus and in the community to support students and employees in crises, including counseling, health, mental health, victim advocacy, legal assistance, and other services. Students and employees may call:

Boise State Counseling Services
(208) 426-1601

Boise State Health Services
(208) 426-1459 (confidential services) during weekday business hours

Faculty Ombuds
facultyombuds@boisestate.edu

In the Boise area, there is also a confidential 24-hour Rape Crisis Hotline (208) 345-70233 and a confidential 24-hour Domestic Violence crisis hotline (208) 343-7025 operated by the Women's and Children's Alliance (WCA) and is available to respond to concerns and provide referral information.

Mountain Home Community Services

Medical Attention/Examination

St. Luke's Elmore County

895 N. 6th E Street

Mountain Home, Idaho
(208) 587-8401

Emergency medical services, forensic and physical exams and preventative care.

Mountain Home Air Force Base Urgent Care and Women's Health Clinic
90 Hope Drive Bldg. 6000
Mountain Home AFB, Idaho 83648
(208) 828-7900

Counseling/Support

The Elmore County Domestic Violence Council
160 N. 3rd E. Street
Mountain Home, Idaho 83647
(208) 590-0379 for support services and referral to local counseling options
(208) 587-3300 24/7 crisis hotline
ecdvc.org

Twin Falls Community Services

Medical Attention/Examination

St. Luke's Magic Valley Medical Center
801 Pole Line Road W.
Twin Falls, Idaho 83301
(208) 814-1000
1-800-649-9798
Emergency medical services, forensic and physical exams and preventative care

Counseling/Support

Voices Against Violence
302 2nd Avenue South
Twin Falls, Idaho 83302
(208) 733-0100 for support services and referral to local counseling options
https://www.vavmv.org/

Coeur d'Alene Community Services

Medical Attention/Examination

Kootenai Health
2003 Kootenai Health Way
Coeur d'Alene, Idaho (208) 625-4000
www.kh.org
Emergency medical services, forensic and physical exams and preventative care

Counseling/Support:

Safe Passage
850 N. 4th Street|
Coeur d'Alene, Idaho
(208) 664-9303
Text: (208) 449-7228
mailto:safety@safepassageid.org
https://www.safepassageid.org/

Post Falls Police Department Victim Service Unit
1717 E. Polston Ave.
Post Falls, Idaho 83854
(208) 773-3517
(208) 773-1080 (24-hour Crisis Line)
Support services and referral to local counseling options
postfallspolice.com

Lewiston Community Services

Medical Attention/Examination

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

Counseling/Support:

YWCA of Lewiston-Clarkston
300 Main Street
Lewiston, Idaho
(208) 734-1535
(208) 746-9655 – Crisis Line
ywcaidaho.org
Support services and referral to local counseling options

18.5 Appendix E: Pool Member Training

The pool members used in the Formal Grievance Process receive annual training. This training includes, but is not limited to:

- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability;
- Implicit bias;
- Disparate treatment and impact;
- Reporting, confidentiality, and privacy requirements;
- Applicable laws, regulations, and federal regulatory guidance;
- How to implement appropriate and situation-specific Remedies;
- How to investigate in a thorough, reliable, and impartial manner;
- How to uphold fairness, equity, and due process;
- How to weigh evidence;
- How to conduct questioning;
- How to assess credibility;
- Impartiality and objectivity;
- How to render Findings and generate clear, concise, evidence-based rationales;
- The definitions of all offenses;
- How to apply definitions used by the University with respect to Consent (or the absence or negation of Consent) consistently, impartially, and in accordance with policy;
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes;
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;

- Any technology to be used at a live hearing;
- Issues of relevance of questions and evidence;
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence; and
- How to determine appropriate Sanctions in reference to all forms of Sexual Harassment, Discrimination, and/or Retaliation allegations.

Specific training is also provided for appeal decision-makers, intake personnel, Advisors (who are University employees), and Hearing Decision-makers. All pool members are required to attend these trainings annually. The materials used to train all members of the pool will be posted on the Office of Compliance and Ethics' website.

18.6 Appendix F: Sanctions

18.6.1 Student Sanctions

Sanctions that may be imposed upon students or student organizations singly, or in combination, could include but are not limited to:

a. Warning: A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe Sanctions/responsive actions.

b. Required Mentorship: A mandate to meet with a mentor and complete a subsequent reflective essay.

c. Required Counseling: A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.

d. Probation: A written reprimand for violation of University policy, providing for more severe disciplinary Sanctions in the event that the student or organization is found in violation of any University policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas on campus, no-contact orders, and/or other measures deemed appropriate.

e. Suspension: Termination of student status for a definite period of time not to exceed two (2) years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at University.

f. Removal from Housing

g. Expulsion: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend University-sponsored events.

h. Withholding Degree: The University may withhold a student's degree/diploma for a specified period of time and/or deny a student participation in commencement activities if the student is found responsible for an alleged violation.

i. Degree Revocation

j. Organizational Sanctions: Deactivation, loss of recognition, loss of some or all privileges (including University registration) for a specified period of time.

k. Other Actions: In addition to or in place of the above Sanctions, the University may assign any other Sanctions as deemed appropriate such as community service and other educational projects meant to address the harm to the University community.

18.6.2 Employee Sanctions

a. Responsive actions for an employee who has engaged in Sexual Harassment and/or Retaliation could include, but are not limited to:

- Warning – verbal or written
- Performance improvement/management process
- Required counseling
- Required training or education
- Mediation
- Probation

- Loss of annual pay increase
- Loss of oversight or supervisory responsibility
- Demotion
- 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.

b. In cases where the Respondent is a University employee and the Investigator determines a policy violation occurred, a summary of Findings will be provided to the Chief Human Resources Officer, or designee, and the Respondent's hiring authority, who will together, in consultation with the decision-maker, determine whether disciplinary action is warranted.

c. If disciplinary action is proposed, Human Resources and Workforce Strategy will assist the hiring authority in initiating the applicable process.

18.6.3 Notification to Grant Funding Agencies – Employees

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

18.7 Appendix G: Officials with Authority

- President
- Assistant Vice President for Compliance and Ethics
- Dean of Students
- Vice Presidents

- Athletic Director, Deputy Athletic Director, Senior Assistant Athletic Directors, Assistant Athletic Directors, and all Athletic Department Head Coaches
- Chief Human Resources Officer
- Director of Housing
- Assistant Vice President for Public Safety

18.8 Appendix H: Hearing Procedures and Protocols

18.8.1 Pre-hearing Preparation

a. Any individual scheduled to participate in the hearing must have first been interviewed by the Investigator(s) [or have proffered a written statement or answered written questions], unless all Parties and the Hearing Decision-maker 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 Hearing Decision-maker do not assent to the admission of evidence newly offered at the hearing, the Hearing Decision-maker will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

b. The Parties will be given a list of the names of the Hearing Decision-maker(s) at least five (5) University Business Days in advance of the hearing. All objections to any Hearing Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Assistant Vice President for Compliance and Ethics as soon as possible but in no event and no later than three (3) University Business Days prior to the hearing. Hearing Decision-makers will only be removed if the Assistant Vice President for Compliance and Ethics concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

c. The Assistant Vice President for Compliance and Ethics will give the Hearing Decision-maker(s) a list of the names of all Parties, Witnesses, and Advisors at least five (5) University Business Days in advance of the hearing. Any Hearing Decision-maker who believes they 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 Hearing Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Assistant Vice President for Compliance and Ethics soon as possible.

d. During the ten (10) calendar day period preceding 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 Hearing Decision-maker at the pre-hearing meeting or at the hearing and will be exchanged between each Party by the Hearing Decision-maker.

e. Parties and Advisors are not permitted to disseminate any of the evidence subject to inspection and review or to use such evidence for any purpose unrelated to this policy's grievance process, including Retaliation. This includes copying, taking photographs, etc. of the evidence and of the investigative report. If a Party or Advisor violates this provision, they will be subject to appropriate disciplinary action, up to and including dismissal from employment and/or Sanctions pursuant to University Policy 2020 (Student Code of Conduct). If the Advisor is not a member of the University Community and violates this provision, the University may remove the Advisor from this process.

18.8.2 Pre-Hearing Meetings

a. The Hearing Decision-maker may choose to convene a pre-hearing meeting(s) with the Parties and their Advisors to invite them to submit the questions or topics the Parties wish to ask or discuss at the hearing. This ensures the Hearing Decision-maker can rule on their relevance in advance to avoid any improper evidentiary introduction into the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors at the hearing from asking for a reconsideration based on any new information or testimony offered at the hearing. The Hearing Decision-maker must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

b. At each pre-hearing meeting with a Party and their Advisor, the Hearing Decision-maker 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 Hearing Decision-maker 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.

c. The pre-hearing meeting(s) will be recorded.

18.8.3 Hearing Procedures

a. At the hearing, the Hearing Decision-maker(s) has the authority to hear and make determinations on all allegations of Discrimination, Sexual Harassment, and/or Retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the alleged Discrimination, Sexual Harassment, and/or Retaliation, even though those collateral allegations may not specifically fall within this policy. If allegations implicate additional University policies, the Assistant Vice President for Compliance and Ethics will provide education to the Hearing Decision-maker(s) on those policies.

b. Participants at the hearing will include the Hearing Decision-maker, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the Parties, Advisors to the Parties, any called Witnesses, and anyone providing authorized accommodations or assistive services.

c. The Hearing Decision-maker will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

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

18.8.3A Joint Hearings

a. 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.

b. The Assistant Vice President for Compliance and Ethics 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.

18.8.3B Order of the Hearing – Introductions and Explanation of Procedure

a. The Hearing Decision-maker will explain the procedures and introduce the participants.

b. 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 Assistant Vice President for

Compliance and Ethics. The hearing facilitator may attend to: logistics of rooms for various Parties/Witnesses as they wait; 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.

18.8.3C Investigator Presents the Final Investigation Report

a. At the Assistant Vice President for Compliance and Ethics or Hearing Decision-maker's discretion, 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 Hearing Decision-maker(s) and the Parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

b. Neither the Parties nor the Hearing Decision-maker(s) may 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 Hearing Decision-maker will direct that it be disregarded.

18.8.3D Testimony and Questioning

a. The Parties and Witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Hearing Decision-maker. The Parties/Witnesses will submit to questioning by the Hearing Decision-maker(s) and then by the Parties' Advisors ("cross-examination").

b. All questions are subject to a relevance determination by the Hearing Decision-maker. 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 Hearing Decision-maker upon request or agreed to by the Parties and the Hearing Decision-maker), the proceeding will pause to allow the Hearing Decision-maker to consider it, and the Hearing Decision-maker will determine whether the question will be permitted, disallowed, or rephrased.

c. The Hearing Decision-maker will then state their decision on the question for the record and advise the Party/Witness to whom the question was directed, accordingly. The Hearing Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

d. The Hearing Decision-maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Decision-maker has final say on all questions and determinations of relevance, subject to any appeal. The Hearing Decision-maker 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 Hearing Decision-maker has ruled on a question. The Hearing Decision-maker may also rule to remand the case back to the Investigator if new evidence is presented at the hearing.

e. If the Parties raise an issue of bias or conflict of interest of an Investigator or Hearing Decision-maker at the hearing, the Hearing Decision-maker may elect to address those issues, consult with legal counsel, and/or refer them to the Assistant Vice President for Compliance and Ethics, and/or preserve them for appeal. If bias is not in issue at the hearing, the Hearing Decision-maker should not permit irrelevant questions that probe for bias.

18.8.3E Refusal to Submit to Cross-Examination and Inferences

a. A Party or Witness may choose not to submit to cross-examination at the hearing, either because they do not attend the meeting or they attend but refuse to participate in questioning. In this case, the Hearing Decision-maker(s) will weigh the credibility of any prior statement made by that Party or Witness contained in the investigation report when making the ultimate determination of responsibility.

b. The Hearing Decision-maker(s) may not draw any inference solely from a Party's or Witness's absence from the hearing or refusal to answer cross-examination or other questions.

c. 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 recipient-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.

18.8.3F Recording Hearings

a. 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.

b. The Hearing 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 Assistant Vice President for Compliance and Ethics. No person will be given or be allowed to make a copy of the recording without permission of the Assistant Vice President for Compliance and Ethics.

18.8.3G Deliberation, Decision-making, and Standard of Proof

a. The Hearing 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 Hearing Decision-maker, but is there only to facilitate the process procedurally, not to address the substance of the allegations.

b. If the Hearing Decision-maker(s) find(s) that a policy violation has occurred, they will then review the statements and any pertinent conduct history provided by the Dean of Students and/or Human Resources and Workforce Strategy and will determine the appropriate Sanction(s) in consultation with them.

c. The Hearing Decision-maker will then prepare a written deliberation statement and deliver it to the Assistant Vice President for Compliance and Ethics detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any Sanctions.

d. This report typically should not exceed three (3) to five (5) pages in length and must be submitted to the Assistant Vice President for Compliance and Ethics within seven (7) University Business Days of the end of deliberations, unless the Assistant Vice President for Compliance and Ethics grants an extension. If an extension is granted, the Assistant Vice President for Compliance and Ethics will notify the Parties.

Minor Amendment

Revision History