



**BOISE STATE UNIVERSITY**

University Policy 1060

## Non-Discrimination and Anti-Harassment

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### **Effective Date**

July 1995

### **Last Revision Date**

December 20, 2022

### **Responsible Party**

Office of Title IX and Institutional Equity, (208) 426-1258

### **Scope and Audience**

This policy applies to all Members of the University Community, including employees, students, affiliates, affiliate faculty, volunteers, contractors, vendors, customers, visitors to the University, and participants in a University-sponsored program or activity.

Harassment on the basis of sex, gender, sexual orientation, gender identity, gender expression, or pregnancy is generally addressed in University Policy 1065 (Sexual Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking); however, pursuant to that policy, employee allegations, that may not rise to the level of Sexual Harassment as defined under University Policy 1065 Section 3.28(2), but may rise to the level of Harassment as defined in this policy (in accordance Title VII of the Civil Rights Act of 1964), may be charged under this policy at the discretion of the Assistant Vice President for Title IX, Institutional Equity, and Compliance/Title IX Coordinator ("Assistant Vice President for Title IX, Institutional Equity, and Compliance"), or their designee. If the allegations implicate both Policy 1060 and 1065, those claims will be charged under both policies.

### **Additional Authority**

- Titles VI and VII of the Civil Rights Act of 1964

- Title IX of the Education Amendments of 1972
  - The Age Discrimination in Employment Act of 1967
  - The Americans with Disabilities Act of 1990 as amended
  - Section 504 of the Rehabilitation Act of 1973
  - The Genetic Information Nondiscrimination Act of 2008
  - The Vietnam Era Veterans' Readjustment Assistance Act
  - The Family Educational Rights and Privacy Act of 1974 (FERPA)
  - Executive Order 11246 regarding non-discriminatory practices in hiring and employment
  - 41 CFR 60-1.35(c)
  - The Pregnant Workers Fairness Act (PWFA)
  - The Idaho Human Rights Act – Idaho Code Chapter 59, Title 67
  - Establishment Clause and Free Exercise Compliance - Idaho Code Chapter 66, Title 33
  - The Higher Education Act of 1965 as amended by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
  - Idaho Code §§ 18-7902, 18-7905, and 18-7906
  - University Policy 1065 (Sexual Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking)
  - University Policy 1075 (Non-discrimination on the Basis of Disability)
  - University Policy 2020 (Student Code of Conduct)
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## 1. Policy Purpose

To detail the University's commitment to providing an employment, learning and campus-living environment free from unlawful Discrimination and Harassment.

## 2. Policy Statement

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 University prohibits Discrimination or Harassment on the basis of a Protected Class. The University is committed to maintaining a working and learning environment that is free from Discrimination or Harassment, in which all Members of the University Community are treated with dignity and respect.

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

### 3. Definitions

#### 3.1 Complainant

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

#### 3.2 Confidential Resources

University Health Services medical and counseling staff who learn of a potential violation of 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 Responsible Employees as defined by this policy but are still Reporters for Clery Act purposes in accordance with University Policy 12000 (Clery Act Compliance).

#### 3.3 Discrimination

Treating an individual or group differently or less favorably (e.g., denied rights, benefits, equitable treatment, or access to facilities available to all others) on the basis of Protected Class.

#### 3.4 Good Faith

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

#### 3.5 Harassment

Unwelcome or offensive behavior that is based upon an individual's or group's Protected Class. Harassment may include conduct that is verbal, written, or physical in nature. Harassment that creates a Hostile Environment is prohibited by this policy. A person is capable of engaging in prohibited Harassment even if the person belongs to the same Protected Class as the individual or group targeted.

#### 3.6 Hostile Environment

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. The more severe the conduct, the less

need there is to demonstrate that a repetitive series of incidents created a Hostile Environment, particularly if the Harassment is physical. A single or isolated incident of Harassment may create a Hostile Environment if the incident is sufficiently severe.

### **3.7 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.

### **3.8 Protected Class**

A group with a common characteristic who are legally protected from adverse treatment on the basis of that characteristic. For purposes of this policy, Protected Class characteristics include race, ethnicity, color, religion, age, national origin, physical or mental disability, veteran status, genetic information, sex, gender, sexual orientation, gender identity, gender expression, pregnancy, or any other status protected under applicable federal, state, or local law.

Allegations of harassment on the basis of the Protected Class characteristics of sex, gender, sexual orientation, gender identity, gender expression, or pregnancy are generally covered under University Policy 1065, though the TIX Coordinator, or their designee, may determine that employee complaints of harassment that may not rise to the level of sexual harassment as defined under University Policy 1065 Section 3.28(2), but may rise to the level of harassment as defined in this policy (in accordance Title VII of the Civil Rights Act of 1964), may be charged under this policy at the discretion of the Assistant Vice President for Title IX, Institutional Equity, and Compliance, or their designee.

If a person discriminates against or harasses an individual or group because the person believes the individual or group is a member of a Protected Class, that conduct may violate this policy even if the individual or group does not actually belong to that class.

### **3.9 Reporter**

An individual who reports alleged prohibited conduct but who is not the individual who is the target of the prohibited conduct.

### **3.10 Respondent**

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

### **3.11 Responsible Employees**

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

Responsible Employees are not required to report information disclosed (1) at public awareness events (e.g., candlelight vigils, protests, or other public forums in which individuals may disclose conduct prohibited by this policy), or (2) during an individual's participation as a subject in an Institutional Review Board-approved human subjects research project. The University may provide information about available resources at public awareness events, however, and Institutional Review Boards may, as they deem appropriate, require researchers to provide such information to all subjects of approved projects. If a Responsible Employee is unsure whether an event would be considered a public awareness event, the Responsible Employee should contact the Office of Title IX and Institutional Equity for clarification.

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

### **3.12 Retaliation**

Adverse treatment of an individual because that individual opposed Discrimination or Harassment, made a Good Faith complaint pursuant to this policy, or conducted or participated in Good Faith in an investigation conducted pursuant to this policy.

### **3.13 Third Party**

An individual who is not a Member of the University Community.

### **3.14 Witness**

An individual who may have information relevant to a report of prohibited conduct. A Witness may be a student, an employee, or a Third Party.

## **4. Responsibilities and Procedures**

### **4.1 General Responsibilities**

All Members of the University Community are responsible for following this policy to create an environment free from Discrimination and Harassment. The University expects all Members of the University Community to avoid any behavior or conduct that could reasonably be interpreted as Discrimination or Harassment as defined under this policy.

## 4.2 Specific Responsibilities

### 4.2.1 Assistant Vice President for Title IX, Institutional Equity, and Compliance

The Assistant Vice President for Title IX, Institutional Equity, and Compliance is responsible for overseeing Boise State's non-discrimination and anti-harassment efforts, including but not limited to: (1) the review, investigation and resolution of complaints alleging violations of this policy by or against Members of the University Community, and (2) identifying and addressing patterns or systemic problems that are identified during the review of these complaints. The Assistant Vice President for Title IX, Institutional Equity, and Compliance is also responsible for the periodic review and assessment of this policy and related policies and procedures.

### 4.2.2 Members of the University Community

Members of the University Community who (a) supervise other employees, students, contractors, or vendors; (b) teach or advise students; or (c) have management authority related to a University-sponsored program or activity must:

- a. Engage in appropriate measures to prevent violations of this policy; and
- b. Promptly notify the Office of Title IX and Institutional Equity after being informed of, or having a reasonable basis to suspect that there has been, Discrimination against, Harassment of, or Retaliation against a Member of the University Community.

### 4.2.3 Responsible Employees

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

### 4.2.4 Confidential Resources

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

### 4.2.5 Campus Security Authorities (CSAs)

Faculty and staff designated as Campus Security Authorities for the purpose of Clery Act compliance must also report alleged crimes to the Clery Compliance Officer. For more

information, please see <https://www.boisestate.edu/publicsafety-security/policies-and-forms/361-2/>. All Members of the University Community are encouraged to report any alleged crime to the University's Department of Public Safety.

#### 4.2.6 Requirement for Members of the University Community to Cooperate During Investigations

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

### 4.3 Resources for Victims

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

#### 4.3.1 Confidential Resources

Victims of Discrimination or Harassment seeking confidential University support may contact one of the following:

- Gender Equity Center – (208) 426-4259
- University Health Services – (208) 426-1459
- University Counseling Services – (208) 426-1459

#### 4.3.2 Preserving Evidence

It is important to preserve evidence of any offense as it may be helpful when seeking a protection order or to prosecute the offender.

### 4.4 Complaint Procedures

#### 4.4.1 Authority

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

- a. That occurred on or may have a continuing effect on University premises;
- b. That occurred in the context of an official Boise State University program or activity, regardless of location;

- c. Where both Complainant and Respondent are Members of the University Community; or
- d. Where the Respondent is a student or employee of Boise State University.
- e. Where the Respondent is affiliated with Boise State University, but is not a Boise State University student or employee, procedures of the affiliated institution may apply to the investigation and disciplinary process.

#### 4.4.1A Timeliness/Statute of Limitations

Boise State has authority to investigate reports of alleged Discrimination or Harassment, or incidents of Discrimination or Harassment, the University otherwise becomes aware of, within 180 calendar days from the date the incident(s) occurred. For ongoing Harassment, if the University becomes aware of the alleged conduct within 180 days of the last incident of Harassment, the University may also consider incidents that occurred prior to the last 180 days. Any complaint filed after 180 days must include a statement of good cause explaining why the complaint was not filed within the 180-day period. The Assistant Vice President for Title IX, Institutional Equity, and Compliance will make a determination whether the statement of good cause is sufficient to permit the investigation to move forward.

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

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

#### 4.4.3 Reporting Options

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

- Assistant Vice President for Title IX, Institutional Equity, and Compliance at (208) 426-1258; or
- By email to: [reportdiscrimination@boisestate.edu](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>



#### 4.4.4 Reports to Law Enforcement

Any individual who believes they have been a victim of a crime is encouraged to report the crime to law enforcement. Individuals can reach the Boise Police Department on campus by calling (208) 426-6911 or may report anonymously by calling (208) 343-COPS or online at <https://www.boisestate.edu/publicsafety-security/policies-and-forms/367-2/>.

#### 4.4.5 Rights of Complainant

A Complainant has the right to:

- a. Be treated in accordance with the University's Shared Values.
- b. Be fully informed of and participate in all steps in the grievance process.
- c. Report conduct prohibited under this policy to local law enforcement but not file a complaint with the university.
- d. Report conduct prohibited under this policy to local law enforcement and file a complaint with the University. (If an alleged policy violation is also the subject of a law enforcement investigation, the University may suspend its investigation for a period not to exceed 10 days to avoid interfering with law enforcement's investigation.).
- e. File a complaint only with the University and request that the University investigate the matter.
- f. File a complaint only with the University but request that the University not take any action other than to provide support services; however, if the University believes a Respondent presents an ongoing threat to the University community, or if the University believes there is a pattern of conduct, it may determine that its obligation to safeguard the University community overrides the Complainant's wishes not to commence a formal investigation. If the University determines this to be the case, the Assistant Vice President for Title IX, Institutional Equity, and Compliance will notify the Complainant in advance of commencing a formal investigation, and the University will assume the role of Complainant.

When weighing requests not to commence a formal investigation, the Assistant Vice President for Title IX, Institutional Equity, and Compliance will consider a number of factors, including but not limited to:

- (i.) The severity and/or pervasiveness of the alleged prohibited conduct

- (ii.) The respective ages and roles (e.g., power dynamics, relationship of authority, etc.) of Complainant and Respondent
  - (iii.) Whether there have been other complaints or reports of Harassment or misconduct against Respondent
  - (iv.) Whether circumstances suggest there is an increased risk of Respondent committing additional acts of violence
  - (v.) Whether Respondent has a history of arrests or records from a prior school indicating a history of violence
  - (vi.) Whether Respondent threatened further violence against Complainant or others
  - (vii.) Whether violence was committed by multiple perpetrators
  - (viii.) Whether the circumstances suggest there is an increased risk of future acts of violence under similar circumstances
  - (ix.) Whether violence was perpetrated with a weapon
  - (x.) Whether the institution possesses other means to obtain relevant evidence (e.g., security cameras or personal, physical evidence)
- g. Request that the Assistant Vice President for Title IX, Institutional Equity, and Compliance seek an informal resolution to a complaint. If a Complainant initially elects to participate in an informal resolution process, the Complainant retains the right to withdraw from the informal resolution process before it is complete and request a formal investigation.
  - h. Have an advisor of the Complainant's choice accompany Complainant to all meetings, interviews and proceedings as outlined in Section 4.4.7., below.
  - i. Have a complaint alleging a violation of this policy processed in accordance with this policy.
  - j. Have an equal opportunity to provide information, names of Witnesses and other evidence to the investigator.

- k. Review and respond to the investigator's written summary of information provided by other parties to the complaint.
  - l. Access University academic and support services and receive referrals to external support resources (for example, the Employee Assistance Program). For additional information about support services, see Section 5.2.
  - m. Request interim measures including but not limited to:
    - (i.) A University-based no contact order limiting Respondent's ability to communicate with, or otherwise contact, Complainant either directory or through a Third Party.
    - (ii.) Academic accommodations, such as course withdrawals or incompletes.
    - (iii.) For University employees, work assignments, work schedule, supervisory responsibilities, or work location changes.
    - (iv.) For students, altering housing assignments, dining arrangements, or other university services for Complainant and/or Respondent.
    - (v.) Campus security escorts
- When granted, interim measures will remain in place until: 1) the investigation is complete and the investigator determines no policy violation occurred; 2) the investigator determines a policy violation occurred and the sanctioning process is completed; or 3) the Assistant Vice President for Title IX, Institutional Equity, and Compliance notifies the Complainant and Respondent in writing that the interim measures are no longer in effect.
- n. Request a review or modification of interim measures. Such requests should be submitted to the Office of Title IX and Institutional Equity at (208) 426-1258 or [reportdiscrimination@boisestate.edu](mailto:reportdiscrimination@boisestate.edu).
  - o. Be free from Retaliation.
  - p. Be informed in writing of the findings of fact and outcome of the complaint.
  - q. Be informed of and have an equal right of appeal.

#### 4.4.6 Rights of Respondent

A respondent has the right to:

- a. Be treated in accordance with the University's Shared Values.
- b. Be fully informed of, and participate in all steps in the grievance process.
- c. Have an advisor of the Respondent's choice accompany them to all meetings, interviews and proceedings as outlined in Section 4.4.7, below.
- d. Access University academic and support services and receive referrals to external support resources (for example, the Employee Assistance Program). For additional information about support services, see Section 5.2.
- e. Respondents who are not employed by the University may decline to participate in an investigation. If a non-employee Respondent declines to participate in an investigation, the investigator will make a determination as to whether a policy violation has occurred based on other information gathered in the course of the investigation.
- f. Decline to participate in the informal resolution of a complaint in favor of a formal investigation. A Respondent also retains the right to withdraw from the informal resolution process before it is complete and request a formal investigation.
- g. Have an equal opportunity to provide information, names of Witnesses, and other evidence to the investigator.
- h. Review and respond to the investigator's written summary of information provided by other parties to the complaint.
- i. Request interim measures including, but not limited to:
  - (i.) A University-based no contact order, limiting Complainant's ability to communicate with, or otherwise contact, Respondent either directly or through a Third Party.
  - (ii.) Academic Accommodations, such as course withdrawals or incompletes.
  - (iii.) For University employees, work assignments, work schedule, supervisory responsibilities, or work location changes.

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

(v.) Campus security escorts

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

- j. Request a review or modification of interim measures. Such requests should be submitted to the Office of Title IX and Institutional Equity at (208) 426-1258 or [reportdiscrimination@boisestate.edu](mailto:reportdiscrimination@boisestate.edu).
- k. Be informed, in writing, of the findings of fact and outcome of the investigation.
- l. Be informed of, and have an equal right of appeal.

#### 4.4.7 Advisors of Choice

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

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

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

#### 4.4.8 Support Services

Both Complainant and Respondent will be given information regarding support services, including confidential counseling for students and/or employees. The Assistant Vice President

for Title IX, Institutional Equity, and Compliance will assist both parties to ensure that they have access to all available resources. For additional information about support services, see Section 5.2.

#### 4.4.9 Confidentiality

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

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

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

#### 4.4.10 Investigation Process

##### 4.4.10A Intake

Once a complaint alleging that this policy has been violated is received by the Office of Title IX and Institutional Equity, an investigator will meet with the Complainant or Reporter to gather information about the allegations and determine whether the alleged behavior constitutes a potential violation of this policy. If so, the investigator will commence an investigation. If the investigator determines that the allegations, if true, would not constitute a policy violation, they have the discretion to either close the investigation or address the allegations informally.

##### 4.4.10B Notice

The investigator will notify Respondent of the nature of the misconduct alleged to have violated this policy by issuing a formal notice, typically sent by email, which will include information reasonably known to the University at the time, such as a) dates and locations of incidents, as applicable; (b) the name of the Reporter and/or the Complainant, unless the University is assuming the role of Complainant; (c) a clear statement of the interim measures being implemented at the time of the notice, if any; (d) the University's policy prohibiting Retaliation against individuals who file Discrimination complaints or who cooperate in the University's investigation of a Discrimination complaint; (e) information regarding the investigation process;

(f) information regarding investigation timelines; (g) notice of Respondent's rights under this policy, including the right to an advisor of Respondent's choice at all stages of the process; and (h) information regarding support services. If additional information gathered during the course of the investigation yields additional allegations of misconduct, the notice will be modified and the Respondent will be given a reasonable amount of time to respond.

The Respondent will be given seven (7) University business days to schedule an interview once requested by the investigator.

If a student Respondent does not respond to the request 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 up to and including termination against the Respondent.

#### **4.4.10C No Contact Order and Other Interim Measures**

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

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

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

#### **4.4.10D Informal Resolution**

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

At the discretion of the investigator, in consultation with the Assistant Vice President for Title IX, Institutional Equity, and Compliance, informal processes may be used at any time during the

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

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

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

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

#### 4.4.10E Formal Investigation

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

If, during the course of the investigation, the investigator in consultation with the Assistant Vice President for Title IX, Institutional Equity, and Compliance determines that the alleged misconduct does not fall under the scope of this policy, or otherwise determines that this policy does not apply, the complaint may be dismissed at any time upon written notice to the Complainant and Respondent, and the allegations may be addressed informally. A determination that the alleged misconduct does not fall under the scope of this policy does not limit the



University's authority to address the alleged misconduct under any other university policy or through referral to other offices such as Human Resources or the Dean of Students.

#### 4.4.10F External Investigator

The Assistant Vice President for Title IX, Institutional Equity, and Compliance, or their designee, may retain an investigator from outside the University to investigate any complaint under this policy. Any outside investigator must follow the same process as an internal investigator, pursuant to this policy.

#### 4.4.10G Investigation Summary

In the event of a formal investigation, the investigator will typically prepare an investigation summary which will include relevant information from each interview conducted by the investigator and any other evidence gathered in the course of the investigation. Information regarding the parties' medical/mental health issues that are not relevant to the complaint will not be included in the summary. As nearly as possible, both Complainant and Respondent will be sent a written copy of the investigation summary simultaneously, and each party will be given a reasonable period of time (generally not to exceed 5 University business days) to submit a written response to the investigation summary to the investigator.

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

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

#### 4.4.10H Investigation Timeline

The time required to complete a formal investigation will vary based on the nature and complexity of the allegations. The Office of Title IX and Institutional Equity will use its best efforts to complete the investigation within sixty (60) business days from receipt of the complaint. Delays in the process will be communicated by the Office of Title IX and Institutional Equity to both Complainant and Respondent in a timely manner.

#### 4.4.10I Final Investigation Report

The investigator, in consultation with the Assistant Vice President for Title IX, Institutional Equity, and Compliance, will prepare a final investigation report with findings of fact and a

determination of whether, based on a preponderance of the evidence, this policy has been violated.

If the Assistant Vice President for Title IX, Institutional Equity, and Compliance acts as the investigator, the Chief Financial and Operating Officer and Vice President for Finance and Operations, or designee, will fulfill the Assistant Vice President for Title IX, Institutional Equity, and Compliance's responsibilities.

#### 4.4.10J Outcome Notice

The Complainant and Respondent will be informed, in writing, of the investigator's findings of fact and the determination regarding whether there was a violation of this policy in an outcome notice issued in accordance with applicable privacy laws. As nearly as possible, both parties will be informed of the outcome simultaneously. The parties will not receive a copy of the Final Investigation Report.

#### 4.4.10K Policy Violation

If an investigation results in the determination that this policy was violated, the final investigation report will, for student Respondents, be forwarded to the Office of the Dean of Students to determine appropriate sanctions, or for employee Respondents, to Human Resources for disciplinary action as outlined in Section 4.4.11 or Section 4.4.17, respectively.

#### 4.4.10L Student Complainant or Respondent Right to File Complaint

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

U.S. Department of Education  
Office of Civil Rights, Region 10  
810 3<sup>rd</sup> Avenue #750  
Seattle, WA 98104  
<https://ocrcas.ed.gov/>  
1-800-368-1019

#### 4.4.10M Employee Complainant or Respondent Right to File Complaint

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

Idaho Human Rights Commission  
317 West Main Street  
Boise, ID 83702

<https://humanrights.idaho.gov>

(208) 334-2664

Equal Employment Opportunity Commission

(206) 220-6850

[www.eeoc.gov](http://www.eeoc.gov)

#### **4.4.10N Appeal of Policy Violation Determination – Students**

If the Assistant Vice President for Title IX, Institutional Equity, and Compliance determines that the findings of fact do not support a violation of this policy, Complainant may appeal this determination to an Appeal Board as outlined in Section 9, Boise State University Policy 2020 (Student Code of Conduct). If the Assistant Vice President for Title IX, Institutional Equity, and Compliance determines that the findings of fact do support the determination of a violation of this policy, the Respondent may appeal this determination to an Appeal Board after the 1060 Sanctioning Board issues a sanction decision (See Section 9, Boise State University Policy 2020 (Student Code of Conduct)).

#### **4.4.11 Sanctions – Students**

In cases where the Respondent is a student and a policy violation has been determined, a copy of the final investigation report will be sent to a Student Conduct Administrator (SCA) in the Office of the Dean of Students. The SCA will convene a 1060 Sanctioning Board to determine appropriate sanctions.

The 1060 Sanctioning Board will use their best efforts to complete the sanctioning process within thirty (30) days from the time the final investigation report is received.

#### **4.4.11A 1060 Sanctioning Board**

The SCA will convene the 1060 Sanctioning Board and set a date for a Sanctioning Conference. The 1060 Sanctioning Board will consist of 3-5 University faculty or staff members who receive annual training on Protected Class Discrimination and Harassment. A minimum of three (3) 1060 Sanctioning Board members is required to conduct a Sanctioning Conference.

#### **4.4.11B Notice of Sanctioning Conference**

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

- a. The Notice of Sanctioning Conference will include the names of the 1060 Sanctioning Board members.
- b. Each party has two (2) University business days from the date the Notice of Hearing is emailed to challenge any of the 1060 Sanctioning Board members on the ground of perceived bias. To challenge a 1060 Sanctioning Board member, a party must submit a concise written statement (no more than one page) stating the reason(s) for the challenge and why the 1060 Sanctioning Member is perceived to be biased against the party. The SCA will review any challenges received and determine if the challenged 1060 Sanctioning Board member needs to be replaced.

#### 4.4.12 Pre-Sanctioning Conference Procedures

- a. Each party may contact the Office of the Dean of Students to arrange a Pre-Sanctioning Conference meeting with the SCA. The non-redacted Final Investigation Report may be viewed in person by either party at the party's Pre-Sanctioning Conference meeting.
- b. Both parties may submit a written impact statement to the 1060 Sanctioning Board, due at least five (5) University business days prior to the day of the Sanctioning Conference.
- c. A Pre-Sanctioning Conference packet will be made available to both parties and the 1060 Sanctioning Board members at least three (3) University business days prior to the scheduled Sanctioning Conference.

#### 4.4.13 Advisors

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

#### 4.4.14 Sanctioning Conference

- a. Participation in the Sanctioning Conference is voluntary for both Complainant and Respondent. The Sanctioning Conference will proceed with or without participation of the parties.
- b. Each party present will have an opportunity to make a brief (no more than ten (10) minutes) verbal statement to the 1060 Sanctioning Board.

- c. The 1060 Sanctioning Board may ask questions of each party present at the Sanctioning Conference.
- d. Parties will not be in the Sanctioning Conference room at the same time. When a party is not in the Sanctioning Conference room, that party will be able to listen to the Sanctioning Conference proceedings via phone from a separate room.
- e. The 1060 Sanctioning Board will deliberate regarding the appropriate sanction(s) for the violation of this policy. Sanctions may include, but are not limited to, educational activities or experiences, loss of privileges, restorative justice measures, service projects, substance abuse and/or mental health care referrals, suspension or expulsion. Decisions of the 1060 Sanctioning Board are determined by a simple majority vote. The SCA may provide the 1060 Sanctioning Board with University precedent in similar cases, as well as Respondent's history of conduct and prior sanctions, if any.

#### 4.4.15 Sanctioning Decision

Within ten (10) University business days after the Sanctioning Conference, the 1060 Sanctioning Board chair will notify the SCA in writing of the sanctions imposed by the 1060 Sanctioning Board. The SCA will then notify the parties via email of the 1060 Sanctioning Board's Decision within two (2) University business days of receiving such notification from the 1060 Sanctioning Board.

#### 4.4.16 Appeals – Students

Appeals of policy violation determinations and/or sanction(s) imposed may be made to an Appeal Board via the Office of the Dean of Students. When an appeal is filed, sanction(s) may be placed in pending status by the Student Conduct Administrator until the appeal process has been exhausted. Select sanctions may remain implemented pending the outcome of the appeals process to ensure the safety and well-being of Members of the University Community or preservation of University property. Both Complainant and Respondent have the right to file an appeal of determination of a violation of this policy and/or a corresponding sanction as outlined in Section 9, Boise State University Policy 2020 (Student Code of Conduct).

#### 4.4.17 Sanctions/Discipline – Employees

In cases where the Respondent is a University employee and the investigator determines a policy violation occurred, a summary of findings will be provided to the AVP for Human Resources, or designee, and the Respondent's supervisor who will together, in consultation with the Assistant Vice President for Title IX, Institutional Equity, and Compliance, determine whether disciplinary action is warranted.

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

- Classified employees – Boise State University Policy 7430 (Classified Employee Disciplinary Action)
- Professional employees and faculty – Boise State University Policy 7310 (Non-Classified Employees – Due Process Procedure and Appeals)

#### 4.4.18 Notification to Sponsored Project Funding Agencies – Employees

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

#### 4.5 Protection Against Retaliation

- a. Federal law and the University prohibit Members of the University Community from retaliating against anyone who has, in Good Faith, filed a complaint under, or conducted or cooperated in an investigation of, an alleged violation of this policy. The University will take all reasonable steps to prevent Retaliation or to remedy the effects if it does occur.
- b. Members of the University Community who retaliate against any party to an investigation, including the investigator, conducted pursuant to this policy will be subject to appropriate disciplinary action, up to and including termination of employment and/or sanctions pursuant to the Student Code of Conduct.
- c. Complaints of Retaliation should be promptly reported to the Office of Title IX and Institutional Equity.

#### 4.6 Abuse of Process

Where there is evidence that a complaint was filed, or evidence was offered, with intent to defraud or deceive investigators, with an absence of Good Faith, the University may sanction that party for engaging in Abuse of Process.

## 4.7 Pay Transparency

The University will not discharge, or otherwise engage in discrimination, against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is:

- a. In response to a formal complaint or charge,
- b. In furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the University, or
- c. Consistent with the University's legal duty to furnish information.

## 5. Related Information

### 5.1 Contact Offices and Contact Information

Assistant Vice President for Title IX, Institutional Equity, and Compliance  
Office of Title IX and Institutional Equity  
University Plaza  
960 S. Broadway Ave., Suite 250  
Boise, ID 83725  
Email: [ReportDiscrimination@boisestate.edu](mailto:ReportDiscrimination@boisestate.edu)  
Phone: (208) 426-1258

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

Gender Equity Center  
Student Union Building  
1910 University Drive  
Boise, ID 83725  
Email: [genderequity@boisestate.edu](mailto:genderequity@boisestate.edu)  
Phone: (208) 426-4259

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](mailto:deanofstudents@boisestate.edu)  
Phone: (208) 426-1527  
<https://www.boisestate.edu/deanofstudents/>

Student Equity  
Student Union Building – Second Floor  
1910 University Drive  
Boise, ID 83725  
Email: [sdi@boisestate.edu](mailto:sdi@boisestate.edu)  
Phone: (208) 426-5950  
<https://www.boisestate.edu/sdi/>

## 5.2 Support Services

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

Boise State University Counseling Services  
1529 Belmont Street – NORCO Building  
Boise, Idaho  
Phone: (208) 426-1459  
[healthservices@boisestate.edu](mailto:healthservices@boisestate.edu)

Faculty Ombuds  
Interactive Learning Center, Room 212  
Boise, Idaho  
Phone: (208) 426-6283  
[facultyombuds@boisestate.edu](mailto:facultyombuds@boisestate.edu)

Gender Equity Center  
Student Union Building  
1910 University Drive  
Boise, ID 83725  
Email: [genderequity@boisestate.edu](mailto:genderequity@boisestate.edu)  
Phone: (208) 426-4259



Human Resources  
2225 W. University Drive – Capitol Village #3  
Boise, Idaho  
Phone: (208) 426-1616  
[hrs@boisestate.edu](mailto:hrs@boisestate.edu)

Office of the Dean of Students  
2100 University Drive - Campus School, Suite 120  
Boise, Idaho  
Phone: (208) 426-1527  
[deanofstudents@boisestate.edu](mailto:deanofstudents@boisestate.edu)

Office of Title IX and Institutional Equity  
University Plaza  
960 S. Broadway Ave., Suite 250  
Boise, Idaho 83725  
Phone: (208) 426-1258  
[complianceandethics@boisestate.edu](mailto:complianceandethics@boisestate.edu)

### **5.3 Pay Transparency Nondiscrimination Provision**

[https://www.dol.gov/sites/dolgov/files/ofccp/pdf/pay-transp\\_%20English\\_formattedESQA508c.pdf](https://www.dol.gov/sites/dolgov/files/ofccp/pdf/pay-transp_%20English_formattedESQA508c.pdf)

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## **Revision History**

May 1997; November 2011; April 2012; November 2018; July 2019; September 2019; December 2019; January 21, 2021; February 18, 2021; December 20, 2022