



**POLICIES AND PROCEDURES**  
**Sexual Harassment Under Title IX**  
**ISUPP 1120**

*POLICY INFORMATION*

**Policy Section:** *Governance/Legal*

**Policy Title:** *Sexual Harassment under Title IX*

**Responsible Executive (RE):** *Office of the President*

**Sponsoring Organization (SO):** *Office of Equal Opportunity and Title IX*

**Effective Date(s):** *TBA*

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**I. INTRODUCTION**

Idaho State University is committed to creating a workplace and educational environment that are free from all forms of Sexual Harassment. The University values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the Grievance Process during what is often a difficult time for all involved. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the University's Education Programs or Activities, the University has developed internal policies and procedures that provide a prompt, fair, and impartial process, decided by the preponderance of the evidence, for those involved in an allegation of Sexual Harassment under Title IX.

This policy applies only to Sexual Harassment under Title IX. Other forms of Harassment are investigated and resolved under ISUPP 1110: *Equal Opportunity, Non-Discrimination and Anti-Harassment*, or other application University conduct policies. For questions of which policies apply in which circumstances, please contact the University's Office of Equal Opportunity and Title IX.

**II. DEFINITIONS**

- A. Adequate Cause. One or more acts or omissions which, singly or in the aggregate, directly and substantially affect or impair an employee's performance of his or her assigned duties or the interests of the University or the Board or is seriously prejudicial to the University

may constitute Adequate Cause and subjects and employee to discipline up to and including dismissal or termination of employment (see SBOE II.L.).

- B. **Advisor.** A person chosen by a party or appointed by the University to accompany the Complainant or Respondent to meetings related to the Grievance Process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any. An advisor may, but is not required to be, an attorney. The University will not pay for either the Complainant or Respondent to have an attorney as an advisor.
- C. **Campus Security Authorities.** Individuals with significant responsibility for Student and campus activities. Campus Security Authorities include Student Affairs/Student conduct staff, Public Safety, coaches, athletic directors, residence life staff, Student activities staff, human resources staff, and advisors to Student organizations. Individuals may be both Mandatory Reporters and Campus Security Authorities.
- D. **Coercion.** Unreasonable pressure for sexual activity. Coercion eliminates a person's ability to freely choose whether or not to participate in sexual activity including various forms of pressure related to threats, intimidation, manipulation or power imbalance.
- E. **Complainant.** An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment under Title IX.
- F. **Confidential Resource.** An employee of the University who is a behavioral health provider and who also has an established doctor / patient relationship with either Party and who is notified of an alleged incident through the course of the provider/patient relationship. A Confidential Resource is not a Mandated Reporter of Sexual Harassment under Title IX, irrespective of Clery Act Clery Act Campus Security Authority status.
- G. **Consent.** A voluntary, affirmative agreement to engage in sexual activity made by persons capable of giving consent. Consent must be informed, freely given, and can be withdrawn at any time. Silence is not consent. A person may be incapable of giving consent based on age or temporary or permanent mental incapacity.
- H. **Discrimination.** Any action, policy, or practice that treats an individual or group less favorably, or has the effect of denying equal access to employment, education, services, or participation in institutional programs or activities, on the basis of a protected characteristic.
- I. **Education Program or Activity.** Locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the prohibited conduct occurs. This also includes any building owned or controlled by a Student Organization that is officially recognized by the University.
- J. **Force.** The use of physical violence, threats, intimidation or coercion that overcomes resistance or bypasses consent.
- K. **Formal Complaint.** A Formal Complaint means a document filed/signed by the Complainant

or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation(s). As used in this policy, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for the purpose by the University) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.

- L. Equal Rights Process Support Team (ERPST). Any investigators, hearing officers, appeal officers, and/or Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- M. Grievance Process. A procedure for objectively assessing complaints of Title IX Sexual Harassment.
- N. Harassment. A form of discrimination and consists of unwelcome conduct based on a protected characteristic that is sufficiently severe, persistent, or pervasive that it interferes with or limits an individual’s ability to participate in or benefit from employment, education, services, or institutional programs or activities.
- O. Hearing Decision-Maker or Panel. Those who have decision-making and sanctioning authority within the University's Formal Grievance process.
- P. Hostile Environment. An environment that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing conduct through verbal, written, graphic, or physical conduct that is severe, pervasive and objectively offensive.
- Q. Intimate Partner Violence. An umbrella term used to describe both Dating Violence and Domestic Violence.
- R. Intimidation. Intimidation is a form of abusive conduct. It includes implied threats and/or conduct that a reasonable person knows or should know would cause a reasonable fear of harm in another person in a similar position as the Complainant for the purposes of deterring them from acting, or for the purpose of forcing another person to act against their will.
- S. Investigator. The person or persons charged by the University with gathering facts about an alleged violation of this policy, synthesizing the evidence, and compiling this information into an investigation report and file of evidence.
- T. Mandatory Reporter. An employee of the University who is obligated by policy to share knowledge, notice, and/or reports of Title IX Sexual Harassment and/or Retaliation with the Office of Equal Opportunity and Title IX. This is not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this policy.

- U. Officials with Authority (OWA). An employee of ISU who has the authority to implement corrective measures on behalf of the University.
- V. Parties: Parties are the Complainant and the Respondent.
- W. Protected Activity. Any good-faith action taken by an individual to report, oppose, or seek remedy for conduct they reasonably believe to be discrimination, harassment, retaliation, or other violations of institutional policy or applicable law, including participating in an investigation, complaint process, hearing, or related proceeding.
- X. Protected Class. Personal characteristics that are protected from discrimination and harassment under federal and Idaho law and institutional policy. These include, but are not limited to, race, color, religion, national origin, sex, pregnancy, age, disability, and veteran status, as well as any other status protected by applicable law. In addition, the institution may, through policy, extend protections to additional characteristics to ensure equal access to employment, education, and participation in institutional programs and activities.
- Y. Remedies. Post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent a recurrence, and restore access to the University's educational program.
- Z. Respondent. An individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment or Retaliation for engaging in a protected activity.
- AA. Retaliation. Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has reported information, made a complaint, testified, assisted, participated, or refused to participate in any manner in an investigation or proceeding, including in an informal resolution process and in grievance procedures. Depending on the nature of the Retaliation, the Retaliatory conduct will be investigated and resolved either under this policy, or under ISUPP 1110: *Equal Opportunity, Non-Discrimination and Anti-Harassment*, whichever is applicable.
- BB. Sexual Harassment Under Title IX. The umbrella category including the offenses of Sexual Assault, Sex-based Stalking, Intimate Partner Violence to include Dating Violence and Domestic Violence, Quid Pro Quo and Unwelcome Conduct.
- CC. Student. All persons accepted for admission to the University, taking courses at the University, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, whether degree or non-degree seeking, and continuing education classes or special programs. Persons who withdraw after allegedly violating this policy, who are not officially enrolled for a particular term but have a continuing relationship with the University, or who have submitted an application for admission are considered Students under this policy.

DD. Unwelcome Conduct. Unwelcome Conduct is conduct that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Programs 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 similar identities, context in which the alleged incident occurred, and any similar previous patterns that may be evidenced.

### **III. POLICY STATEMENT**

Idaho State University prohibits Sexual Harassment under Title IX in all programs and activities of the University. The University will act to remedy all forms of Title IX Sexual Harassment when reported, whether or not the Sexual Harassment rises to the level of creating a hostile environment. The University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination of employment, for any offense under this policy. The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Idaho prohibit Title IX Sexual Harassment, which is a specific form of discriminatory harassment, as an unlawful discriminatory practice. The procedures below may be applied to incidents, patterns, and/or the campus climate, all of which may be addressed and investigated in accordance with this policy.

### **IV. AUTHORITY AND RESPONSIBILITIES**

- A. Mandatory Reporters. The University has designated most employees as Mandatory Reporters. Mandatory Reporters must report any knowledge they have that a member of the community is experiencing Sexual Harassment under Title IX to the Title IX Coordinator, or designee. Failure to comply with Mandatory Reporting obligations is a serious offense and will be considered Adequate Cause which may result in sanctions, including, but not limited to, termination of employment. Suspected violations of Mandatory Reporting obligations will be reported to the Title IX Coordinator or designee and referred to Human Resources for action.
- B. Officials with Authority. ISU has determined that the following administrators are Officials with Authority to address and correct Sexual Harassment Under Title IX. In addition to the Equal Rights Process Support Team, Officials with Authority may also accept notice or complaints on behalf of the University. Officials with Authority include the University President, University Provost and Executive Vice-President, University Vice Presidents, Athletic Director, Assistant Vice President of Human Resources, Chief Security Officer, Office of Equal Opportunity and Title IX staff, and the Dean of Students.

- C. President of the University. The University President has the exclusive authority and duty to implement all Title IX compliance. The University President approves any final decision or action on any Title IX related task or duty. The University President shall carry out all duties required by Federal and State law including, but not limited to, those listed in Idaho Code §33-3733.
- D. Title IX Coordinator. The University official designated to ensure compliance with Title IX and the University's Title IX program. References to the Coordinator throughout this policy may also encompass a Designee of the Coordinator for specific tasks. Consistent with Federal Regulations, the Title IX Coordinator has the primary responsibility for coordinating the University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent Sexual Harassment under Title IX prohibited under this policy. The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy.
- E. Title IX Team. The Title IX Team consists of the Coordinator, Deputy Coordinators, Decision-Makers, Investigators, and any member of the Equal Rights Process Support Team. The Title IX Team is responsible for implementing and overseeing this policy.
- F. University Employees. All University employees, including Faculty, staff, Student employees, graduate Students, and Student residents, are required to immediately report actual or suspected discrimination or harassment to the Office of Equal Opportunity and Title IX. All University employees have a duty to report violations of this policy unless they fall under the "Confidential Employees" designation. Reports should include sufficient information (names, locations, dates, specific facts) to allow the Office of Equal Opportunity and Title IX to investigate, if necessary.
- G. Witnesses. Witnesses (as distinguished from the Parties) who are employees of the University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy. Failure to comply with Witness requirements is a serious offense and will be considered Adequate Cause and subject the Witness to disciplinary action up to and including termination of employment. Suspected violations of Witness obligations will be reported to the Title IX Coordinator or designee and referred to Human Resources for action.

## **V. SCOPE AND JURISDICTION**

- A. Jurisdiction of the University
  - 1. Individuals and Organizations.
    - a. The Respondent must be a member of the University community in order for its

policies to apply. This community includes, but is not limited to Students, Student Organizations, Faculty, Administrators, Staff, and third parties such as guests, visitors, vendors, volunteers, invitees, contractors, subcontractors, conference and camp attendees, as well as University sponsored non-credit event participants.

- b. University guests, visitors, volunteers, invitees, contractors, subcontractors, vendors, conference attendees, camp attendees and anyone else who uses University space or services are expected to be compliant with all University policies. Failure to do so may result in removal from campus outside of this process.
- c. When the Respondent is not a member of the University's community, supportive measures, remedies, and resources are accessible to the Complainant by contacting the University's Title IX Coordinator.

## 2. Geography.

- a. This policy applies to the Education Programs or Activities of the University, to conduct that takes place on campus, or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by University's recognized Student organizations in the United States.
- b. This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to the University's Educational Programs or Activities. Because of this, the University's jurisdiction may also extend to off-campus, and/or online conduct in the United States.

## 3. Digital Communications.

- a. University policies are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's Education Programs or Activities or use of University networks, technology, or equipment.
- b. The Title IX Coordinator determines whether conduct affects a substantial University interest. A substantial University interest includes:
  - i. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeated violations of any local, state, tribal, or federal law;
  - ii. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any Student or other individual;
  - iii. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or

- iv. Any situation that is detrimental to the educational interests or mission of the University.
- B. Allegations of sexual harassment to which this policy applies can only be addressed through this policy, and may not be addressed under any other University policy. To the extent that this policy conflicts with any other University policy, this policy takes primacy. Other sexual misconduct outside the scope of this policy is addressed in ISUPP 1110: *Equal Opportunity Non-Discrimination and Anti-Harassment*.

## **VI. CONFIDENTIALITY**

- A. In the context of Title IX, Confidentiality means limiting disclosure of information related to a report of sexual misconduct to those with a “need to know” in order to perform employment related duties to assist in the assessment, investigation, implementation of supportive measures, and resolution, and honoring a Complainant’s request for privacy to the extent possible, consistent with the University’s obligations to investigate and address misconduct.
- B. All employees who are involved in the University’s response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law.
- C. Confidential information will not be shared with the general public, other Students or employees, or uninvolved administrators or supervisors; however, the information that may be shared changes with the different stages of the reporting and investigation process.
- D. The University has designated individuals who have the ability to have privileged communications as Confidential Resources. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource may not reveal the information to any third party unless an applicable law or court order requires or permits disclosure of such information. Non-identifiable information may be shared by Confidential Resources for statistical tracking as required by the federal Clery Act. Other information may be shared as required by law.
- E. Confidential information is protected and only shared on a need-to-know basis. The Title IX Team will practice discretion and only speak with those individuals who require the information in order to reach a resolution.
- F. Information protected by the Clery Act will not be included in public records.
- G. Parties reporting Sexual Harassment under Title IX should be aware that under the Clery Act, the University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.



- H. Every effort is made by the University to preserve the privacy of reports. ISU will not share the identity of any individual who has made a report or complaint of Sexual Harassment under Title IX, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.
- I. The University reserves the right to designate which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to FERPA and any other applicable laws or regulations.
- J. Limits of Confidentiality. Title IX does not guarantee that a person can make an anonymous report and remain completely unidentified throughout the process.
  - 1. At the Formal Investigation phase, the parties have a right to notice of a complaint in order to prepare a defense. Title IX regulations require that the identity of the Complainant be shared with the Respondent during a Formal Grievance Process.
  - 2. University Employees cannot keep reports of Sexual Harassment Under Title IX confidential. All ISU employees, except those categorized as Confidential Resources, are Mandatory Reporters and required to report to the Office of Equal Opportunity and Title IX.

## **VII. PROHIBITED CONDUCT**

- A. Title IX Sexual Harassment.
  - 1. Sexual Harassment is an umbrella term defined as conduct on the basis of sex that satisfies one or more of the following:
    - a. A University employee conditioning the provision of an aid, benefit or service of the University on an individual's participation in unwelcome sexual conduct, also known as Quid Pro Quo;
    - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Programs or Activities; and/or,
    - c. Sex-based Stalking, Sexual Assault, and/or Intimate Partner Violence.
- B. Sexual Assault.
  - 1. Any sexual act directed against another person without their consent, including instances where the Complainant is incapable of giving consent is a Sexual Assault. This includes the following:

- a. Rape: the 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 that person's consent, including instances where the person is incapable of giving consent based on age or temporary or permanent mental incapacity.
- b. Fondling: 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 or 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.
- c. Incest: Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d. Statutory rape: Nonforcible sexual intercourse with a person who is under the statutory age of consent.

C. Domestic Violence.

- 1. Domestic Violence is defined as a felony or misdemeanor crime of violence on the basis of sex committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

D. Dating Violence.

- 1. Dating Violence is defined as violence on the basis of sex committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be based on the reporting Party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, 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.

E. Stalking.

- 1. Stalking is defined as engaging in a course of conduct on the basis of sex directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others, or suffer substantial emotional distress. For the purposes of this definition:
  - a. Course of conduct means two (2) or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action,

method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

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

F. Retaliation.

- 1. Retaliation against individuals who report or participate in an investigation of Title IX Sexual misconduct is strictly prohibited.
- 2. Acts of alleged Retaliation that are not by themselves violations of this policy will be addressed through the grievance process found in ISUPP 1100: *Equal Opportunity, Non-Discrimination and Anti-Harassment*.
- 3. Acts of alleged Retaliation should be reported immediately to the Title IX Coordinator. ISU will take appropriate steps to protect individuals who are subjected to Retaliation.
- 4. Counterclaims not made in good faith will be considered retaliatory and may constitute a violation of this policy.

G. False Allegations and Evidence.

- 1. Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and considered Adequate Cause that will be subject to appropriate disciplinary action.
- 2. Witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence after being directed to preserve such evidence, or deliberately mislead an official conducting an investigation may be subject to discipline under ISU policy. Such behavior is Adequate Cause for disciplinary action and will be referred to Human Resources.

## **VIII. REPORTING OPTIONS**

- A. Notice Occurs when an Employee, Student, or third party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of Sexual Harassment under Title IX.
- B. Reporting. Notice or complaints of Sexual Harassment under Title IX may be made using any of the following options:
  - 1. File a complaint with or give verbal notice to the Title IX Coordinator, the Director of Equal Opportunity and Title IX, or member of the Title IX Team. Such a report may be made at any time (including during non-business hours) by using the telephone number

or e-mail address, or by mail to the office address listed below.

Title IX Coordinator

Office of Equal Opportunity and Title IX

(208) 282-1439

Email: [titleix@isu.edu](mailto:titleix@isu.edu)

Web: <https://www.isu.edu/title-ix/>

2. Report online, using the reporting form which is available on the University's Title IX webpage at <https://www.isu.edu/title-ix/>. Anonymous reports are accepted, and may result in the need for an investigation. Such reports do complicate the University's ability to provide the Supportive Measures to all Complainants, and may impede the University's ability to conduct a thorough investigative process; therefore, whenever possible, the University encourages Complainants to report on the record. Reporting carries no obligation to initiate a Formal Complaint.
- C. Receiving a Report. When the Title IX Coordinator or designee becomes aware of possible Title IX Sexual Harassment, the Title IX Coordinator, or designees, will:
1. Conduct an initial assessment of the situation to determine if it meets the criteria for the application of this policy;
  2. Attempt to identify the person who was alleged to be harmed;
  3. Assess the facts of the individual situation;
  4. Determine the University's jurisdiction;
  5. Identify any Supportive Measures that may be appropriate to stop harmful behaviors during the assessment and investigation process;
  6. Identify if there is any perishable evidence that needs to be collected while the assessment is being conducted;
  7. Attempt to contact the Complainant to discuss Supportive Measures and explain the process for filing a complaint;
  8. Determine what interventions need to be taken if a Complainant does not respond; and,
  9. When applicable, conduct a Violence Risk Assessment.
- D. Violence Risk Assessment.
1. The Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the CARE Team as part of the initial assessment.
  2. A VRA is required prior to initiating an emergency removal.
  3. Where a VRA is required by the Title IX Coordinator, the Respondent refusing to

cooperate is Adequate Cause for disciplinary action and may result in a charge of failure to comply with the appropriate Student or employee conduct process, or any other applicable University policy. Such Adequate Cause may result in sanctions up to and including termination of employment, or expulsion from the University.

a. Instituting an Emergency Removal.

- i. The University can act to remove a Respondent entirely or partially from its Education Programs or Activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any Student or other individual justifies removal.
- ii. Risk analysis is performed by the Title IX Coordinator in conjunction with the CARE Team, using standard objective Violence Risk Assessment (VRA) procedures.
- iii. In all cases in which emergency removal is imposed, the Respondent(s) will be given Notice of the action and the option to request to meet with the Title IX Coordinator and a Representative from the CARE Team to challenge the decision immediately following the removal, to show cause why the action/removal should not be implemented or should be modified.

iv. Show Cause Meeting.

- a. A Show Cause Meeting is not a hearing on the merits of the allegation(s), but rather an administrative process to determine solely whether the emergency removal is appropriate.
  - b. The Respondent must request a Show Cause Meeting within two (2) business days of notice being given. If the meeting is not requested within 2 (two) business days of notice being given, objections to the emergency removal will be deemed waived.
  - c. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.
  - d. A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting.
- v. There is no appeal process for emergency removal decisions. The Title IX Coordinator has the sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration.
- vi. The University will implement the least restrictive emergency actions possible in light of the circumstances and individual safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to:

- a. Removing a Student from a residence hall;
    - b. Temporarily re-assigning an employee;
    - c. Restricting a Student's or Employee's access to or use of facilities or equipment;
    - d. Suspending a Student's participation in extracurricular activities, Student employment, Student organizational leadership, or intercollegiate/intramural athletics.
    - e. At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the Parties.
  - b. Violation of an emergency removal under this policy is Adequate Cause and as such will be referred to Human Resources or the Dean of Students as grounds for disciplinary action, which may include expulsion or termination of employment.
- E. Complainant Requests to Not Proceed.
1. If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.
  2. The University may be compelled to act on alleged Employee or Student misconduct irrespective of a Complainant's wishes.
  3. If the Complainant does not wish to proceed with a Formal Investigation, the Title IX Coordinator has the discretion to file a Formal Complaint on behalf of the University. The Title IX Coordinator may consider, among other things:
    - a. Whether there is a pattern of alleged misconduct involving the same Respondent;
    - b. Whether non-participation by the Complainant negatively impacts the availability of evidence and the University's ability to pursue a Formal Grievance Process fairly and effectively;
    - c. Whether the allegation involves the use of violence, weapons, or other similar factors; and / or,
    - d. Whether the safety of the University community requires filing a Formal Complaint.
  4. When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this policy irrespective of their level of participation.
  5. If the Complainant chooses not to participate, an Advisor may be appointed as proxy

- for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.
6. The University's ability to remedy and respond to notice may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process.
  7. When the Title IX Coordinator files a Formal Complaint, they are not a Complainant or otherwise a party. The Complainant is the individual who is alleged to be the Complainant of conduct that could constitute a violation of this policy.
  8. If the Complainant elects to take no action, the Complainant may still decide to pursue a Formal Complaint at a later date.
- F. Upon a Complainant making a formal complaint, the University will initiate at least one of three responses:
1. Offer Supportive Measures; and/or,
  2. An Informal Resolution through the Formal Grievance Process; and/or,
  3. A full investigation and hearing through the Formal Grievance Process.
- G. Supportive Measures. Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available, and without fee or charge to the parties to restore or preserve access to the University's Education Programs or Activities, including measures designed to protect the safety of all parties or the University's educational environment, and/or deter Sexual Harassment under Title IX.
1. The University will offer and implement appropriate and reasonable Supportive Measures to the Parties upon notice of alleged Sexual Harassment under Title IX.
  2. Supportive Measures can be implemented by the Title IX Coordinator for both Complainant and Respondent.
  3. Supportive Measures may be implemented with or without filing a Formal Complaint.
  4. Supportive Measures are designed to protect the safety of all Parties, deter Title IX Sexual Harassment, and / or protect the educational environment. Supportive Measures include, but are not limited to:
    - a. Referral to counseling, medical, or other healthcare services;
    - b. Extensions of deadlines or other course-related adjustments;
    - c. Modifications of work or class schedules;
    - d. Provision of campus safety escort services;
    - e. No Contact Orders which apply to both parties. Violations of no contact orders will be referred to the appropriate Student or Employee conduct processes for

enforcement and will be considered Adequate Cause for termination of employment and/or expulsion from the University;

- f. Changes in work or housing arrangements;
- g. Authorizing administrative leave;
- h. Student financial aid counseling;
- i. Safety planning;
- j. Allowing a Student to withdraw or take grades of incomplete without financial penalty;
- k. Increased security and monitoring of campus areas; and/or,
- l. Other similar measures as deemed appropriate by the Title IX Coordinator

#### H. Informal Resolutions.

1. In cases in which the Complainant requests no Grievance Process and the circumstances allow the University to honor that request, the University will offer Informal Resolution options, Supportive Measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.
2. An Informal Resolution is not permitted in instances where an employee of the University is alleged to have sexually harassed a Student.
3. The Title IX Coordinator has discretion to engage in Informal Resolutions. A Respondent may initiate an Informal Resolution by contacting the Title IX Coordinator and submitting a Formal Complaint, as defined above. A Formal Complaint must be filed before an Informal Resolution can be pursued.
4. It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process.
5. Any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.
6. Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.
7. The University will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

#### I. Formal Grievance Process

1. The Formal Grievance Process involves an objective evaluation of all relevant evidence



obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation.

2. Timeliness

- a. The University will act promptly on all allegations once it has received notice or a formal complaint. Investigations are completed expeditiously, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.
- b. The Title IX Coordinator will provide notice and rationale for any significant extensions or delays to the parties as appropriate, as well as an estimate of additional time needed to complete the process.

3. Notice of Investigation and Allegations. The Title IX Coordinator or trained designee will provide written notice of the investigation and allegations (the "NOIA") to the Respondent, including the identity of the Complainant, upon commencement of the Formal Grievance Process. This notification facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

J. Counterclaims. The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims if an assessment determines that the counterclaim is made in good faith. Counterclaims made for purposes of retaliation are not permitted.

K. Right to an Advisor. In a Formal Grievance Process, including when seeking Informal Resolution, the Parties each have the right to an Advisor.

1. The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process.
2. In addition to advising the party throughout the process, the Advisor will perform all questioning for cross-examination during a hearing.
3. The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.
  - a. A Witness cannot be an Advisor.
  - b. "Available" means the party cannot insist on an Advisor who doesn't have inclination, time, or availability.
  - c. The Advisor cannot have institutionally conflicting roles, such as being a Title IX

administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions or oversees multiple parties involved in the process.

4. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout.
5. Advisors are a resource and serve in a supportive role in the investigative and resolution process.
6. Advisors are not to speak on or act on behalf of either party. Each party is responsible for presenting their own statements and acting on their own behalf throughout the process.
7. If a party does not choose an Advisor, the University may select an individual to serve in this role for the limited purpose of conducting the cross-examination.

L. Equal Rights Process Support Team

1. The Formal Grievance Process relies on the Equal Rights Process Support Team (ERPST) to carry out the process. The University may choose to use external trained third-party neutral professionals to serve as investigators, hearing facilitator, or hearing decision-maker.
2. Equal Rights Process Support Team Roles. Members of the ERPST are trained annually, and can serve in the following roles, at the direction of the Title IX Coordinator or trained designee:
  - a. Advisor to the parties;
  - b. Facilitator of informal resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices);
  - c. Perform or assist with initial assessment;
  - d. Complaint Investigator;
  - e. Hearing facilitator (process administrator, no decision-making role)
  - f. Decision-maker regarding the complaint
  - g. Appeal Decision-maker
3. ERPST Training. All ERPST members are required to attend annual trainings. The materials used to train all members of the ERPST, including Title IX Coordinators, investigators, decision-makers, and any person who facilitates a resolution process are publicly posted here: <https://www.isu.edu/aaction/>.

M. Appointment of Investigators. Once the decision to commence a Formal Investigation is made, the Title IX Coordinator, with the Senior Investigator, appoints members of the ERPST to conduct the investigation.

## 1. Impartiality

- a. The Title IX Coordinator or Designee will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases.
- b. Any concerns about bias or conflict of interest in the investigative process should be raised with the Title IX Coordinator with supporting evidence.
- 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 by the applicable standard of proof.
- d. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or Witness.

## N. Dismissal.

### 1. Any Formal Complaint is subject to Mandatory or Discretionary dismissal.

- a. Mandatory. The University must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:
  - i. The conduct alleged in the formal complaint would not constitute Title IX Sexual Harassment as defined in this policy, even if proved; and/or
  - ii. The conduct did not occur in an Educational Program or Activity controlled by the University (including buildings or property controlled by recognized Student Organizations); and/or,
  - iii. The conduct did not occur against a person in the United States.
- b. Discretionary
  - i. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
  - ii. The Respondent is no longer enrolled in or employed by the University; or
  - iii. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

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

### 3. This dismissal decision is appealable by any party under the procedures for appeals in Section XII, below.

### 4. Any allegation dismissed under this Title IX policy can still be investigated under a

different University policy.

O. Effect of withdrawal or resignation while charges are pending:

1. Students.

- a. If a Student has an allegation pending for violation of the policy on Sexual Harassment under Title IX the University may place a hold on a Student's ability to graduate and/or receive an official transcript/diploma as a Student facing disciplinary proceedings is not in good standing to graduate.
- b. Should a Student Respondent permanently withdraw from the University, the resolution process pauses, as the University no longer has disciplinary jurisdiction over the withdrawn Student. However, the University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Sexual Harassment under Title IX.
- c. The Student who withdraws or leaves while the process is pending may not return to the University without resolving any pending investigations or disciplinary matters and may be subject to additional University policies before reenrollment is permitted. Such exclusion applies to all University campuses. They may also be barred from University property and/or events.
- d. If the Student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that Student is not permitted to return to ISU unless and until all sanctions have been satisfied.
- e. During the resolution process, the University may put a hold on a responding Student's transcript or place a notation on a responding Student's transcript or dean's disciplinary certification that a disciplinary matter is pending.

2. Employees.

- a. Should an employee Respondent resign with unresolved allegations pending, the Title IX Coordinator will assess whether a dismissal is appropriate, or whether there is enough evidence to proceed absent the Respondent's participation.
- b. If the investigation continues, Sanctions may include a bar from future University employment.
- c. If an employee retires or resigns during an investigation in which the employee is named as a Respondent, and is subsequently rehired by the University, the Title IX Coordinator has the discretion to resume the investigation process.
- d. At the discretion of the Title IX Coordinator, investigatory findings and reports by the Title IX Coordinator will be included in the personnel file of an employee who

resigns or retires from the University during a pending investigation.

## **IX. INVESTIGATIVE PROCESS**

- A. A Formal Complaint results in an investigation. The investigation is an impartial, fact-finding process designed to gather both exculpatory and inculpatory relevant evidence from all available sources. The Respondent is presumed to be not responsible for a violation of this policy until the process concludes and a determination is made by the decision maker(s).
- B. Investigators are trained in the definition of Title IX Sexual Harassment, the jurisdiction of the policy, how to conduct an investigation, interviews, gathering and evaluating evidence, maintaining impartiality, and report writing.
- C. Procedural Rights During the Investigation.
  - 1. Both Parties may submit evidence, identify Witnesses, and offer written or oral statements.
  - 2. Parties will have an equal opportunity to participate and may be accompanied by an Advisor of their choice.
  - 3. Interviews may be conducted in person or by audio/video recording. All interviews are recorded by investigators regardless of format. No other recording of interviews is authorized.
  - 4. ISU does not restrict either Party's ability to discuss the allegations or gather and present relevant evidence.
- D. Evidence.
  - 1. Evidence falls under two categories:
    - a. Relevant Evidence. Evidence that tends to prove or disprove an issue in the complaint.
    - b. Directly Related Evidence. Evidence upon which the University does not intend to rely on in reaching a determination regarding responsibility, whether obtained from a party or other source. Directly Related Evidence may be connected to the complaint, but tends neither to prove nor disprove a violation. Directly related Evidence will not be relied upon by the investigative report.
  - 2. The investigation does not consider:
    - a. Incidents not directly related to the possible violation, unless they evidence a pattern of similar behavior;
    - b. The character of the Parties;

- c. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence 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.
  - d. Evidence or information that is protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- E. Draft Investigative Report. Upon completing the investigation, the investigators will prepare a comprehensive draft report that fairly summarizes the investigation, including Witness interviews and all relevant physical and documentary evidence. This report does not include a finding of responsibility.
- F. Access to Evidence and Review.
  - 1. Both parties will be given equal opportunity to inspect and review the draft report, along with all evidence directly related to the allegations in the Formal Complaint. This includes evidence that ISU does not plan to rely on when determining responsibility, as well as any inculpatory or exculpatory evidence, regardless of its source. This ensures both parties have the opportunity to respond meaningfully before the investigation concludes. Parties will have ten (10) business days to review and respond to the draft report.
  - 2. During this ten (10) business day period, each Party may:
    - a. Review the draft report and supporting evidence;
    - b. Submit corrections, context, or clarifications; and/or,
    - c. Submit new evidence.
  - 3. All comments by both Parties will be considered before finalizing the report.
- G. Final Investigative Report. The final investigative report will be shared with both Parties and their Advisors at least ten (10) business days before the scheduled live hearing, unless waived by agreement of the Parties.

## **X. HEARING PROCESS**

- A. The final report is shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing, unless waived by agreement of the Parties. The parties are also provided with a file of any directly related evidence that was not included in the report.
- B. Notice of Hearing.

1. The hearing will occur no less than ten (10) business days from the conclusion of the investigation, unless all Parties and the Decision-maker agree to an expedited timeline. The Chair or designee will determine the hearing time.
2. Hearings for violations near or after the end of an academic term will typically be held immediately after the term or during the summer to meet resolution timelines.

C. Pre-Hearing.

1. The Chair will provide the names of participants, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days before the hearing. During the ten (10) business day period prior to the hearing, Parties can continue to review and comment on the final report and evidence, to be shared with the Chair.
2. Any witness must have been interviewed by the Investigator(s) unless all parties and the Chair agree to their participation.
3. The parties will be given a list of Decision-maker(s) names at least five (5) business days in advance. Objections to any Decision-maker must be submitted in writing to the Title IX Coordinator within two (2) business days prior to the hearing. Decision-makers will only be removed for bias or conflict of interest.
4. Evidence offered at the hearing must have been considered by the Investigator(s) unless all parties and the Chair agree to its presentation. If not, the hearing will be delayed, and the investigation reopened.
5. The Title IX Coordinator will provide the Decision-maker(s) a list of all Parties, witnesses, and Advisors at least five (5) business days in advance. Decision-makers must recuse themselves if they cannot make an objective determination or have a bias or conflict of interest.

D. Pre-Hearing Meetings.

1. The Chair may convene pre-hearing meetings to allow Parties/Advisors to submit questions/topics for discussion at the hearing.
2. With agreement of the Parties, the Chair may decide certain Witnesses need not be present if their testimony is summarized by the Investigator(s).
3. Arguments about relevance of evidence identified in the Investigative Report can be made in the pre-hearing meeting, but will be decided upon by the Chair at the Hearing.
4. The Chair must consult with the Office of General Counsel and/or the Title IX Coordinator, as needed.

E. Alternative Hearing Options.

1. Live hearings may be conducted with all Parties physically present or virtually, allowing

participants to see and hear each other. Parties preferring or needing alternative arrangements should request them from the Title IX Coordinator or Chair at least five (5) business days prior to the hearing.

2. Remote options may also be utilized for Witnesses who cannot appear in person. Witnesses should inform the Title IX Coordinator or Chair at least five (5) business days prior to the hearing of the need for remote options.

F. Hearing Participants.

1. Participants will include the Chair, panelists, facilitator, Investigator(s), Parties, Advisors, Witnesses, and those providing authorized accommodations or assistive services.
2. The Decision-maker(s) will make determinations on allegations of Sexual Harassment under Title IX, and other alleged policy violations occurring in concert.
3. The Chair will answer procedural questions.
4. Witnesses will respond to factual questions from the Parties or Decision-maker(s) on their own behalf.
5. The Chair will allow Witnesses with relevant information to respond to specific questions from the Decision-maker(s). The Witness will then be excused.
6. The Chair will document rationale for exclusions/inclusions.

G. Joint hearings.

1. In hearings with multiple Respondents or Complainants, allegations will be heard jointly unless the Title IX Coordinator permits separate hearings for compelling reasons.
2. Separate determinations of responsibility will be made for each Respondent for each alleged violation.

H. Order of Hearings.

1. Introductions and Procedure. The Chair explains procedures and introduces participants. Final challenges or recusals of the Decision-maker(s) are addressed. A facilitator manages logistics.
2. Investigator Presents Report. The Investigator(s) will summarize the report and be subject to questioning by the Decision-maker(s) and the parties. Opinions on credibility or recommended findings are not to be requested.
3. Testimony and Questioning. Parties and Witnesses provide information in turn, subject to questioning. Cross-examination may occur in separate rooms with technology. The Chair determines relevance of all questions and may disallow irrelevant, repetitive, or abusive questions. Bias issues may be addressed.

- I. Refusal to Submit to Cross-Examination and Inferences. Decision-maker(s) may rely on



all relevant evidence but may not draw inferences solely from absence or refusal to answer. Rules of decorum must be followed.

- J. Recording Hearings. Hearings are recorded for appeals. Parties may not record. Recordings are available in a controlled environment with Title IX Coordinator permission.
- K. Deliberations.
  - 1. Decision-maker(s) will deliberate in closed session and make a finding based on the preponderance of evidence.
  - 2. If the Decision-maker(s) makes a finding of responsibility, the Decision-maker will also recommend sanctions.
  - 3. The Decision-Maker(s) must prepare a written deliberation statement.
- L. Notice of Outcome.
  - 1. The Title IX Coordinator prepares a Notice of Outcome, including the determination, rationale, and sanction(s), and share it with the Parties and Advisors simultaneously in writing within three (3) business days; however, the timeline may be extended at the Chair's discretion with communication to the Parties.
  - 2. Notification may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official ISU records, or emailed to the parties' ISU-issued email or otherwise approved account. Once the notification has been mailed, emailed, and/or delivered in-person, it will be presumptively delivered.

## **XI. PENALTIES / SANCTIONS**

- A. A Sanction is a consequence imposed by the University on a Respondent who is found to have violated this policy.
- B. Factors considered when determining a sanction/responsive action may include, but are not limited to:
  - 1. The nature, severity of, and circumstances surrounding the violation(s);
  - 2. The Respondent's disciplinary history;
  - 3. Previous allegations or allegations involving similar conduct;
  - 4. The need for sanctions/responsive actions to bring an end to the Sexual Harassment under Title IX;
  - 5. The need for sanctions/responsive actions to prevent the future recurrence of Sexual Harassment under Title IX;

6. The need to remedy the effects of the Title IX Sexual Harassment on the Complainant and the community;
  7. The impact on the parties;
  8. Any other information deemed relevant by the Decision-maker(s).
- C. The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.
  - D. 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.
  - E. The sanctions for Students can be found in ISUPP 5000: *Student Code of Conduct* and include University and/or Housing probation, suspension, or expulsion; loss of University privileges which may include access to locations, participation in programs, status in organizations, no contact orders, etc.); revocation of admission and/or degree; and withholding of a degree.
  - F. Employee sanctions. Responsive actions for an employee who is determined to have engaged in Sexual Harassment under Title IX may include any disciplinary action allowed under any University policy. In addition to or in place of those sanctions, the University may assign any other sanctions as deemed appropriate, up to and including termination of employment. Sanctions may also include a bar of future employment at the University.
  - G. Long-Term remedies. Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the Sexual Harassment under Title IX, remedy the effects, and prevent reoccurrence.
    1. At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the Parties even if no policy violation is found.
    2. When no policy violation is found, the Title IX Coordinator will address any remedies owed by the University to the Respondent to ensure no effective denial of educational access.
    3. The University will reasonably maintain the privacy of any long-term remedies in accordance with applicable law and to the extent privacy does not impair the University's ability to provide these remedies.
  - H. Failure to Comply.
    1. The Title IX Coordinator is responsible for the effective implementation of any remedies or sanctions.
    2. All Respondents are required to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the Title IX

Coordinator, or Designee (including the Appeal Chair/Panel).

3. Evidence of compliance with sanctions or remedies must be provided to the Title IX Coordinator, or designee, by the date required by the Title IX Coordinator.
4. Failure by a Supervisor to enforce sanctions may be considered Adequate Cause and result in disciplinary action up to and including termination of employment.
5. Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension or expulsion from the University if a Student, or termination of employment if an employee.
6. Suspension or expulsion will be noted on a Student's official transcript. Employees may receive additional sanctions from Human Resources up to and including termination.
7. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator or designee.

## **XII. APPEALS PROCESS**

### **A. Appeals are limited to the following grounds:**

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available to the appellant at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
3. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

### **B. Request for Appeal.**

1. Any party may file a request for appeal ("Request for Appeal").
2. The Request for Appeal must be submitted in writing to the Title IX Coordinator within seven (7) business days of the delivery of the Notice of Outcome.
3. The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

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

### **D. If any of the grounds in the Request for Appeal meet the grounds in this policy, the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when**

appropriate, the Investigators and/or the original Decision-maker(s).

- E. The other Party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a copy of the request with the approved grounds for appeal.
- F. The Part(ies) and their Advisors will be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all Parties for review and comment.
- G. The non-appealing Party (if any) may also choose to raise a new ground for appeal at this time. If so, that appeal will be reviewed for standing by the Appeal Chair and either denied or approved.
  - 1. If approved, that appeal will be forwarded to the Party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary.
  - 2. The Party, Investigator(s) and/ original Decision-maker(s) will submit their responses in three (3) business days.
  - 3. The Appeal Chair will circulate the appeal for review and comment by all Parties.
  - 4. Neither Party may submit any new requests for appeal after this time period.
- H. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses. These will be shared with the Appeal Panel.
- I. The panel will usually render a decision in no more than three (3) business days; however, the timeline may be extended at the Chair's discretion with communication to the Parties.
- J. All decisions apply the preponderance of the evidence standard through a majority vote.
- K. A three-member appeal panel chosen from the ERPST will be designated by the Title IX Coordinator. No appeal members will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.
- L. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.
- M. Sanctions during the appeals process
  - 1. Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive Measures may be reinstated, subject to the same Supportive Measure

procedures above.

2. If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.
  3. ISU may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.
- N. Appeal Considerations. Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
1. Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
  2. An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
  3. The Appeal Chair/Panel may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
  4. Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration, at the discretion of the Title IX Coordinator. The decision of the original Investigator(s) and/or Decision-maker(s) is final.
  5. In rare cases where an appealable error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
  6. In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status.

### **C. TRAINING AND AWARENESS**

- A. The Title IX Coordinator will ensure all incoming Students receive training that indicates the process of reporting Title IX Sexual Harassment and where to obtain information related to that process.
- B. Faculty, Staff, and Students will be given the opportunity to participate in regular training

- C. Campus Security Authorities and Officials with Authority will be provided annual training in Title IX Sexual Harassment.
- D. Title IX office provides the required training and designs programs and awareness for Faculty, Staff, and Students in compliance with all state and federal regulations.

#### **CI. APPLICABLE LAWS AND RELATED POLICIES**

- A. 34 CFR Part 106.45
- B. 34 CFR 99 106.2(r)
- C. 34 CFR 106.8(a)
- D. 34 CFR 106.45(b)(1)(x)
- E. Title IX of the Education Amendments Act (1972);
- F. Idaho Code § 18-6101
- G. Idaho Code § 18-7902,
- H. Idaho Code § 18-7905,
- I. Idaho Code § 18-7906;
- J. Idaho Human Rights Act;
- K. Idaho State Board of Education Governing Policies and Procedures
- L. Idaho State Board of Education Governing Policies and Procedures II.L.
- M. ISUPP 1080 *Protection of Minors*
- N. ISUPP 1040 *Alcoholic Beverage Permitting*
- O. ISUPP 1050 *Clery Act Compliance*
- P. ISUPP 3090 *Grievance Procedure for Non-Classified Employees*
- Q. ISUPP 3130 *Disciplinary Action for Non-Classified Staff*
- R. ISUPP 3160 *Classified Employees Problem-Solving, Due Process and Appeal Procedure*
- S. ISUPP 3190 *Disciplinary Action for Classified Staff*
- T. ISUPP 4041 *Grievance Procedures for Institutional Faculty*
- U. ISUPP 5000 *Student Code of Conduct*
- V. ISUPP 9000 *Possession of Firearms*
- W. ISUPP 9040 *Smoke Free Campus*