

# 6100 - Title IX Sexual Harassment

## Owner:

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## A. STATEMENT OF PURPOSE

**A-1.** The core purpose of this policy is the prohibition of all forms of sexual harassment.

**A-2.** This policy is designed to treat all parties equally. All provisions of this policy must be interpreted as applying equally to both parties.

**A-3.** The University presumes that the respondent is not responsible for any conduct alleged in a report or formal complaint until a determination regarding responsibility is made at the conclusion of this grievance process.

**B. APPLICABILITY.** This policy applies to sexual harassment occurring in a University education program or activity and against a person while in the United States. Allegations of sexual harassment to which this policy applies can only be addressed through this policy, and may not be addressed by any other University policy. To the extent this policy conflicts with any other University policy, this policy shall control. Other sexual misconduct is addressed under other University policies.

**C. VIOLATION.** Sexual harassment, as defined in this policy, is prohibited.

## D. DEFINITIONS

**D-1. Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator or any University official who has authority to institute corrective measures on behalf of the University. The University officials with authority to institute corrective measures on behalf of the University include the president, provost, vice presidents, vice provosts, associate vice presidents, associate vice provosts, Dean of Students, director of Housing and Residence Life, director of Fraternity and Sorority Life, executive director of Public Safety and Security, Title IX Coordinator, senior executive in Human Resources, deans, associate deans, department chairs, Athletic Director, Associate Athletic Director for NCAA compliance, Center executive officers, Chief Diversity Officer, and the Internal Auditor.

**D-2. Advisor** means a person chosen by a party or appointed by the University to accompany the party to meetings, hearings, or interviews related to the grievance process and to conduct cross-examination for the party at the hearing, if any.

**D-3. Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. If the complainant is under 18 years of age, the complainant's parent or guardian may also be considered a complainant.

**D-4. Consent** is knowing, voluntary, and clear permission by word or action to engage in sexual activity. Consent can be withdrawn at any time.

**D-5. Dating violence** is violence on the basis of sex committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

**D-6. Day(s)** means a business day that the university is open for normal operation, not including Saturdays, Sundays, fall recess, winter recess, spring recess, or University holidays.

**D-7. Domestic violence** is violence 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; by a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner; by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Idaho; or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family laws of Idaho.

**D-8. Education program or activity** includes locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University

**D-9. Formal complaint** means a document filed with the Title IX Coordinator in accordance with section (E-2) alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment.

**D-10. Good cause**, when referring to the extension of any deadline, may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

**D-11. Hearing administrator.** The hearing administrator shall be responsible for ensuring that the administrative duties relating to the live hearing process are carried out in accordance with this policy. The hearing administrator shall be the senior executive of Human Resources in cases in which the respondent is an employee, and the Dean of Students in all other cases.

**D-12. Investigator** means the person or persons charged by the University with investigating a formal complaint and drafting the final investigative report.

**D-13. Party** means either the complainant(s) or respondent(s). Parties includes the complainant(s) and respondent(s), collectively.

**D-14. Relevant evidence** means any evidence that tends to make a fact more or less probable than it would be without the evidence.

**a.** Questions and evidence about the complainant's sexual predisposition or prior sexual behaviors are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

**b.** Relevant evidence does not include a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in their professional or paraprofessional capacity, or assisting in the capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the party gives voluntary written consent to use the records in the grievance process and hearing.

**D-15. Remedies** means any measures implemented after a finding of responsibility that is designed to restore or preserve the complainant's equal access to the University's education program or activity. Such remedies may include the same measures implemented as supportive measures, but may be disciplinary or punitive in nature, and may burden the respondent.

**D-16. Report of sexual harassment** means any situation in which the University has actual knowledge of an alleged incident of sexual harassment occurring in an education program or activity.

**D-17. Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. If the respondent is under 18 years of age, the respondent's parent or guardian may also act on behalf of the respondent.

**D-18. Sexual assault** means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent, including the following:

**a. Rape:** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.

**b. Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.

**c. Sexual assault with an object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.

**d. Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.

**e. Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**f. Statutory rape:** Sexual intercourse with a person who is under the statutory age of consent.

**D-19. Sexual harassment** means 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;

**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 program or activity; or

**c.** Sexual assault, dating violence, domestic violence, or stalking.

**D-20. Stalking** means engaging in a course of conduct 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.

**D-21. Supportive measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed

to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment.

**D-22. Title IX Coordinator** means at least one official designated by the University to ensure compliance with Title IX and the University's Title IX program. References to the Title IX Coordinator may also encompass a designee of the Title IX Coordinator for specific tasks.

## **E. RESPONSE TO REPORT OF SEXUAL HARASSMENT**

**E-1. Receipt of Report.** Upon receipt of a report of sexual harassment the Title IX Coordinator will:

**a.** Promptly contact the complainant to:

- 1.** Discuss the availability of supportive measures;
- 2.** Consider the complainant's wishes with respect to supportive measures by engaging in a meaningful dialogue with the complainant to determine which supportive measures may restore or preserve equal access to the University's education program or activity without unreasonably burdening the respondent;
- 3.** Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
- 4.** Explain to the complainant the process for filing a formal complaint.

**b.** Implement appropriate supportive measures for both the respondent and complainant. Supportive measures may be implemented with or without the filing of a formal complaint.

**1.** Supportive measures must be designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party. Supportive measures may be designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. Supportive measures may include:

- (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 escort services;
- (e)** Mutual restrictions on contact between the parties;
- (f)** Changes in work or housing arrangements;
- (g)** Leaves of absence;
- (h)** Referral to community-based providers;
- (i)** Student financial aid counseling;
- (j)** Education of the institutional community or community subgroup(s);
- (k)** Safety planning;
- (l)** Increased security and monitoring of certain areas of the campus; and

**(m)** Other similar measures deemed appropriate by the Title IX Coordinator.

**2.** The Title IX Coordinator has sole authority to determine what supportive measures are to be implemented. The Title IX Coordinator must document the reasons for approving or denying supportive measures.

**3.** The University must keep confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining confidentiality would not impair the ability of the University to provide the supportive measures.

**c.** If the complainant decides not to file a formal complaint, the Title IX Coordinator will determine whether or not to file a formal complaint. In determining whether to file a formal complaint, the Title IX Coordinator may consider, among other things, whether there is a pattern of alleged misconduct involving the same respondent; whether a complainant's allegations involved violence, use of weapons, or similar factors; or whether the safety of the University community requires the filing of a formal complaint.

## **E-2. Filing of Formal Complaint**

**a.** Only the complainant or the Title IX Coordinator may file a formal complaint.

**b.** At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the University's education program or activity.

**c.** A formal complaint may be filed by any of the following methods:

**1.** Completing and submitting the online complaint form available at [www.uidaho.edu/report](http://www.uidaho.edu/report);

**2.** Downloading and completing the complaint form available at [www.uidaho.edu/report](http://www.uidaho.edu/report), or by requesting it from the Title IX Coordinator, and returning the form to the Title IX Coordinator in person, by mail, or through email to [TitleIX@uidaho.edu](mailto:TitleIX@uidaho.edu); or

**3.** By sending a document to the Title IX Coordinator in person, by mail, or through email to [TitleIX@uidaho.edu](mailto:TitleIX@uidaho.edu). The document must:

**(a)** Indicate the complainant's desire to file a formal complaint;

**(b)** Contain the basic allegations of the respondent's conduct that allegedly constitutes sexual harassment; and

**(c)** Contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint.

## **E-3. Confidentiality**

**a.** The University must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness.

**b.** This confidentiality requirement does not apply when disclosure is:

**1.** Permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99; or

**2.** Required by law; or

3. Required to carry out the purposes of this policy or 34 CFR Part 106, including the conduct of any investigation, hearing, or judicial proceeding.

## **F. FORMAL COMPLAINT**

### **F-1. Notice of Allegations**

- a. Upon receipt of a formal complaint the Title IX Coordinator must provide a notice of allegations to the known parties.
- b. The Title IX Coordinator may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.
- c. This notice must be written and sent simultaneously to all known parties, with the following information:
  1. The University of Idaho's grievance process, including any informal resolution process;
  2. The allegations of potential sexual harassment, which shall include the following details:
    - (a) Identities of the parties involved in the incident, if known;
    - (b) The conduct allegedly constituting sexual harassment; and
    - (c) The date and location of the alleged incident, if known;
  3. The right to an advisor of their choosing, who may be a friend, colleague, attorney, family member, advocate or other person;
  4. The right to inspect and review evidence;
  5. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination of responsibility will not be made until the conclusion of the grievance process; and
  6. A statement that knowingly providing false statements or knowingly submitting false information during the grievance process violates University policy and may subject the person to disciplinary action outside of this grievance process.
- d. If, during the course of an investigation, the University decides to investigate additional allegations that are not in the initial notice of allegations, an amended notice of allegations must be provided to the parties whose identities are known.

### **F-2. Dismissal of Formal Complaint**

- a. A formal complaint must be dismissed without investigation if:
  1. The conduct alleged in the formal complaint would not constitute sexual harassment as defined in section D-19 even if proven; or
  2. The conduct did not occur in a University of Idaho education program or activity; or
  3. The conduct did not occur against a person in the United States.
- b. A formal complaint may be dismissed at any point in time during the investigation if:

1. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations in the formal complaint; or
  2. The respondent is no longer enrolled or employed by the University of Idaho; or
  3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations in the formal complaint.
- c. If a formal complaint is dismissed, the Title IX Coordinator shall send the parties written simultaneous notice of the dismissal, which will include the reason(s) for the dismissal.
- d. A dismissal of a complaint under this policy does not preclude action under another University policy.

**F-3. Meeting with Parties.** Each party will be given an opportunity to meet with the investigator(s) within a reasonable period of time after the notice of allegations is provided to the parties. The investigator should contact each party no later than five days after the notice of allegation is provided to the parties in order to schedule the meeting. A party is not required to meet with an investigator. Prior to the meeting, the investigator shall provide the party with written notice of the date, time, location, names of participants, and the purpose of the meeting. The written notice must give the party sufficient time to prepare to participate in the meeting. A separate written notice must be provided prior to each meeting with the parties.

#### **F.4. Investigation**

- a. Parties may, but are not required to, provide information for investigators to consider at any point in time during the investigation, prior to the dissemination of the final investigative report. The information may include, but is not limited to:
1. The names of potential witnesses to interview;
  2. Suggested questions to ask the other party or other witnesses;
  3. Written information relevant to the allegations, including, but not limited to text messages, police reports, witness statements, medical records, and social media posts or messages;
  4. Video or audio recordings;
  5. A written response to the notice of allegations;
  6. Expert witnesses and/or expert witness reports; and
  7. Any other inculpatory or exculpatory information the party would like the University to consider.
- b. Investigators will conduct their own inquiry to gather relevant information, including, but not limited to:
1. Documentary information;
  2. Inculpatory evidence;
  3. Exculpatory evidence;
  4. Names of witnesses, including fact and expert witnesses;
  5. Witness interviews;
  6. Suggested questions to ask the other party or witnesses.

**c.** Without the voluntary written consent of the person to whom the records pertain, the University cannot access, consider, disclose, or otherwise use a person's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in their professional or paraprofessional capacity, or assisting in that capacity, and which are made and maintained in connection with the person's treatment.

**d.** The University shall not prohibit the parties from discussing the allegations under investigation, nor shall the University prohibit parties from conducting their own investigation.

**e.** All parties and witnesses will be provided a written summary of their respective meeting(s). A party or witness may submit comments on the summary within two days of receipt of the summary.

#### **F.5. Preliminary Investigative Report**

**a.** Once investigators conclude the investigation, investigators will draft a preliminary investigative report. This preliminary investigative report will be provided to all parties (either in hardcopy or electronically) to inspect and review. The preliminary investigative report must include a summary of all relevant information gathered during the Investigation including, but not limited to:

- 1.** A summary of the complainant's interview(s);
- 2.** A summary of the respondent's interview(s);
- 3.** A list of witnesses contacted;
- 4.** A summary of witness interviews; and
- 5.** All other evidence obtained as part of the investigation that is relevant to the allegations, including evidence upon which investigators do not intend to rely.

**b.** The investigator shall provide a preliminary investigative report and all evidence gathered by the investigator that is directly related to the allegations to both parties and their advisors for review and inspection.

**c.** Parties will have ten days to submit a written response to the preliminary investigative report. This response may include requests for additional investigation, additional witnesses to be interviewed, or additional questions to ask of witnesses. Requests for extensions will be granted at the discretion of the Title IX Coordinator for good cause. Written notice of the extension of the deadline will be provided to all parties and will apply equally to all parties.

**d.** Investigators will consider any timely written response submitted by a party prior to completing the final investigative report. If investigators determine additional investigation is appropriate, investigators will conduct the additional investigation and then draft a revised preliminary investigative report and provide the parties an additional ten days to review and provide a written response.

#### **F.6. Final Investigative Report**

**a.** Upon conclusion of the investigation, taking into consideration the timely written response of the parties, if any, investigators will create a Final Investigative report that includes all information provided in the preliminary investigative report as well as:

- 1.** The timely responses from the parties to the preliminary investigative report;
- 2.** A list of necessary witnesses who should be requested to appear at the live hearing; and,



**3.** As necessary, an assessment of the credibility of the parties and relevant witnesses, provided however that the investigator shall not make a determination as to whether a party or witness is credible or not credible.

**b.** The final investigative report shall not include any recommended findings or conclusions.

## **G. LIVE HEARING PROCESS**

### **G-1. Final Investigative Report Submission**

**a.** Once a final investigative report is complete, the Title IX Coordinator will forward the final investigative report to the hearing administrator.

**b.** Upon receipt of the final report, the hearing administrator shall forward the report to each party simultaneously using the party's official University of Idaho email address or through any other electronic means reasonably calculated to provide immediate access to the report. The hearing administrator shall also provide a notice of hearing to the parties at the same time as the final investigative report. The notice of hearing shall include the following information:

**1.** A statement that a live hearing will be convened for the purpose of determining whether the respondent is responsible for violating this policy;

**2.** The date, time, and location for a live hearing. If the hearing will be held electronically, the notice shall include instructions on how to participate in the live hearing;

**3.** A copy of or a link to the hearing procedures contained in this section;

**4.** A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made after the conclusion of the hearing;

**5.** A statement that the parties may have an advisor of their choice who may be, but is not required to be, an attorney, and that if they do not have an advisor, the University will provide an advisor to the party for the sole purpose of assisting with cross-examination;

**6.** A statement that if a party needs an accommodation on account of a disability to participate in the hearing, the party should contact Human Resources if the party is an employee and the Center for Disability Access and Resources if the party is a student or anyone other than an employee;

**7.** A list of the witnesses that were identified in the final investigative report as necessary witnesses and a statement that the hearing administrator will attempt to contact these witnesses and arrange for their presence at the hearing;

**8.** The deadlines referenced in section G-1 c; and

**9.** The name of the hearing officer and the names of those appointed to serve on the hearing panel.

**c.** No later than five days after the notice of hearing and final investigative report are provided to the parties, each party must, if desired, submit the following information to the hearing administrator:

**1.** Any written statements or arguments for the hearing panel to consider in making the decision of responsibility;

**2.** The identity of the advisor the party will bring to the live hearing or, if the party will not provide an advisor, a request for the University to provide an advisor for the party at the live hearing;

**3.** The identity of any additional witness the party requests to have present at the hearing, provided, however, that if the witness was not interviewed during the investigation, the witness may not appear at the hearing. The parties shall be reminded that the University cannot force anyone to be present at the hearing or to give any statements at the hearing. The parties are encouraged, but are not required, to have the hearing administrator contact the witnesses to request their presence. Each party may contact witnesses directly to request their presence at the hearing as long as there is not a no-contact order prohibiting the party from contacting a specific witness; and

**4.** If desired, a request to participate in the live hearing in a separate room through virtual technology.

## **G-2. Hearing Administrator Duties**

**a.** Prior to the live hearing, the hearing administrator shall:

**1.** Appoint a hearing officer to preside over the live hearing from the list of approved hearing officers;

**2.** Notify the chair of the Title IX hearing board of the need to convene a hearing panel for a live hearing and request the chair to appoint a hearing panel;

**3.** Schedule a date and time for the live hearing. The live hearing shall be held no earlier than ten days after the delivery of the final investigative report, and no later than twenty days after delivery of the final investigative report. The hearing administrator may extend the date of the hearing at the request of a party or otherwise for good cause, provided that written notice is provided to the parties of the delay and the reasons for the delay;

**4.** Attempt to contact the witnesses identified in the final investigative report as necessary witnesses and any witness identified by the parties, in order to request the witnesses' presence at the hearing; provided, however, that the University cannot force anyone to be present at the hearing or to give any statements at the hearing;

**5.** Schedule and arrange for a room or rooms in which to hold the hearing;

**6.** Make arrangements for any technology, such as recording equipment and video conference technology and equipment, necessary to hold the hearing;

**7.** Prepare a hearing packet and provide the hearing packet to the hearing officer, the members of the hearing panel, and the parties at least three days prior to the hearing. The hearing packet shall consist of the final investigative report; copies of the notice of allegation(s); copies of any written statements the parties provided in response to the final investigative report which were submitted prior to the submission deadline; and copies of the notice of hearing.

**b.** The hearing administrator shall be responsible for ensuring that an audio or audio/video recording is made of the hearing.

**c.** The hearing administrator shall be present during the hearing panel's deliberations, but shall not vote on the decision regarding responsibility.

## **G-3. Hearing Officer**

**a. Qualifications**

**1.** The senior executive of Human Resources, Dean of Students, provost, and General Counsel shall determine the appropriate qualifications for a person to serve as a hearing officer and shall make a list of approved hearing officers available to the hearing administrator.

**2.** Each person approved to serve as a hearing officer must, prior to being appointed to serve as a hearing officer in any case, shall complete the training specified in section L.

**3.** The hearing officer must not have a conflict of interest or bias for or against either party specifically; or, generally for or against complainants or respondents.

**b. Duties**

**1.** The hearing officer shall preside over the live hearing in accordance with the procedures set forth in this section and shall serve as chair of the hearing panel, but shall only vote in determining whether the respondent is responsible for violating the sexual harassment policy and on determining the appropriate sanctions, if any, in the event of a tie vote among the other members of the hearing panel.

**2.** The hearing officer may be physically present at the location of the parties or may conduct the hearing virtually through technology that enables all participants to see and hear each other simultaneously. If the hearing officer is not physically present at the same location as the parties, the parties and their advisors shall be in separate rooms and shall participate in the hearing virtually.

**3.** The hearing officer shall ensure that a written decision is drafted and finalized no later than ten days after the conclusion of the live hearing.

**G-4. Title IX Hearing Board**

**a.** The Student Conduct Board, as set forth in FSH [1640.83](#) will make up the Title IX Hearing board.

**b.** When the hearing administrator notifies the chair of the Title IX Hearing Board of the need to convene a hearing panel, the chair shall appoint either three or five members of the Title IX Hearing Board to serve as a hearing panel in each case. The chair shall notify the hearing administrator of the names of those appointed as soon as possible in order to allow the hearing administrator to provide the names of the hearing panel members to the parties in the notice of hearing.

**c.** A member of the Title IX Hearing Board shall not serve on any hearing panel or appeal panel in any case where the member has a conflict of interest or bias for or against either party specifically, or generally for or against complainants or respondents.

**d.** Prior to being appointed to serve on any hearing panel, each member of the Title IX Hearing Board shall complete training on the definition of sexual harassment; the scope of the University's education program or activity; the University's investigation and grievance process; how to conduct hearings; how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; any technology to be used at a live hearing; and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

**e.** The chair of the Title IX Hearing Board may only appoint a student to serve on hearing panels in cases in which all parties are students.

**f.** Proceedings before the Title IX Hearing Board, whether before a hearing panel or appeal panel, are confidential and protected by state and federal law. In specific disciplinary cases, members of the Title IX Hearing Board must protect the confidentiality of the information they receive in fulfilling their duties as members of the Title IX Hearing Board. Panel members must not discuss specific cases or share any information regarding specific disciplinary cases or their deliberations with anyone other than the Title IX

Hearing Board chair, the Office of General Counsel, the hearing administrator, or fellow panel members appointed to the same panel in that specific case, and in all such instances, the discussion or sharing of information must be reasonably necessary for the panel's consideration of the specific case.

## **G-5. Live Hearing Process**

**a.** All parties, witnesses, advisors and other participants should be present in the same physical location for the hearing. However, either party, at the request of the party, or any other participant at the discretion of the hearing administrator or hearing officer, may appear at the live hearing virtually, with technology enabling participants to simultaneously see and hear each other. Participation by audio only shall be prohibited.

**b.** All hearings are closed to the public. The only people allowed to be present during the hearing are the parties; each individual party's advisor; the investigator(s); the hearing administrator; the Title IX Coordinator (or designee); one or more attorneys or support staff from the Office of General Counsel; the hearing officer; members of the hearing panel appointed to hear the case; and the witnesses, provided that each witness shall only be present while the witness is answering questions. In rare cases, the hearing officer may allow someone not on this list to attend the hearing, after consulting with the Title IX Coordinator and the Office of General Counsel to ensure compliance with all applicable confidentiality requirements.

**c.** The live hearing shall be recorded either by audio or by audio/video.

**d.** Order of proceedings. The live hearing shall proceed in the following manner to the extent possible, provided that the hearing officer may allow deviations from this order in the hearing officer's discretion:

**1. Opening Statements.** Each party may, but is not required to, make an opening statement. The party's advisor is not allowed to make the opening statement on behalf of the party.

### **2. Witnesses**

**(a)** The hearing officer shall call each witness and party to answer questions in the following order: 1) complainant, 2) respondent, 3) non-party witnesses in any order determined by the hearing officer.

**(b)** Only witnesses who were previously interviewed as part of the investigation may appear at the hearing.

**(c)** Prior to asking any questions of a witness or party, the hearing officer shall read the following statement to each party and witness. The statement need not be read verbatim, but shall consist substantially of the following: "You are hereby advised that you are not required to answer any questions posed to you during this hearing. If you choose to answer the questions, you must answer the question truthfully. If you knowingly provide false information you may be disciplined by the University of Idaho. This hearing is being recorded. Do you have any questions?"

**(d)** The hearing officer shall ask the following questions of each party and witness prior to cross-examination. The hearing officer may, but is not required to, ask additional questions of any party or witness at any time during the hearing. The following questions need not be asked verbatim, but shall be substantially as follows:

**i.** "Have you had a chance to review the summary of your statements contained in the final investigation report?"

ii. “Does the summary accurately reflect your knowledge of the facts at issue in this case?” If the answer is no, the hearing officer shall ask the witness or party to identify the parts of the summary are not accurate.

iii. “Is there anything contained in that summary that you would like to expand upon or clarify?”

iv. To be asked only of the complainant and the respondent: “Is there anything else you would like to tell me regarding the facts of the situation? If so, please do so now.”

(e) Neither a party nor a party’s advisor is allowed to conduct direct examination of any party or witness.

**3. Cross-Examination.** After the hearing officer asks the initial questions, each party shall thereafter be given the opportunity to conduct cross-examination of the witnesses and other party, but cross-examination is not required. Under no circumstances shall a party be allowed to directly cross-examine a party or witness; rather, all cross-examination must be conducted by the party’s advisor. A party’s advisor is not allowed to cross-examine the party they are advising. If an advisor is also a witness, neither the party nor the advisor/witness may cross-examine the party’s own advisor/witness. However, a party is allowed to provide additional information after cross-examination is complete in order to address questions asked during cross-examination.

**4.** Prior to any cross-examination, each witness, including each party, shall be instructed not to answer the question asked until the hearing officer makes a determination regarding the relevance of the question asked. Before the witness or party answers the question, the hearing officer must first determine whether the question is relevant. The hearing officer may, but is not required to, allow each party’s advisor to make a brief argument regarding the relevance of the question. If the hearing officer determines that the question is not relevant, the hearing officer must exclude the question and direct the witness or party to not answer the question. The hearing officer must also provide a brief explanation for the decision to exclude the question. The hearing officer may provide a more detailed explanation in the written decision if necessary or desired. If the question is relevant, the hearing officer shall allow the witness to answer the question.

**5. Closing Statement.** At the conclusion of the presentation of evidence, each party may, but is not required to, make a closing statement to the hearing officer. The party’s advisor is not allowed to make the closing statement on behalf of the party.

e. Written evidence may not be provided at the live hearing, except written evidence which is already included in the final investigative report.

## **G-6. Decision**

**a.** The hearing officer shall provide to the hearing administrator a written decision regarding responsibility and sanctions within ten days after the conclusion of the live hearing. The hearing administrator shall simultaneously provide the written decision to the parties and their advisors.

**b.** In making the decision, the hearing panel shall consider and objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, contained in the hearing packet and the oral evidence presented at the live hearing. The hearing panel may not draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.

**c.** The hearing panel shall determine whether the respondent violated the Title IX sexual harassment policy using a preponderance of the evidence standard.

**d.** The written decision must include the following:

- 1.** Identification of the allegations alleged to be in violation of the University's sexual harassment policy;
- 2.** A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- 3.** Findings of fact supporting the determination;
- 4.** Where necessary to the decision, a credibility determination of the parties and witnesses, provided however that a credibility determination may not be based on a person's status as a complainant, respondent, or witness;
- 5.** Conclusions regarding the application of the University's Title IX sexual harassment policy;
- 6.** A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- 7.** If the respondent is found responsible, the sanctions imposed on the respondent, including a statement of the sanctions and rationale for the sanctions.
- 8.** Whether remedies designed to restore or preserve equal access to the University's programs will be provided to the complainant; and
- 9.** The procedures and permissible bases for either party to appeal the decision.

**e.** Should the hearing panel find that the respondent is responsible for violating this policy, prior to determining the appropriate sanction to be imposed, the hearing administrator shall disclose to the panel any appropriate previous disciplinary history regarding the respondent. The hearing administrator shall also serve as a resource to the hearing panel to help the panel determine appropriate sanctions that are reasonably consistent among similar cases.

**f.** All hearing panel decisions shall be by majority vote.

- 1.** The hearing panel may return the matter for additional investigation if the hearing panel determines that: The investigator(s) failed to properly investigate the allegation and the failure was both substantial and to the party's detriment; or
- 2.** There is new information that could substantially affect the outcome and the new information could not have been discovered before the issuance of the final investigative report.

**g.** Sanctions imposed by the hearing panel shall not go into effect until either the time period for an appeal has expired and no appeal has been filed or until the decision is upheld on appeal. If the sanctions for an employee respondent includes termination of employment, the sanction shall not go into effect until reviewed and approved by the President.

## **H. ROLE OF ADVISORS**

**H-1.** Parties may have an advisor of their choice present with them for all meetings and interviews, if they so choose. The parties may select whomever they wish to serve as their advisor. While it is not recommended to choose an advisor who is also a witness in the process, should a party decide to do so, any bias or conflict of interest of the witness may negatively affect the credibility of the witness and/or party.

**H-2.** All advisors are subject to the same limitations, whether they are attorneys or not. The advisor may not make a presentation and may not speak on behalf of the party to the investigators or other decision-makers except to conduct cross-examination during the live hearing, as described below.

**H-3.** The parties are expected to ask and respond to questions on their own behalf throughout the investigation. While the advisor generally may not speak on behalf of a party, a party may request a break in order to speak privately with the party's advisor, may consult quietly with the party's advisor, and/or may quietly pass notes during any meeting or interview, as long as they do not unreasonably disrupt the process. For longer or more involved discussions, the party and the party's advisor should ask for breaks to step out of meetings to allow for private consultation. If breaks become disruptive to the process, such requests may be denied or the meeting rescheduled.

**H-4.** Advisors may be given an opportunity to meet with the administrative officials conducting interviews/meetings in advance of the interviews or meetings. This pre-meeting allows advisors to clarify any questions they may have and allows the University an opportunity to clarify the role the advisor is expected to take. This pre-meeting is intended only to allow the advisor to inquire about the advisor's role and the process, in order to minimize procedural discussion during the interview, and is not an opportunity for the advisor to discuss the case specifics.

**H-5.** Advisors are expected to refrain from interference with the University's investigation and resolution. Advisors who step out of their role will be warned only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting or hearing. If the advisor's continued interference occurs at the live hearing, the University will provide the party with an advisor to conduct cross-examination. If the advisor's continued interference occurs at any other meeting, the meeting may then be rescheduled to allow the party to obtain a different advisor.

**H-6.** Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by University. The University may exclude any advisor who fails to abide by these expectations. Each party is responsible for ensuring that the party's advisor abides by these restrictions and may be subject to discipline for the advisor's failure to comply with these restrictions.

**H-7.** A party may elect to change advisor during the investigation, and is not obligated to use the same advisor throughout. The parties are expected to inform the investigators of the identity of their advisors at least one (1) day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties are expected to provide timely notice to investigators if they change advisors at any time. Changing advisors does not delay the investigation, interview, meeting, or hearing process.

**H-8. University-provided advisors**

**a.** In the event any party appears at a live hearing without an advisor, the University will provide an advisor to the party without charge for the sole purpose of conducting cross-examination during the live hearing. The University-provided advisor may not assist the party in anything other than conducting cross-examination.

**b.** The Title IX Coordinator shall be responsible for recruiting and training university employees to serve as advisors, and shall ensure that advisors assigned to a party do not have an impermissible bias or conflict of interest.

**I. APPEALS**

**I-1.** Any party may appeal a decision to dismiss the formal complaint and the hearing panel's decision. Appeals must be submitted in writing to the hearing administrator and must set forth the grounds for the appeal. The appeal must be filed no later than five days after the decision is delivered to the parties. The hearing administrator shall ensure that all parties and their advisors receive a copy of the appeal and any response to the appeal submitted by the non-appealing party(ies).

**I-2.** Appeals are limited to the following grounds:

- a.** Procedural irregularity that affected the outcome of the matter;
- b.** New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter;
- c.** 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 individual complainant or respondent that affected the outcome of the matter;
- d.** The sanctions imposed are substantially disproportionate to the severity of the violation (the imposition of an administrative fee is not a sanction, and therefore cannot be appealed); or
- e.** The decision is not based on substantial information. A decision is based on substantial information if there are facts in the case that, if believed by the decision-maker, are sufficient to establish that the decision is correct.

**I-3.** An appeal shall be limited to a review of the decision, the hearing packet (if any), any written material considered in the decision, the recording of the live hearing (if one was held), any written materials submitted with the appeal, and any response to the appeal submitted by the non-appealing party(ies). Where an appeal is based on new evidence, the new evidence may be considered only to determine whether the information was reasonably available at the time of the decision and whether the new evidence could affect the outcome of the matter.

**I-4. Appeal Panel Procedures**

- a.** The chair of the Title IX Hearing Board shall appoint three or five members of the Board to serve on the appeal panel, and shall designate one member to serve as chair of the appeal panel. Any member who served on a hearing panel shall not serve on the appeal panel on the same case. A student may not serve as chair of an appeal panel, and may not serve on an appeal panel unless all parties are students.
- b.** Any non-appealing party may file a response to the appeal in support of, or challenging, the outcome. The written response must be provided to the hearing administrator within five days after notice of the appeal is provided to the party.
- c.** The appeal panel shall issue a written decision. The decision should be issued within ten days of receiving all appeal materials. The written decision shall describe the result of the appeal and the rationale for the result. The chair of the appeal panel shall provide the written decision to the hearing administrator, who will then simultaneously provide the decision to the parties.

**I-5. Results of the Appeal Panel.** The appeal panel may:

- a.** Uphold the decision;
- b.** Uphold the finding that the respondent violated this policy, but revise the sanction(s);
- c.** Return the matter for reconsideration; or
- d.** Return the matter for additional investigation.



**I-6.** Unless the case is returned for reconsideration or to the investigator for additional investigation, the decision of the appeal panel is the final institutional decision. If the decision upholds the findings that the respondent is responsible for violating this policy, the sanctions imposed shall go into effect immediately. Provided, however, that if the sanction for an employee respondent includes termination of employment, the sanction shall not go into effect until reviewed and approved by the President.

## **J. POSSIBLE SANCTIONS AND REMEDIES**

**J-1.** The sanctions which may be imposed upon any employee determined to have violated this policy range from a written warning to termination, and may include one or more of the following:

- a.** Written warning;
- b.** Letter of reprimand;
- c.** No-contact directive;
- d.** Reassignment of position and/or location;
- e.** Modification of duties;
- f.** Withholding of pay increase;
- g.** Pay decrease;
- h.** Demotion;
- i.** Suspension without pay;
- j.** Termination.

**J-2.** The sanctions which may be imposed upon any student determined to have violated this policy range from a warning to expulsion, revocation of degree, or withholding of degree, and may include any of the following:

- a.** Warning;
- b.** Probation;
- c.** No-contact directive;
- d.** Community service;
- e.** Loss of privileges;
- f.** Restitution;
- g.** Educational sanctions;
- h.** On-campus housing suspension;
- i.** On-campus housing expulsion;
- j.** Suspension, which may include the imposition of conditions that must be fulfilled before the student may re-enroll;
- k.** Expulsion;

- l.** Revocation of admission;
- m.** Revocation of degree;
- n.** Withholding of degree;
- o.** Trespass from some or all University property.

**J-3.** The sanctions which may be imposed upon any other person over whom the University exercises substantial control determined to have violated this policy may include any of the following:

- a.** Warning;
- b.** Loss of privileges;
- c.** Trespass from some or all University property;
- d.** Termination or suspension of affiliation with the University;
- e.** Exclusion from participating in any University program or activity.

**J-4.** The range of remedies which may be provided to any complainant, after the respondent is found responsible for violating this policy, includes, but is not limited to, the following:

- a.** Relocation of the respondent's or complainant's work location, residence hall or apartment assignment;
- b.** Issuance or continuation of a no-contact order;
- c.** Changing the respondent's and/or complainant's supervisor, or supervisory chain;
- d.** Approval of flex-time or flex-place work arrangements;
- e.** Course modification;
- f.** Changing the complainant's or respondent's class schedule;
- g.** Modifying academic guidelines or requirements;
- h.** Prohibiting respondent from entering some or all University buildings or property;
- i.** Any supportive measures provided to the parties;

## **K. EMERGENCY MEASURES**

### **K-1. Emergency removal.**

- a.** The University may remove a respondent from any education program or activity on an emergency basis if, after undertaking an individualized safety and risk analysis, the University determines that the respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment, and that threat justifies removal.
- b.** The following persons shall be responsible for making the determination of whether the respondent poses an immediate threat: For student respondents, the Dean of Students; for faculty respondents, the Provost; for non-faculty employees, the Vice-President for Finance and Administration; for all other respondents, the Executive Director for Public Safety and Security.

**c.** The Threat Assessment and Management Team should be consulted in making the determination of whether a respondent poses an immediate threat if it can be convened in a timely manner.

**d.** Immediately following the decision to remove the respondent from an education program or activity, the person making the determination shall deliver notice of the decision to the respondent. The respondent may appeal the decision within five days of being notified of the decision by submitting a written statement to the person making the determination. The respondent may, however, request a modification based on changed circumstances at any time prior to the final institutional decision regarding whether the respondent violated this policy.

**K-2. Administrative leave.** Administrative leave may be used at any time for non-student employees, in accordance with University policy, and is not considered to be an emergency removal. Before a student employee may be placed on administrative leave arising out of an allegation of sexual harassment, the University must use the above procedures for an emergency removal.

## **L. TRAINING REQUIREMENTS**

**L-1.** The University will train the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process on the following matters:

**a.** The definition of sexual harassment;

**b.** The scope of the University's education program or activity;

**c.** How to conduct an investigation;

**d.** How to conduct the University's grievance process including hearings, appeals, and informal resolution processes; and

**e.** How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

**L-2.** In addition to training on the matters in section L-1, the University will train decision-makers and hearing officers on:

**a.** The technology to be used at a live hearing; and

**b.** Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

**L-3.** In addition to training on the matters in section L-1, the University will train investigators on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

**L-4.** All training materials used must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

**L-5.** The University must make the training materials publicly available on its website and available upon request for inspection by members of the public.

**M. RECORD KEEPING.** The University must maintain the following records for a period of seven years:

**M-1.** Each sexual harassment investigation, including any determination regarding responsibility and the recording or transcript of the hearings, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant;

**M-2.** Any appeal and the result therefrom;

**M-3.** Any informal resolution and the result therefrom; and

**M-4.** All training materials.

## **N. INFORMAL RESOLUTION PROCESS**

**N-1.** At any time prior to a determination regarding responsibility, the University and the parties may participate in an informal resolution process whereby the parties agree to an appropriate resolution without further investigation, hearing, or appeal. The agreed-upon resolution may include the use of alternative dispute resolution methods.

**N-2.** The informal resolution process can only be offered when:

- a. A formal complaint is filed,
- b. The Title IX Coordinator determines that an informal resolution process is appropriate,
- c. Both parties agree in writing to the informal resolution process and procedures, and
- d. The formal complaint does not include allegations that an employee sexually harassed a student.

**N-3.** Prior to engaging in an informal resolution process, the parties will receive written notice with the following information:

- a. A copy of the Notice of Allegations provided in accordance with section F-1;
- b. The procedures to be used to reach the agreement; and
- c. The information contained in section N-4 currently.

**N-4.** Informal resolution process requirements

- a. All parties must agree to a resolution under the informal resolution process. If all parties are unable to reach a mutually agreeable outcome, the formal investigation process will resume.
- b. A party may submit a written request to withdraw from the informal resolution process and resume the formal grievance process at any time prior to a signed informal resolution agreement.
- c. After all parties sign a written agreement, the parties are precluded from resuming the formal complaint process arising from the same allegations.
- d. All records of the informal resolution process will be maintained with the records of the complaint, but will not be included in the final investigative report should the informal resolution process fail to result in a written agreement.
- e. All disciplinary sanctions, remedies, supportive measures or alternative outcomes are available to use in the informal resolution process.

**N-5.** All informal resolution agreements must be approved by the University. For student respondents, the Dean of Students has the authority to approve the agreement. For faculty respondents, the Provost has the authority to approve the agreement. For all other respondents, the Vice-President for Finance and Administration has the authority to approve the agreement.

**N-6.** Any executed informal resolution agreement is the final institutional decision and cannot be appealed.

## **O. RETALIATION**

**O-1.** Retaliation is prohibited.

**a.** No person may intimidate, threaten, coerce, or discriminate against any individual:

**1.** for the purpose of interfering with any right or privilege secured by Title IX or this policy, or

**2.** because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

**b.** Intimidation, threats, coercion, or discrimination, including charges against an individual for policy violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

**O-2.** The exercise of rights protected under the First Amendment does not constitute retaliation.

**O-3.** Charging an individual with a policy violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation. However, -a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

**O-4.** Complaints alleging retaliation under this policy may be filed as set forth in section E.

## **P. OTHER**

**P-1. Amnesty.** The provisions of FSH [2310](#) shall apply to reports and formal complaints of sexual harassment under this policy and shall be extended to all parties regardless of their status or affiliation with the University.

**P-2.** All documents required under this policy shall be delivered either in person or by email to the person's official University email account, if possible; otherwise the document shall be delivered by any means reasonably likely to reach the person. If the document is sent by email to the person's official University of Idaho email address, the document is deemed received upon delivery to the person's email inbox.

**P-3.** Any reference to a University official by title shall include any equivalent University official should that title no longer exist and includes that official's designee

## **Version History**

**Temporary emergency amendment September 29, 2021.** A temporary emergency policy amendment pursuant to FSH 1460 C-3 deleted a provision in G-6 prohibiting reliance on statements not subject to cross-examination. The temporary emergency amendment will expire on March 28, 2022 if not adopted, amended, or suspended prior to that date. See FSH 1460 for further information.

**Adopted 2021.** In order to comply with U.S. Department of Education regulations amending 34 C.F.R. 106, FSH 6100 was adopted as a temporary emergency policy in August 2020, and as a permanent policy effective January 1, 2021.

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## **Version History**

**Minor edit July 2022.** Errors in section lettering were corrected in sections G-6 and J-2.

**Minor edit June 2022.** Section G-5.d.2.c. was amended to align with the September 2021 change to G-6.

**Amended January 2022.** The September 29, 2021 temporary emergency amendment was adopted into policy.

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