

3. Definitions

3.1 Complainant

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

3.2 Confidential Resources

University Health Services medical and counseling staff who learn of a potential violation of this policy while performing services in the scope of their employment as licensed clinicians, and graduate students in Counselor Education who are acting as counselors in a practicum course. Confidential Resources are not Responsible Employees as defined by this policy but are still Reporters for Clery Act purposes in accordance with University Policy 12000 (Clery Act Compliance).

3.3 Discrimination

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

3.4 Good Faith

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

3.5 Harassment

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

3.6 Hostile Environment

Conduct that is so severe, pervasive, or persistent that it creates an

does cause the harassed person(s) any of these difficulties. The more severe the conduct, the less need there is to demonstrate that a repetitive series of incidents created a Hostile Environment, particularly if the Harassment is physical. A single or isolated incident of Harassment may create a Hostile Environment if the incident is sufficiently severe.

3.7 Members of the University Community

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

3.8 Protected Class

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

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

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

3.9 Reporter

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

3.10 Respondent

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

3.11 Responsible Employees

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

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

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

3.12 Retaliation

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

3.13 Third Party

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

3.14 Witness

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

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4.2 Specific Responsibilities

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

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

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

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

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

Faculty and staff designated as Campus Security Authorities for the purpose of Clery Act compliance must also report alleged crimes to the Clery Compliance Officer. For more information, please see <http://security.boisestate.edu/csa/>. All Members of the University Community are encouraged to report any alleged crime to the University's Department of Public Safety.

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

4.3 Resources for Victims

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

- b. That occurred in the context of an official Boise State University program or activity, regardless of location;
- c. Where both Complainant and Respondent are Members of the University Community; or
- d. Where the Respondent is a student or employee of Boise State University.
- e. Where the Respondent is affiliated with Boise State University, but is not a Boise State University student or employee, procedures of the affiliated institution may apply to the investigation and disciplinary process.

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

Where the Respondent is unknown or not a Member of the University Community, the Office of Title IX and Institutional Equity

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

A Complainant has the right to:

- a. Be treated in accordance with the University's Shared Values.
- b. Be fully informed of and participate in all steps in the grievance process.
- c. Report conduct prohibited under this policy to local law enforcement but not file a complaint with the university.
- d. Report conduct prohibited under this policy to local law enforcement and file a complaint with the University. (If an alleged policy violation is also the subject of a law enforcement investigation, the University may suspend its investigation for a period not to exceed 10 days to avoid interfering with law enforcement's investigation.).
- e. File a complaint only with the University and request that the University investigate the matter.
- f. File a complaint only with the University but request that the University not take any action other than to provide support services; however, if the University believes a Respondent presents an ongoing threat to the University community, or if the Respondent request that the U

- (ii.) The respective ages and roles (e.g., power dynamics, relationship of authority, etc.) of Complainant and Respondent
- (iii.) Whether there have been other complaints or reports of Harassment or misconduct against Respondent
- (iv.) Whether circumstances suggest there is an increased risk of Respondent committing additional acts of violence
- (v.) Whether Respondent has a history of arrests or records from a prior school indicating a history of violence
- (vi.) Whether Respondent threatened further violence against Complainant or others
- (vii.) Whether violence was committed by multiple perpetrators
- (viii.)

- k. Review and respond to the investigator's written summary of information provided by other parties to the complaint.
- l. Access University academic and support services and receive referrals to external support resources (for example, the Employee Assistance Program). For additional information about support services, see Section 5.2.
- m. Request interim measures including but not limited to:
 - (i.) A University-based no contact order limiting Respondent's ability to communicate with, or otherwise contact, Complainant either directory or through a Third Party.

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

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

University Policy

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

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

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

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

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

The investigator, in consultation with the Director of Title IX and Institutional Equity, will prepare a final investigation report with findings of fact and a determination of whether, based on a preponderance of the evidence, this policy has been violated.

If the Director of Title IX and Institutional Equity acts as the investigator, the Vice President for University Affairs and Chief of Staff, or designee, will fulfill the Director of Investigation's responsibilities.

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

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

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

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

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

- a. The Notice of Sanctioning Conference will include the names of the 1060 Sanctioning Board members.
- b. Each party has two (2) University business days from the date the Notice of Hearing is emailed to challenge any of the 1060 Sanctioning Board members on the ground of perceived bias. To challenge a 1060 Sanctioning Board member, a party must submit a concise written statement (no more than one page) stating the reason(s) for the challenge

and why the 1060 Sanctioning Member is perceived to be biased against the party. The SCA will review any challenges received and determine if the challenged 1060 Sanctioning Board member needs to be replaced.

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

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

- a. Participation in the Sanctioning Conference is voluntary for both Complainant and Respondent. The Sanctioning Conference will proceed with or without participation of the parties.
- b. Each party present will have an opportunity to make a brief (no more than ten (10) minutes) verbal statement to the 1060 Sanctioning Board.
- c. The 1060 Sanctioning Board may ask questions of each party present at the Sanctioning Conference.
- d. Parties will not be in the Sanctioning Conference room at the same time. When a party is not in the Sanctioning Conference room, that party will be able to listen to the Sanctioning Conference proceedings via phone from a separate room.



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

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

4.5 Protection Against Retaliation

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

4.6 Abuse of Process

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

4.7 Pay Transparency

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

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5.3 Pay Transparency Nondiscrimination Provision

https://www.dol.gov/ofccp/pdf/pay-transp_formattedesqa508c.pdf

Revision History

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