

**IDAHO STATE UNIVERSITY**  
**POLICIES AND PROCEDURES (ISUPP)**  
**Non-Discrimination and Anti-Harassment**  
**Policy #3100**

***POLICY INFORMATION***

**Major Functional Area (MFA):** *Office of Human Resources*

**Policy Title:** *Non-Discrimination and Anti-Harassment Policy*

**Responsible Executive (RE):** *HR Director*

**Sponsoring Organization (SO):** *Office of Equal Opportunity, Affirmative Action and Diversity*

**Dates: Effective Date:** *April 27, 2015*

**Revised:**

**Annual Review:** *April 27, 2016*

**I. INTRODUCTION**

- A. In accordance with Titles VI and VII of the Civil Rights Act of 1964; Title IX of the Education Amendments Act of 1972, the Age Discrimination in Employment Act of 1976; the Equal Pay Act of 1963; Sections 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990 as amended by the Americans with Disabilities Act Amendments Act of 2008; Title II of the Genetic Information Nondiscrimination Act of 2008; the Vietnam Era Veterans' Readjustment Assistance Act; Executive Order 11246; Executive Order 13672; the Idaho Human Rights Act and the Idaho State Board of Education Governing Policies and Procedures, unlawful discrimination, harassment (including sexual harassment) and retaliation against any employee, student, visitor, guest, contractor, subcontractor, vendor or volunteer is prohibited. This policy explains Idaho State University's position, defines discrimination and harassment, and communicates what is expected of employees of the University.

**II. POLICY STATEMENT**

- A. Idaho State University ("University or ISU") is committed to maintaining a working and learning environment that is free from unlawful discrimination and harassment and in which every member of the campus community is treated with dignity and respect. The University strives to create an environment that supports, encourages and rewards career and educational advancement on the basis of ability and performance. Accordingly, the University prohibits to the extent permitted by applicable law, discrimination and/or harassment against an individual on the basis of that person's race, color, religion, age, gender, national origin, physical or mental disability, veteran status, genetic information, sexual orientation, gender identity or any other protected class applicable under federal, state, local law or ISU Policy.

**III. AUTHORITY AND RESPONSIBILITIES**

- A. Management's Prevention and Reporting Responsibilities

1. Members of the University community who (a) supervise other employees, students, or volunteers or who interface and direct 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 Equal Opportunity, Affirmative Action and Diversity Office (EO/AA and Diversity Office) after being informed of or having a reasonable basis to suspect there has been discrimination against, harassment of, or retaliation against a member of the University community.

#### **B. Individual Employee Responsibilities**

1. All members of the University community are responsible for creating a campus environment free from unlawful discrimination and harassment and for following this policy. The University expects all members of the University community to refrain from engaging in behavior or conduct that constitutes unlawful discrimination or harassment.
2. Employees who observe or are otherwise aware of discrimination, harassment or other inappropriate conduct that violates this policy must report such conduct to the EO/AA and Diversity Office, Human Resources, or to their supervisor.
3. Members of the University community are expected to cooperate with the University in any investigation of alleged discrimination and/or harassment under this policy to the extent permitted by applicable law.
4. Employees who engage in personal social networking or other off duty conduct could violate this policy if that conduct creates or contributes to an intimidating, hostile or offensive work environment and it constitutes unlawful discrimination or harassment under this policy.

#### **C. Investigating Responsibilities**

1. The Equal Opportunity, Affirmative Action and Diversity Office is responsible for conducting investigations of allegations of harassment and discrimination.

#### **D. Title IX Officer and Deputy Coordinators**

1. The Title IX Officer and Deputy Coordinators are charged with coordinating the University response to reports of sexual misconduct under this policy. The Title IX Officer and Deputy Coordinators do not serve as advocates for either the complainant or the respondent. Rather, they will complete an intake of information about the situation and explain the processes for filing a complaint and the provisions for confidentiality. The Title IX Officer or Deputy Coordinators will provide information to both parties regarding options for obtaining advocacy, medical and counseling services, and making criminal reports, and will assist with providing information on other resources. They will coordinate with other campus officials to take appropriate interim actions such as administrative leave, no contact orders, work assignments, housing, dining and academic modifications.

### **IV. DEFINITIONS**

- A. **Protected Class:** Protected class is a term used in anti-discrimination law to describe characteristics or factors which cannot be targeted for discrimination and harassment. For

purposes of this policy, the following characteristics are considered “Protected Classes” and, to the extent permitted by applicable law, individuals cannot be discriminated against based on these characteristics: race, color, religion, gender, age, national origin, physical or mental disability, veteran status, genetic information, sexual orientation, gender identity or any other status protected under applicable federal, state, local law or ISU policy.

- B. **Discrimination:** Discrimination occurs when an individual or group of individuals is treated adversely (i.e. denied rights, benefits, equitable treatment or access to facilities available to others) based on the individual’s or group’s actual or perceived membership in a protected class.
- C. **Harassment:** Harassment includes unwelcome conduct that demeans or shows hostility or aversion toward an individual because of his or her protected class. The conduct must be sufficiently severe, persistent or pervasive to interfere with, limit, or deny the ability of the individual to participate in or benefit from employment access, employment benefits, employment opportunities, educational programs and/or activities or the conduct creates an intimidating, hostile or offensive environment. Harassing conduct may be verbal, written, visual or physical in nature. It includes, but is not limited to:
- Verbal abuse or hostile behavior such as insulting, name calling, teasing, mocking, degrading or ridiculing another person or group;
  - Conduct that is physically offensive, harmful, threatening or humiliating such as impeding or blocking movement, leering or staring;
  - Unwelcome or inappropriate physical contact such as kissing, hugging, pinching, patting or grabbing another person;
  - Physical assault or stalking.

Merely offensive conduct and/or harassment of a generic nature, such as bullying, not on the basis of membership in a protected class may not result in a violation of this policy, but may be addressed through education and/or other resolution methods.

- D. **Bullying:** Bullying is repeated and persistent negative acts of individuals or groups directed toward one or more individuals in which there is a perceived power imbalance and which creates a hostile environment. For bullying to be established, it typically needs to occur over a significant period of time. Bullying can occur through personal contact, through texting, email, social media or any other electronic communications. Examples of bullying behaviors include:
- Aggressive communication such as insulting or offensive remarks, shouting, yelling, angry outbursts, and invasion of personal space;
  - Acts aimed at humiliating and ridiculing such as harsh practical jokes, spreading rumors and gossip, teasing, and taunting;
  - Manipulation of work such as purposely withholding information, leaving employees out of important correspondence, arbitrarily changing tasks and deadlines, exclusion or isolation;
  - Mobbing, which is when a group of persons repeatedly engage in bullying behavior that is directed in a systemic manner toward one individual or group.

Bullying does not include:

- Situations where colleagues or students point out professional differences or difficulties they have with other members of the campus community, provided it is done in an appropriate manner;

- Occasional differences of opinion, conflicts and problems in work/study relationships. These are part of life and certainly every conflict does not constitute bullying;
- Situations where a supervisor institutes proceedings for unsatisfactory performance, misconduct, dismissal or to deal with complaints within the framework of University policies and procedures.

E. **Sexual Misconduct:** Sexual misconduct includes, but is not limited to:

- Sexual Harassment
- Non-Consensual Sexual Contact (or attempts to commit same)
- Non-Consensual Sexual Intercourse (or attempts to commit same)
- Sexual Exploitation

F. **Sexual Harassment:** Sexual harassment is unwelcome sexual or gender based verbal, written, online and/or physical conduct.

- Sexual harassment creates a **hostile environment** when it is sufficiently severe, pervasive, persistent or offensive so that it has the effect of unreasonably interfering with, denying, or limiting employment opportunities or the ability to participate in or benefit from the University's educational, social and/or residential program, or
- **Quid pro quo** (this for that) sexual harassment occurs when employment or academic decisions resulting in a significant change in status are based on an employee or student's submission to or rejection of unwelcome verbal or physical sexual conduct. Examples include:
  - Requiring sexual favors in exchange for hiring, a promotion, a raise or a grade.
  - Disciplining, demoting or firing an employee because he or she ends a consensual relationship.
  - Refusing to write recommendations for a graduate student because the student refuses sexual advances.
  - Changing work or academic assignments because an employee or student refuses invitations for a date or other private, social meetings.

G. **Non-Consensual Sexual Contact:** Non-consensual sexual contact is any intentional sexual touching, however slight, including with any object, by one person upon another person (regardless of gender), that is without consent and/or is by force. Sexual contact may include intentional contact of a sexual nature with any body part of another person.

H. **Non-Consensual Sexual Intercourse:** Non-consensual sexual intercourse is any sexual intercourse however slight, including with any object, by one person upon another person (regardless of gender), that is without consent and/or is by force.

I. **Sexual Exploitation:** Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostitution;
- Non-consensual video or audio taping of sexual activity;
- Voyeurism;
- Knowingly transmitting a sexually transmitted infection or disease or HIV;
- Exposing one's genitals;

- Sexually based stalking and/or bullying.
- J. **Consent:** Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
- K. **Complainant:** A complainant is any person who submits a complaint alleging that a member of the University community identified in Section I has violated the ISU Non-Discrimination and Anti-Harassment Policy.
- L. **Respondent:** A respondent is any person about whom a complaint alleging that she or he has violated the ISU Non-Discrimination and Anti-Harassment Policy.
- M. **Retaliation:** Retaliation is firing, demoting, harassing or any other adverse employment action toward applicants, employees or students because they filed a charge of discrimination, complained about discriminatory practices of an employer or participated in an employment discrimination proceeding (e.g. an investigation or lawsuit).

## V. PROCEDURES TO IMPLEMENT

### A. Reporting Process

1. Filing a Complaint
  - a. Complaints of discrimination and harassment should be brought to the EO/AA and Diversity Office in good faith and supported by fact. The EO/AA and Diversity Office will initiate an investigation for all complaints of discrimination and harassment, in a manner it deems appropriate, based on the information available.
  - b. In some instances, an informal resolution process may be utilized as an alternative. The EO/AA and Diversity Director and Title IX Officer will determine if informal resolution is appropriate, based on the willingness of the parties and the nature of the alleged conduct.
  - c. Complaints should be filed in a timely manner in accordance with federal civil rights guidelines. Complaints extending beyond those guidelines may be considered, depending on the severity of the allegations and the circumstances.

### B. Investigation Process

1. Investigating a Complaint
  - a. During an investigation, the EO/AA and Diversity Office will take appropriate measures to ensure that any alleged discrimination or harassment does not persist. These measures may include administrative leave, no contact orders, work assignments, or housing, dining or academic modifications.
  - b. The EO/AA and Diversity Office has the discretion to engage an outside investigator to conduct the investigation, depending on the circumstances giving rise to the investigation.
  - c. The parties to the complaint will each have an opportunity to be heard during the investigation, and to provide witnesses and other evidence to the investigator. The parties to the complaint will also be informed of the status of the investigation periodically. Each party is entitled to an advisor of their choosing throughout the process.
  - d. The University will use its best efforts to complete the investigation within sixty (60) days of the report of discrimination or harassment. Depending on the

circumstances and nature of the complaint, extensions of time may be necessary to complete a thorough investigation.

- e. The standard of evidence used to determine if a policy violation has occurred is the Preponderance of the Evidence standard.

2. Investigation Findings

- a. The findings of the investigation will be communicated to the parties of the complaint, and the appropriate University officials.
- b. If, based on the investigation, the University determines that a violation of policy has occurred, the University will take action commensurate with the conduct to ensure any discrimination, harassment or inappropriate behavior does not persist. The nature and actions and its implementation will depend on the particular facts and circumstances. Corrective action may include a range of disciplinary measures up to and including immediate termination.
- c. If corrective action involves disciplinary sanctions, the appropriate disciplinary procedures will be followed. Sanctions imposed may be appealed through the appropriate appeals process depending on the status of the alleged policy violator.

**B. Additional Campus Reporting Responsibilities:**

In addition to required campus reporting, reports may also be made to the police, especially if a crime is or may be involved, by calling the following numbers:

Emergency:	9-1-1
ISU Campus Security:	(208) 282-2515
Pocatello Police:	(208) 234-6100
Idaho Falls Police:	(208) 529-1200
Meridian Police:	(208) 888-6678
Twin Falls Police:	(208) 735-4357

**C. Clery Act Reporting Requirements:**

Victims of sexual misconduct should be aware that the University must issue crime alerts for incidents reported to them that represent a serious or continuing threat to students or employees. ISU will withhold a victim's name and other identifying information while providing enough information for community members to make safety decisions in light of the potential danger.

**D. Confidentiality:**

Confidentiality of complaints will be maintained on a "need to know" basis to the extent permitted by the circumstances and applicable law, and consistent with the University's obligation to thoroughly investigate the incident and circumstances.

**E. Confidential Resources:**

Members of the University community have access to the following resources with the assurance that the information will not be shared with others. Reporting to faculty and staff is not confidential because they are required to share information with the Title IX Officer.

University Counseling and Testing Service (UCTS)	(208) 282-2130
Center for New Directions, ISU College of Technology	(208) 282-2454
ISU Student Health Center	(208) 282-2330

Counseling, Testing and Career Services, Idaho Falls	(208) 282-7750
ISU Meridian Counseling Clinic	(208) 373-1719
Twin Falls Campus, contact UCTS for referral	(208) 282-2130
Family Service Alliance, Pocatello	(208) 232-0742
Domestic Violence & Sexual Assault Center, Idaho Falls	(208) 529-4352
Crisis Center of Magic Valley, Twin Falls	(208) 733-1000
Women and Children's Alliance, Boise	(208) 343-3688

*Note: Reporting to a resource that maintains confidentiality does not constitute reporting to the University.*

**F. Anonymous Reporting:**

Silent Witness is the Department of Campus Security's online anonymous reporting system. It is located at <http://www.isu.edu/pubsafe/security/silent.shtml>.

The MySafeCampus Hotline ([www.MySafeCampus.com](http://www.MySafeCampus.com)) is a website operated by a third party which forwards report anonymously to ISU's internal auditor and General Counsel. If the report is submitted to the website, it is possible for the reporting party to communicate anonymously with these officers as the report is investigated. MySafeCampus can also be reached at (800) 716-9007.

**VI. Related Policies**

- ISUPP 3060 Sexual Orientation and Gender Identity Policy
- ISUPP 3090 Grievance Procedure for Non-Classified Employees
- ISUPP 4041 Grievance Procedures for Institutional Faculty
- Classified Employees Problem-Solving, Due Process and Appeal Procedure

**PRESIDENTIAL CERTIFICATION**

\_\_\_\_\_ Date: \_\_\_\_\_  
 Approved by Arthur C. Vailas  
 President, Idaho State University

OGC use only:  
 Received by OGC on \_\_\_\_\_ by \_\_\_\_\_ (initial).

Published to ISUPP on \_\_\_\_\_ by \_\_\_\_\_ (initial).