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

POLICY INFORMATION
Policy Section: Governance/Legal
Policy Title: Non-Discrimination and Anti-Harassment Policy
Responsible Executive (RE): General Counsel
Sponsoring Organization (SO): Office of Equal Opportunity, Affirmative Action and Diversity
Dates: Effective Date April 27, 2015
Revised: July, 2019

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;
   • Idaho Code Sections 18-7902, 18-7905, and 18-7906;
   • 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, applicant for admission and/or
employment, 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 and students
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 Office of Equity and Inclusion 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. Members of the University community are required to cooperate with the University in any investigation of alleged discrimination and/or harassment under this policy to the extent permitted by applicable law.

3. 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. Mandatory Reporter Policy

1. All university employees (faculty and staff) are required to immediately report actual or suspected discrimination or harassment to the Office of Equity and Inclusion. All university employees have a duty to report violations of this policy unless they fall under the “Confidential Employees” in subsection 3 below. Reports should include sufficient information (names, locations, specific facts) to allow the Office of Equity and Inclusion to investigate, if necessary.

2. Student employees are mandatory reporters to the extent their knowledge of a
potential policy violation is related to their employment.

3. Employees who work for the Counseling and Testing Center, health care professionals who have a practitioner/client relationship, faculty in the Health Sciences or Counseling Department(s) who oversee clinical operations involving patients are exempt from the Mandatory Reporter Policy, if violations are identified during the scope of work or are otherwise covered by confidentiality requirements.

D. Investigating Responsibilities

1. The Office of Equity and Inclusion is responsible for conducting investigations of allegations of harassment and discrimination.

E. Title IX Officer and Deputy Coordinators

1. The Office of Equity and Inclusion is 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.

D. 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
• Stalking
• Relationship Violence and/or Intimate Partner Abuse
• Sexual Coercion

E. Sexual Harassment: Sexual harassment is unwelcome sexual or gender-based verbal, written, online and/or physical conduct. There are two types of sexual harassment: Quid Pro Quo and Hostile Environment.

- 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. In determining whether a denial or limitation has occurred, the University examines all the relevant circumstances from an objective and subjective perspective including but not limited to:
  - The type of harassment (e.g., whether it was verbal or physical);
  - The frequency and severity of the conduct;
  - The age, sex, and relationship of the individuals involved (e.g. teacher-student or student-student or supervisor-subordinate);
  - The setting and context in which the harassment occurred;
  - Whether other incidents have occurred at the University; and
  - Other relevant factors.

A hostile environment can occur when sexual harassment is severe, persistent or pervasive. The more severe the conduct, the less need there is to show a repetitive series of incidents to demonstrate a hostile environment, particularly if the harassment is physical.

- 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.

F. 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.

G. 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.

H. 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.

I. Stalking: A course of conduct directed at a specific person that would cause a reasonable person to feel fear. A course of conduct can be defined as a pattern of behavior composed of two or more acts over a period of time, however short, that evidence a continuity of purpose. Stalking behavior includes communicating orally, in writing, or electronically with another individual or directing someone else to do so or remaining in the physical presence of the other person.

J. Relationship Violence and/or Intimate Partner Abuse: The use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual, or economic abuse directed towards a partner in a dating or domestic relationship constitutes
relationship violence. This includes any behavior that intimidates, isolates, frightens, threatens or otherwise physically, emotionally or economically harms one's partner. Relationship violence can be a single act or a pattern of behavior in relationships. The University will use federal regulations to classify a relationship as dating or domestic for the purposes of reporting.

K. 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.
   1. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
   2. Previous relationships or prior consent cannot imply consent to future sexual acts.
   3. In order to give consent, one must be of legal age, 18, in the state of Idaho. Incapacitation negates consent. An individual cannot give consent when mentally or physically incapacitated, when the incapacity is known – or based on the circumstances should reasonably have been known to be incapacitated. Incapacitation may be caused by alcohol or other drug use, unconsciousness or blackout, mental disability, sleep, involuntary physical restraint, or from the consumption of incapacitating substances. The use of alcohol or drugs will never function as a defense to a gender-based or sexual misconduct violation.

L. Incapacitation: A state in which individuals cannot make rational, reasonable decisions because she/he lacks the capacity to give knowing consent (e.g. to understand the “who, what, when, where and how” of the circumstances or interpersonal interaction that could lead to sex). Incapacitation negates consent. Intoxication is not synonymous with incapacitation. An individual is not prohibited from initiating sexual activity with someone who is intoxicated as long as that person is not incapacitated.

M. Force: The use of physical violence and/or imposing on someone physically. Force also includes threats, intimidation (implied threats), and coercion that overcomes resistance or produces consent.

N. 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. The University may act as Complainant.

O. 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.

P. Retaliation: Retaliation is firing, demoting, harassing or any other adverse employment or educational action (or attempts to commit same) 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
   A. Reporting Process

   1. Filing a Complaint
      a. Complaints of discrimination and harassment should be brought to the Office of Equity and Inclusion in good faith and supported by fact. The Office of Equity and Inclusion 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 Office of Equity and Inclusion 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. Informal Resolution

1. At the discretion of the Office of Equity and Inclusion, informal resolution of complaints may be pursued in the following situations:
   a. When a Respondent admits responsibility for all or part of the alleged policy violation;
   b. When a Complainant seeks a desired outcome (e.g.; for the behavior to cease) that the Respondent accepts voluntarily without negotiation or mediation.

In these circumstances, the Office of Equity and Inclusion will coordinate the resolution with Student Affairs, the Respondent's supervisor(s) and/or Human Resources as appropriate.

C. Due Process Protections

1. All complaints are investigated in a fair, impartial manner as to whether a policy violation has occurred. Persons free of actual or perceived conflicts of interests and biases for or against any party will lead and oversee the investigation.
2. Once the Office of Equity and Inclusion decides to proceed with an investigation, a notice will be issued to both parties. The notice will contain allegations of potential violations of ISU policies including sufficient details of the allegations and the specific sections that have been alleged to have been violated. Each party will receive sufficient time to prepare a response before the first interview.
3. The Office of Equity and Inclusion will suggest available support services to both parties such as referrals to the Counseling and Testing Center or Employee Assistance Program. Interim measures, No Contact Directives or other accommodations will be offered as appropriate to either or both parties and are not punitive in nature. Any rights or opportunities are made available to either party on equal terms.
4. At the end of the investigation process, both parties shall have the right to receive the investigation report with witness names redacted. The copy provided is confidential and shall not be shared with the public by either party. Both parties may write a response to the investigation report.

D. Investigation Process

1. Investigating a Complaint
   a. During an investigation, the Office of Equity and Inclusion 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 Office of Equity and Inclusion 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 in a prompt and equitable manner. In many cases this can be accomplished 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.

f. Withdrawal or resignation from the University shall not be used as a method to avoid completion of the investigation.

2. Investigation Findings

a. The findings of the investigation will be communicated to the parties of the complaint, and the appropriate University officials as a Notice of Outcome.

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, expulsion from the University, or permanent trespass from campus.

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.

d. If a student is found responsible under this policy, the matter will be referred to Student Affairs who will proceed in accordance with their policies contained in the Student Conduct Code. If an employee is found responsible under this policy, the matter will be referred to the appropriate supervisor, Dean, Vice President and/or Human Resources for further action.

e. Reports or sanctions that result of any disciplinary proceedings conducted under this policy, or by Student Affairs involving students, shall be provided to the other party.

E. Appeals

1. Following the conclusion of the investigative process and after the investigative report has been completed and a Notice of Outcome has been communicated to each party, either party has the right to appeal the findings and outcome of the investigative report.

2. All requests for appeal must be submitted in writing to the Office of Equity and Inclusion within ten business days after the Notice of Outcome has been sent.

3. Appeals are limited to the following grounds:

   a. A procedural error or omission that significantly impacted the outcome.

   b. To consider new evidence, unknown or unavailable during the original
investigation. A summary of new evidence must be included.

4. Appeals will be conducted by an Appellate Panel. The Appellate Panel will consist of trained Title IX investigators selected randomly who have had no prior involvement with the case.
   a. In cases involving a student respondent where the investigative report and Title IX Coordinator recommend a finding of “not responsible,” if the Appellate Panel upholds the findings of the investigative report, the case is closed.
   b. In cases involving a student respondent where the investigative report and Title IX Coordinator recommend a finding of “responsible,” if the Appellate Panel upholds the findings of the investigative report, the case proceeds to Student Conduct in accordance with the procedures for the student conduct hearing board as found in the Student Conduct Code Article IV. Sections F. G. and I. An additional appeal is available if a sanction is imposed and is described in the Student Conduct Code.
   c. In cases involving an employee where the investigative report and Title IX Coordinator recommend a finding of “not responsible,” if the Appellate Panel upholds the findings of the investigative report, the case is closed.
   d. In cases involving an employee where the investigative report and Title IX Coordinator recommend a finding of “responsible,” if the Appellate Panel upholds the findings of the investigative report, the case proceeds to HR, and/or the Respondent’s supervisor for resolution in accordance with appropriate disciplinary or grievance procedures available to the party, up to and including termination.

F. 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 Public Safety: (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

G. Clery Act Reporting Requirements:
Pursuant to the Clery Act, the University includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. Victims of sexual misconduct should be aware that the University must issue crime alerts called timely warnings to the University community for incidents reported that may represent a serious or continuing threat to students or employees. ISU will withhold a victim’s name and other personally identifying information when issuing timely warnings while providing enough information for community members to make safety decisions in light of the potential danger.

H. 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.
I. 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.

J. Anonymous Reporting:
The Department of Public Safety has an online anonymous reporting form. It is located at
https://isu.edu/publicsafety/anonymous-reporting-form/

The MySafeCampus Hotline (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
- ISUPP 3160 Classified Employees Problem-Solving, Due Process and Appeal Procedure
- ISUPP 5000 Student Conduct Code

PRESIDENTIAL CERTIFICATION

[Signature]
Date: 8-20-19

Approved by Kevin Satterlee, Idaho State University