

**IDAHO STATE UNIVERSITY**  
**POLICIES AND PROCEDURES (ISUPP)**  
**Student Conduct Code**  
**ISUPP 5000**

*POLICY INFORMATION*

**Policy Section:** *Student Affairs*

**Policy Title:** *Student Conduct Code*

**Responsible Executive (RE):** *Vice President for Student Affairs*

**Sponsoring Organization (SO):** *Office of the Vice President for Student Affairs*

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

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**Annual Review:** *February 20, 2019*

**I. INTRODUCTION**

The Student Conduct Code establishes behavioral standards and responsibilities for Idaho State University (hereinafter as “ISU” or “University”) students and includes the processes and procedural rights for administering conduct proceedings.

**II. POLICY STATEMENT**

The Student Conduct Code articulates behavioral standards and procedural guidelines designed to empower ISU community members to live, work, study, recreate, and pursue their goals in a safe, secure, and inclusive environment. Adherence to and enforcement of the Code promote student accountability, community integrity, and mission fidelity.

This Code should be viewed as a general framework to guide student conduct. It cannot possibly cover all complex situations or exceptional circumstances involving policies and procedures. Therefore, the Vice President for Student Affairs, in collaboration with University General Counsel, shall decide what policies and/or processes shall be applied if a circumstance is not specifically addressed herein.

**III. AUTHORITY AND RESPONSIBILITIES**

**A.** The Director of Student Life serves as the University Student Conduct Administrator (hereinafter as “Conduct Administrator”) and oversees the implementation of the Student Conduct Code (hereinafter as “Code”).

- B. Student Conduct Boards (hereinafter as “Conduct Boards”) are comprised of students, faculty, and staff trained and supported in their role as decision-makers in conduct proceedings.
- C. Other officials from the Division of Student Affairs serve as Student Conduct Officers (hereinafter as “Conduct Officers”) and report to the Conduct Administrator on conduct matters.
- D. In cases where a student’s conduct violates both the Code and departmental or program policies, the Code will supersede the other policy.

#### IV. IDAHO STATE UNIVERSITY STUDENT CONDUCT CODE

##### Preamble

ISU’s Code is predicated on the premise that communities have the authority and the responsibility to establish standards and expectations for the behavior of their members. The late Dr. Ernest Boyer, President of the Carnegie Foundation for the Advancement of Teaching, identified six principles of community that provide the foundation for the University’s Code:

##### **Purposeful**

A college is an educationally *purposeful* community, a place where faculty and students share academic goals and work together to strengthen teaching and learning.

##### **Open**

A college is an *open* community, a place where freedom of expression is uncompromisingly protected and where civility is powerfully affirmed.

##### **Just**

A college is a *just* community, a place where the sacredness of the person is honored and where diversity is aggressively pursued.

##### **Disciplined**

A college is a *disciplined* community, a place where individuals accept their obligations to the group and where well-defined governance procedures guide behavior for the common good.

##### **Caring**

A college is a *caring* community, a place where the well-being of each member is sensitively supported and where service to others is encouraged.

##### **Celebrative**

A college is a *celebrative* community, one in which the heritage of the institution is remembered and where rituals affirming both tradition and change are widely shared.<sup>1</sup>

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<sup>1</sup> Campus Life: In Search of Community (1990). The Carnegie Foundation for the Advancement of Teaching. Ernest L. Boyer (forword); Princeton, NJ. (verbatim on pp. 7-8).

The Code contains conduct standards based on values essential to a flourishing academic community, such as honesty, integrity, respect, civility, and fairness. The standards are higher than the general law, as our expectations for ISU students, as future alumni and citizen-leaders, are considerable. That said, the University strives to honor core tenets of our society and our academic legacy, such as free expression. Therefore, expression that may be offensive or unpopular may not be actionable under this Code. Further, those who administer the Code attempt to facilitate hearings and sanctions that consider the developmental and educational needs of students, whenever possible.

Students are also citizens of the larger society. As citizens, they retain those rights, protections, and guarantees of fair treatment that are held by all citizens. In addition, students are subject to the reasonable and basic standards of the University regarding discipline and maintenance of an educational institution. The enforcement of the student's duties to the larger society is, however, the responsibility of the legal and judicial authorities established for that purpose.

### **Article I: Definitions**

All definitions appertain to the Student Conduct Code; definitions in this policy may not be the same as other University policies.

- A. **“Academic”** refers to school-related endeavors, whether the school is academic, professional, or technical.
- B. **“Accused”** means any student accused of violating the Code. The Accused may also be referred to as a Respondent.
- C. **“Address of Record”** is the student’s ISU email address and/or the address on file with the Office of the Registrar. Notice is considered to have been received if sent to either of these addresses.
- D. **“Complainant”** means any person who submits a complaint alleging an ISU student violated the Code. When an individual believes he or she has been victimized by a student’s misconduct, he or she will have the same rights under the Code as are provided to complainants.
- E. **“Conduct”** is a manner of behaving or acting, including inaction, when asked to act or when a reasonably prudent person would know how to act.
- F. **“Conduct Proceedings”** is a general term referring to University processes and procedures established within the Code for the purpose of resolving allegations and complaints of student misconduct. These proceedings include administrative resolution meetings, conduct board hearings, and appeals.
- G. **“Faculty member”** or **“Instructor”** is a person responsible for teaching a class or laboratory or other instructional activities. This definition includes instructors

(regardless of rank), instructional staff, graduate assistants, visiting lecturers, and affiliate or visiting faculty.

- H. **“May”** is used in the permissive sense.
- I. **“Members of the University community”** refers to students, faculty members, staff members, administrators (including governing board members), or any other person employed by or volunteering for, the University. The Conduct Administrator and/or the Vice President for Student Affairs determine(s) a person’s status in a particular situation.
- J. **“Policy”** means the written regulations of the University as found in, but not limited to, the Code, Standards of Residence, Information Technology Acceptable Use policy, and University catalogs.
- K. **“Protected Class”** is a term used in anti-discrimination law to describe characteristics or factors that are unlawfully targeted for discrimination and harassment. For purposes of the Code, 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/expression, marital and familial status, or any other status protected under applicable federal, state, local law, or ISU policy.
- L. **“Shall”** is used in the imperative sense.
- M. **“Student”** includes all persons taking courses at the University, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, whether degree or non-degree seeking, and continuing education classes or special programs. Persons who withdraw after allegedly violating the Code, who are not officially enrolled for a particular term but have a continuing relationship with the University, or who have submitted an application for admission are considered students.
- N. **“Student Conduct Boards”** refer to persons authorized by the Conduct Administrator to determine whether a student has violated the Code and to impose sanctions when a Code violation has been committed.
- O. **“Student Conduct Officer”** is a University staff or faculty member authorized by the Conduct Administrator, on a case-by-case basis, to impose sanctions upon students found to have violated the Code. The Conduct Administrator is also a Student Conduct Officer.
- P. **“Student Organization”** means an organization comprised of any number of students who have complied with the requirements for registered student organizations at the University.
- Q. **“University premises”** includes all land, buildings, facilities, and other property possessed, owned, used, or controlled by ISU (including adjacent streets and sidewalks).

## **Article II: University Authority to Regulate Student Conduct**

Students are subject to University authority. The University derives its authority to regulate student conduct from the Idaho State Board of Education<sup>2</sup>. The President of the University delegates this authority to the Vice President for Student Affairs, who then extends the authority to the Conduct Administrator.

- A.** The Conduct Administrator and/or the Vice President for Student Affairs may develop policies for the administration of the Code and establish procedural rules for Conduct Officers and Student Conduct Boards that are consistent with the Code.
- B.** The Conduct Administrator determines which Conduct Officer or Conduct Board will hear a particular complaint. The Vice President for Student Affairs evaluates requests for appeals and determines who may hear them.
- C.** The University's authority to regulate conduct applies to:
  - 1. Students, registered student organizations, and student groups, if their collective action violates the Code and displays a lack of internal control that is detrimental to the purposes of the University or the maintenance of a secure and productive learning environment.
  - 2. Students, from the time they submit an application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of enrollment. If misconduct occurred prior to the awarding of a degree, but was not discovered until after the degree was awarded, the University may institute its conduct proceedings.
  - 3. Students, even if they withdraw from school while a complaint, investigation, or conduct proceeding is pending or underway.
  - 4. Conduct that occurs on University premises (all locations and centers), at University sponsored activities, and off-campus conduct that adversely affects the University community and/or the pursuit of its objectives. The Conduct Administrator and/or the Vice President for Student Affairs decide(s) whether the Code shall be applied to conduct occurring off campus on a case-by-case basis.
  - 5. Conduct that occurs while students are studying in another country, even if the University does not coordinate or supervise the experience.
- D.** Misconduct that is also a Violation of Law  
University conduct proceedings may be instituted against a student charged with conduct that potentially violates both the criminal law and the Code (that is, if both

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<sup>2</sup> ISBOE Governing Policies and Procedures § III.P.12

possible violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution.

Conduct proceedings under the Code may be carried out prior to, simultaneously with, or following civil or criminal proceedings at the discretion of the Conduct Administrator in consultation with the Vice President for Student Affairs and General Counsel.

Determinations made or sanctions imposed under the Code shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of University rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

### **Article III. Conduct Rules and Regulations**

The University encourages students to approach personal decision making with the following expectations and principles, but not all behaviors that violate these principles may be actionable under the code.

- The University expects its students to be honest, forthright, and authentic. Integrity is basic to the University's mission and core functions of teaching, learning, scholarship, and service. As a public institution, the University is a steward of shared resources and public trust, and students assume an obligation to assist faculty, staff, and administrators in meeting the responsibilities of stewardship.
- The University values civil discourse, equity, and human dignity as essential to supporting the marketplace of ideas. Students are expected to be considerate and respectful of others' efforts to share and receive ideas even though they may disagree with them. The best remedy or recourse for offensive expression, ideas, or opinions is more expression and the introduction of other ideas.
- The University expects students to respect and honor the core functions and processes of the University and to act in a manner that allows those functions (e.g., learning, teaching, research, service, free expression, and enforcement of campus regulations) to progress without unnecessary impediments.
- The University expects students to respect the rights and dignity of each individual in all contexts, but particularly in close interpersonal relationships. All people should be afforded autonomy and the ability to live free from violence, discrimination, harassment, threats, coercion, or the use of force.

*The proscribed behaviors that follow are not an exhaustive list, but represent types of student misconduct that have occurred on campus. Any student, student organization, or student group found responsible for committing or attempting to commit the following misconduct will be subject to conduct sanctions.*

**A. Acts of dishonesty** include but are not limited to the following:

1. Furnishing false information to the University. This includes filing false, knowingly incomplete, or intentionally exaggerated reports or documents with Public Safety, the Vice President for Student Affairs, or other departments, staff, and faculty.
2. Forgery, alteration, or misuse of any University document, record, or instrument of identification including parking passes or any document, record, or instrument requested by or provided to the University.
3. Unauthorized possession, duplication, or use of keys or access codes to any University premises or unauthorized entry to or use of University premises.
4. Cheating on tests administered by any ISU testing center (see ISUPP #400) including tests administered by any ISU testing center.

Possible violations of the ISU Academic Dishonesty Policy are administered separately by faculty members and academic administrators. Certain behaviors may violate both the Academic Dishonesty Policy and this section, or others, of the Code. In that case, the Conduct Administrator will consult with the relevant department(s) and determine whether one process or both will be utilized.

**B. Disruptive or obstructive actions or activities** include but are not limited to the following:

1. Disruption or obstruction of teaching, research, administration, conduct proceedings, Public Safety proceedings, other University activities, or its service functions on or off campus. This includes speech that is manifestly unreasonable in time, place, or manner.<sup>3</sup>
2. Participating in an on-or off-campus demonstration, riot, or activity that disrupts the normal operations of the University and/or infringes on the rights of other members of the University community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area.
3. Obstruction of the free flow of pedestrian or vehicular traffic on University premises or at University sponsored or supervised functions.
4. Persistent speech, expression, or action that is so objectively offensive or concerning that it interferes with others' ability to live, learn, work, or pursue educational opportunities at the University.<sup>4</sup>

<sup>3</sup> Examples of speech that are inconsistent with time, place, and manner include shouting in a residence hall at 2:00 AM when no emergency would justify using elevated volume; intentionally interrupting an instructor during a lecture with statements that are not germane to the lecture topic or after being asked to stop interrupting; heckling performers during a public performance; and using sound amplification equipment during protests or demonstrations that interfere with nearby classes.

<sup>4</sup> The University has used the word "concerning" to represent certain types of speech that would lead hearers of the speech to become concerned for health, safety, or wellbeing of the speaker. For example, if a student persistently speaks of suicide to his or her roommates but is unresponsive to their requests to get help, the student may be disrupting the living environment because the roommates are unable to focus on anything other than preventing the suicide.

## **C. Disruptive Behavior During Instruction & Educational Activities**

Because classroom disruption is both a Student Conduct Code Violation and a classroom management issue, there is the potential for two distinct and discrete consequences. As a matter of classroom management, the instructor may intervene to preserve order and decorum within the classroom. These consequences are known as Classroom Management Interventions (CMIs).

Idaho State University prohibits student conduct that disrupts teaching, research, administration, and service functions. The core educational functions of colleges and universities are teaching, learning, research, and service. Student behavior that interferes with these core educational functions is troubling to the University because it diminishes the ability of the University and its staff to fulfill its mission. Moreover, when these functions are disrupted, it also affects the participation of other students and their opportunity to learn and grow.

The University recognizes that students have a right to speak and express themselves freely, but that right is not absolute and the context in which student speech and expression are exercised matters. Certain expressive behaviors may not be protected if they are performed at or in a time, place, or manner that is not appropriate for the context.

Students, staff, and faculty members should be aware that university officials (e.g., department chair, college dean or dean's representative, student affairs official) who become involved in an investigation or adjudication of alleged disruptive behavior will assess all relevant information and recognize the obligation of fairness to the instructor, the student, and the class.

### **REFRAINING FROM DISRUPTIVE BEHAVIOR DURING INSTRUCTION & EDUCATIONAL ACTIVITIES (for Students)**

Idaho State University students are expected to observe and follow the directions and instructions of their course instructors. Typically, expectations, directions, and instructions are conveyed to students through the course syllabus. However, instructors may also share expectations at the time assignments are given or prior to or during a particular educational activity. Regardless of the time at which expectations are delivered or the medium used, students should observe and follow them. The following statements frame the instructor-student relationship and explain how students should honor their responsibilities within the relationship.

#### **1. Conduct in the Classroom**

Faculty members supervise classroom conduct and may establish reasonable conduct standards for their students through their syllabi or spoken directives. Reasonableness is based on the proposed conduct standard serving a legitimate



educational or instructional purpose. Standards should not be arbitrary or capricious.

## 2. Freedom in Classrooms

The classroom is the center for study and understanding of the subject matter for which the faculty member has professional responsibility and institutional accountability. Faculty members should encourage free discussion, inquiry, and expression among their students in their quest for knowledge.

Faculty members should adhere to the scholarly standards for their disciplines. They should honor their role as intellectual guides and mentors. They should model honest academic conduct and evaluate their students fairly and accurately. They should respect the confidential nature of the relationship between instructor and student.

Faculty members should avoid exploiting students for personal or professional advantage and should acknowledge assistance from them. They should protect student rights as defined herein. Controlling the order and direction of a class, as well as the scope and treatment of the subject matter, rests with instructors. Instructor-imposed classroom rules should properly reflect the obligation of each student to respect the rights of others in the maintenance of classroom order and in the observance of courtesy and civility common to every intellectual discipline.

- a. Students may expect to be informed, in sufficient detail at the beginning of each term, of the nature of the course, the course expectations, the evaluative standards, and the grading system that will be used.
- b. Students may disagree with the information, data, or views offered in the classroom, and may reserve judgment about matters of opinion without fear of adverse action.
- c. Students have the right of protection against improper disclosure of information concerning their academic work and performance with others who do not have a legitimate educational interest (see the Family Educational Rights and Privacy Act).
- d. Students have the right to fair treatment that protects them from prejudiced or capricious academic evaluation. At the same time, they are responsible for maintaining standards of academic performance for their courses (see the Scholastic Appeals Policy).

## 3. General Behavioral Expectations for Students

Most instructors reasonably assume that the students in their classes meet minimum expectations for behavior in social and educational settings. The following are general minimum expectations for behavior for students at Idaho State University:

- a. Students should attend course meetings and arrive on time and depart at the end of the meeting. Arriving late and leaving early have the potential to shift focus from learning activities to the student arriving or leaving. Instructors understand there may be occasions that require a student to be absent or arrive late or depart early. When such occasions can be anticipated, students should tell their instructors in advance. When they cannot be anticipated, students should communicate as soon as possible thereafter.
- b. Students should be courteous and respectful to the instructor and other students in their courses. In practice, courtesy and respect are expressed and demonstrated by:
  - Waiting to speak out or contribute to discussions until acknowledged by the instructor;
  - Refraining from methods, manners, or modes of communication that convey disrespect. Depending on the context, the use of vulgarity, uncouth language, sarcasm, or derisive or demeaning statements could be disrespectful and unprofessional. Nonverbal elements such as gestures, volume, and tone can also demonstrate disrespect.
  - Focusing intently on instruction and learning activities. Students should avoid being the source of distraction for themselves and others. Using devices such as laptops, cell phones, mp3 players, and tablets for purposes other than learning course material should be avoided. Additionally, bringing and reading materials (magazines, newspapers, comics) unrelated to the course may distract others and communicate disengagement from learning activities.

Instructors respond to singular incidents of rude and disrespectful behavior to avoid tacitly condoning it and thereby permitting it to spread among students generally.

Students should practice good hygiene. Because many learning activities are collaborative or social, being socially capable of interacting with other students and the instructor is very important. Poor hygiene can impede social interactions and disrupt learning predicated on social exchange.

- c. Students should attend class unimpaired. Being under the influence of drugs or alcohol is unacceptable. In the case of prescribed substances affecting one's mental faculties, it would be appropriate to inform one's instructor about side effects or the influence of medication on one's mood and attentiveness. Moreover, students should disclose to Disability Services the use of medication and the condition it has been prescribed to treat.

#### 4. Behaviors that may be viewed as Disruptive

Depending on the context of the learning environment, many behaviors could be considered disruptive. The following list illustrates behaviors that are frequently reported as disruptive:

- a. Habitually arriving late and/or departing early;
- b. Conspicuously eating during class meetings;
- c. Persistently interrupting the instructor while she/he is speaking;
- d. Consistently and conspicuously conversing (side conversations) with other students while the instructor is speaking;
- e. Using electronic devices (laptops, cell phones, mp3 players, tablets) to do tasks that are unrelated to the course;
- f. Using electronic devices to do tasks or activities that distract other students (e.g., watching movies, web browsing, listening to music);
- g. Treating others in class with contempt, disdain, and disrespect (e.g., shouting others down, name calling, making fun of their questions or responses, derisively commenting about them as opposed to an idea they shared, etc.);
- h. Conspicuously reading materials that are not assigned for the class (newspapers, magazines, notes, etc.);
- i. Making loud and/or obnoxious noises (clicking or tapping pens) or shouting;
- j. Persistently asking questions that are unrelated to the topic of lecture or discussion;
- k. Engaging in threatening speech or actions that lead others to feel afraid for their physical safety and wellbeing;
- l. Disregarding instructions or directions or distracting others while directions or instructions are being given;
- m. Behaving recklessly with equipment or substances that can cause injury;
- n. Creating a scene or drawing attention to a situation that should be handled discretely (e.g., receiving critical feedback or correction, discussing personal issues publicly, or challenging/questioning a grade in front of others);
- o. Monopolizing discussion time with needlessly long (time consuming) comments;
- p. Receiving or sending phone calls and text messages; and
- q. Sleeping.

#### 5. How to Respond When Accused of Disruption

If an instructor tells a student that a particular behavior is disrupting the learning activity or instructional interaction, the student should promptly stop doing whatever the instructor indicated was disruptive. Continuing to behave disruptively could lead the instructor to ask the student to leave the class.

If an instructor asks a student to leave the class for being disruptive, the student should leave the class quietly and discretely. If a student chooses not to leave, a Public Safety officer may be called to assist him or her. If a student chooses to leave the class but needlessly draws attention to his or her departure, it will only support an allegation of disruptive behavior.

Although a student may disagree with the instructor's directive to leave the class or laboratory, questioning the instructor during the class or instructional interaction only serves to extend the duration of the alleged disruption. Students asked to leave may seek redress for misplaced directives or perceived unfairness by meeting with the instructor during his/her office hours or submitting a complaint to the instructor's supervisor (department chair) or with the Office of Student Affairs.

Failing to comply with the request of an instructor is a violation of the University's Student Conduct Code.

## 6. Potential Consequences of Disruptive Behavior

### a. Classroom Management Interventions

- i. Remedial Action (assigned seating, loss of privileges, group reassignment, class apology, etc.)
- ii. Course completion by alternative format (e.g. online, independent study, correspondence, closed circuit, etc.);
- iii. Course section reassignment if plausible;
- iv. Administrative withdrawal – Student will be withdrawn from the class without a refund of tuition. Withdrawals after the withdrawal deadline will result in an 'X' grade;
- v. Recommendation that the student be dismissed from his/her program of study by informing the appropriate Department Chair and Dean;
- vi. Referral of the incident to the Student Conduct Administrator for disciplinary action;

In the event the student is referred to the Conduct Administrator, he/she will be subject to the resolution framework outlined in the Student Conduct Code. The following sanctions may be applied to students who are found responsible for *Disruptive or Obstructive Actions or Activities*.

### b. Student Conduct Sanctions

- i. Written Warning
- ii. Probation
- iii. Loss of Privileges
- iv. University Suspension

v. University Expulsion

vi. Withholding of a Degree

Some disruptive behaviors may also result in additional violations of the *Student Conduct Code*. For example, students who are disruptive may also be accused of failing to comply; using threats, coercion, or intimidation; harassment; bullying and/or other violations enumerated in the *Code*. Sanctions will be commensurate or proportionate to the violation. More serious forms of disruption will receive more serious sanctions.

**D. Disorderly and/or Irresponsible Conduct**, including but not limited to the following:

1. Public conduct that is objectively offensive, lewd, or indecent.
2. Breach of peace, or aiding, abetting, or procuring another person to breach the peace on University premises or at functions sponsored by, or participated in by the University or members of the community.
3. Conduct that endangers the health and safety of others and/or the public.<sup>5</sup>

**E. Destruction, Damage, or Misuse of University or Private Property:** This includes, but is not limited to, all University property, whether that property be buildings, library materials, computer hardware, software and network, trees and shrubbery, or University files and records; violation of University or Associated Students of Idaho State University (ASISU) rules for use of campus facilities; tampering with safety equipment, including but not limited to fire alarms, fire equipment, or escape mechanisms and elevators.

**F. Theft**, including but not limited to the following:

1. Taking or removing others' property (including the University's), or attempting to take it without their knowledge or permission, or by the use, attempted use, or threat of force or violence. Theft also occurs when a student appropriates retail goods or services without paying the retailer for them.
2. Assuming or appropriating the identity of another person for any reason.

**G. Failure to comply with directions of University officials**, including ISU Public Safety officials acting in performance of their duties, and/or failure to identify oneself to these persons when requested to do so.

**H. Dangerous Materials:** Illegal or unauthorized possession of firearms, explosives, other weapons, or dangerous chemicals on University premises or use of any such item, even if legally possessed, in a manner that harms, threatens, or causes others to fear for their safety.

**I. Misuse of Technology:** Abuse of computer facilities and resources, including but not limited to:

1. Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.
2. Unauthorized transfer of a file.
3. Use of another individual's identification and/or password or sharing one's identification and/or password with others.
4. Interfering with the normal operation of the University computing system or the work of another student, faculty member, or University official.
5. Sending obscene, harassing, or threatening messages.
6. Downloading, sharing, and/or distributing copyrighted materials without the permission of the copyright holder and/or any other use of computing/network resources in violation of copyright law. This includes unauthorized peer-to-peer file sharing, which may subject students to civil and criminal liabilities in addition to conduct sanctions ranging from warning to expulsion.
7. Any violation of the University Acceptable Use Policy and/or the Student Computing Contract.

**J. Physical Abuse:** Pushing, hitting, kicking, choking, battering, assaulting, etc.

**K. Intimidation:** Behavior or conduct intended to induce fear in others for the purpose of deterring them from acting or forcing them to act against their will. Pressure to obtain compliance may also be considered intimidation. Grades and most university policies are not negotiable. Persistent and/or adamant requests from students such as "You must give me a (passing/specific grade) in this course" or "You must allow me to retake the exam or take the quiz I missed" and "You must allow me to register for this course" are inappropriate and disrespectful and may be considered intimidation.

**L. Threats:** Making statements or engaging in non-verbal acts that communicate clear and serious expression of intent to commit an act of unlawful violence to a particular person, persons, or property, or has the intent to inflict severe emotional distress.

**M. Coercion:** The use or threat of physical violence or the improper use of actual or perceived power, position, status, or influence to pressure others to do something against their will.

**N. Bullying:** Conduct that is "so severe, pervasive, and objectively offensive, and that so undermines and detracts from victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities."<sup>6</sup>

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<sup>5</sup> Examples of disorderly conduct that may endanger the health and safety of others include ignoring an order to be quarantined when diagnosed with a highly contagious and life-threatening illness, urinating or defecating in an indoor facility outside of a bathroom, or engaging in a typically private behavior in a public place.

<sup>6</sup> Standard set forth by the Court in *Davis v. Monroe County Board of Education*, 526 U.S. 629, 651 (1999). Bullying may include the following speech and conduct, when it is part of a pattern of behavior that rises to the level of the standard set forth above: harsh practical jokes, spreading rumors, and gossip...

- O. Hazing:** An act that endangers the mental or physical health or safety of a student, or which destroys or removes public or private property for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in a group or organization. The express or implied consent of the victim will not be a defense. Apathy or acquiescence in the presence of hazing is not a neutral act and are violations of this rule, as are violations of the Idaho Hazing Statute §18-917.
- P. 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.
- Q. Harassment:** Unwanted or unwelcome behavior or conduct toward an individual because of his or her protected class that is sufficiently severe, persistent, or pervasive to have the impact of unreasonably interfering with a person's ability to live, learn, work, or recreate at the University.<sup>7</sup>
- R. 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.<sup>8</sup> The University will use federal regulations to classify a relationship as dating or domestic for the purposes of reporting.<sup>9</sup>
- S. 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.
- T. Invasion of Privacy:** Making, using, disclosing, or distributing a recording or a photograph of a person in a location or situation in which that person has a reasonable expectation of privacy and is unaware of the recording or does not consent to it.<sup>10</sup>

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<sup>7</sup> This definition is derived from three sources: (A) *Davis vs. Monroe County Board of Education* (1999) 526 U.S. 629, (B) Harvey A. Silvergate, David French, and Greg Lukianoff's *FIRE's Guide to Free Speech on Campus, 2nd Edition* (2012), p. 91, and (C) Edinboro University of Pennsylvania's policy on Harassment, Intimidation and Institutional Vandalism – Policy No. C0006.

<sup>8</sup> This definition was adapted from Columbia University's Gender-based Misconduct Policy for Students.

<sup>9</sup> Information regarding the regulations for defining dating and domestic violence can be found in the *Federal Register*, Vol. 79, No. 202 (October 20, 2014) 34 CFR Part 668.

<sup>10</sup> This definition was obtained from the University of Florida Non-Discrimination/Harassment/Invasion of Privacy Policies.

**U. Invasion of Privacy:** Making, using, disclosing, or distributing a recording or a photograph of a person in a location or situation in which that person has a reasonable expectation of privacy and is unaware of the recording or does not consent to it.<sup>10</sup>

## **V. Gender-Based and Sexual Misconduct**

To better inform students about what actions or behaviors constitute gender-based and sexual misconduct, the definitions of consent, force, and incapacitation precede specific policy violations.<sup>11</sup>

### **Consent**

Sexual permission that 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.

- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- In order to give consent, one must be of legal age, 18 in the state of Idaho.
- Sexual activity with someone who is known to be—or based on the circumstances should reasonably have been known to be—mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a lack of consent and is a violation of the Code. This also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the consumption of incapacitating substances.

Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing, and voluntary consent to any sexual activity is equivalent to a “No.” The use of alcohol or drugs will never function as a defense to a Gender-Based or Sexual Misconduct violation.

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<sup>11</sup> NCHERM Group: The 2012 ATIXA Campus Title IX Coordinator and Administrator Training and Certification Course Materials (September 11-14, 2012): Lewis, W. S., Schuster, S. K., Sokolow, B. A., and Swinton, D. C.



## **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.<sup>12</sup>

## **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, or how” of the circumstances or interpersonal interaction that could lead to sex).

## **Incapacitating Substances**

The use and/or distribution of Rohypnol, Ketamine, GHB, Scopolamine, or other substance of this type. Possession or administration of one of these drugs is a violation of the Code. More information on these drugs can be found at <http://www.911rape.org/>.

**1. Sexual Harassment:** Unwelcome conduct of a sexual nature that includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.

There are two types of sexual harassment: *Quid Pro Quo* and Hostile Environment.

- a. Quid pro Quo (this for that) Harassment:** Employment or program-based (academic or extracurricular) decisions that result in a significant change in status because an employee or student’s submission to or rejection of unwelcome verbal, nonverbal, or physical sexual conduct. Examples include:
- i. Requiring sexual favors in exchange for hiring, a promotion, a raise in pay, a better grade, more playing time, or a leadership position.
  - ii. Disciplining, demoting, or firing an employee because he or she ends a consensual relationship.
  - iii. Disciplining, demoting, or removing a club member from a student club because he or she ends a consensual relationship.
  - iv. Refusing to write recommendations for a student because he or she refuses sexual advances.
  - v. Changing work or academic assignments because an employee or student refuses invitations for a date or other private, social meetings.

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<sup>12</sup> ATIXA Note 1: Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

ATIXA Note 2: There is no requirement that a person resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

**b. Hostile Environment Harassment:** Sexually harassing conduct that is sufficiently serious to deny or limit the student's ability to participate in or benefit from a University program or employment. In determining whether a denial or limitation has occurred, the University examines all the relevant circumstances from an objective and subjective perspective including:

- i. The type of harassment (e.g., whether it was verbal or physical);
- ii. The frequency and severity of the conduct;
- iii. The age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student);
- iv. The setting and context in which the harassment occurred;
- v. Whether other incidents have occurred at the University; and
- vi. Other relevant factors.

A hostile environment can occur when sexual harassment is severe 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. Examples include:

- One incident of sexual assault or sexual violence;
- Persistent unwelcome remarks about someone's body parts or looks;
- Displaying pornography on a laptop in class so that others stop coming to class or cannot concentrate; and
- Stalking.<sup>13</sup>

2. **Non-Consensual Sexual Contact** (or attempts to commit same): Any intentional sexual touching, however slight, with any object, by one person upon another person (regardless of gender) that is without consent and/or by force. This includes but is not limited to intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.
3. **Non-Consensual Sexual Intercourse or Rape** (or attempts to commit same): Any sexual intercourse however slight, with any object, by one person upon another person (regardless of gender) that is without consent and/or by force. This includes vaginal penetration by a penis, object, tongue, or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

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<sup>13</sup> US Dept. of Ed. Office for Civil Rights and US Dept of Justice, Civil Rights Division, *University of Montana Letter of Findings*, May 9, 2013, pgs. 4-5.

4. **Sexual Exploitation:** Taking non-consensual or abusive sexual advantage of another for the student's own advantage or benefit, or to the benefit or advantage of anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples include but are not limited to:
- Invading sexual privacy;
  - Prostituting another student;
  - Non-consensual video or audio-taping of sexual activity;
  - Going beyond the boundaries of consent within sexual activity (such as, letting your friends hide in the closet to watch you having consensual sex, sharing sexual photos);
  - Engaging in voyeurism;
  - Knowingly transmitting an STI (Sexually Transmitted Infection) or HIV (Human Immunodeficiency virus) to another student;
  - Exposing one's genitals in non-consensual circumstances; inducing another to expose his/her genitals;
  - Stalking, hazing, intimate partner violence, and/or bullying may also be forms of sexual exploitation.

**W. Smoking:** The University maintains smoke-free campuses. Smoking with any device or product, including e-cigarettes, is prohibited on University premises unless a person is on a public street or sidewalk maintained by the surrounding municipality.

**X. Drugs:** Use, possession, manufacture, or distribution of controlled substances, as defined by the United States Department of Justice, and synthetic substances used as a substitute for a controlled substance. Abusing prescription drugs is also prohibited. Violation of alcohol or drug regulations may lead to notification of a student's parents. Additionally, a conviction for violation of state or federal drug laws may jeopardize federal financial aid.

The University expects its students to comply with local, state, and federal laws regarding proscribed substances, in addition to University policies. We recognize that our society provides certain privileges to its citizens at different ages, but following the law and University policies, even while working to change them, is part of our obligations as citizens.

<https://www.usc.gov/research/research-reports/mandatory-minimum-penalties-drug-offenses-federal-system> (Check with Joanne Hirase-Stacey)

**Y. Alcohol:** Illegal or unauthorized procurement, consumption, use, possession, manufacture, or distribution of alcoholic beverages. Violation of alcohol or drug regulations may lead to notification of a student's parents. Alcoholic beverages may not, in any circumstances, be used by, possessed by, or distributed to persons under twenty-one (21) years of age.

## 1. Regulations

- a. Consumption and possession of alcohol is prohibited in general use areas and all University residence halls. General use areas include all University owned, leased, or operated facilities, and campus grounds.
- b. Consumption and possession of alcohol, by persons of legal age, is only authorized in the University apartments and other areas designated by the President with the approval of the State Board of Education. Distribution of alcohol to a minor is prohibited.
- c. Possession and consumption of alcohol by a minor is prohibited.
- d. Possession or consumption of alcohol in areas that are designated as "alcohol free" is prohibited.
- e. If a student violates the Code while under the influence of alcohol, this policy will also apply.
- f. Sale of alcohol, unless authorized by the State Board of Education and with the appropriate licenses and permits, is prohibited.

## 2. Enforcement

- a. All incidents of alcohol violations shall be reported to the Public Safety Office.
  - b. All reports of incidents involving alcohol will be forwarded to the Conduct Administrator.
  - c. The Conduct Administrator, or designee, will be responsible for the following:
    1. Determining if a reported incident constitutes a violation of the University alcohol regulations.
- Idaho House Bill No. 521, as Amended, "provides a limited use immunity from a misdemeanor Minor in Consumption or Possession of alcohol for a minor that needs or seeks emergency medical help on behalf of themselves or another."

The Bill states that "Any person under twenty-one (21) years of age who, acting in good faith and for a medical emergency:

- Is a person seeking or needs emergency medical assistance for himself or others;
- Remains on the scene until emergency medical assistance or law enforcement officers arrive; and
- Cooperates with emergency medical assistance and law enforcement personnel at the scene;

Shall have limited use immunity such that evidence obtained solely as a result of the person having sought, received or rendered emergency medical services as set forth in this section may not be used against the

person for any violation of section 23-604 or 23-949, Idaho Code, for consuming or possessing an alcohol beverage.

The provisions of this section shall have no applicability to the prosecution of any criminal charges other than the consumption or possession of an alcoholic beverage by a person under twenty-one (21) years of age under section 23-604 or 23-949, Idaho Code, and shall not prevent a prosecution based on evidence not obtained as described” herein.

- d. Recording and tracking all students responsible for alcohol violations.
- e. Notifying the criminal justice system, when warranted, of the behavior of an individual involved in an incident.
- f. Enforcing sanctions described.

### 3. Sanctions

#### a. Infractions and Mandatory Sanctions:

*The sanctions described are minimum sanctions and do not limit the disciplinary power of the University in any matter involving Code violations.*

- i. First infraction of the Academic Year – The student must pay for and complete an alcohol education program assigned by a Conduct Officer; the student will be placed on probation.
- ii. Second infraction in the Academic Year without injury or conduct likely to lead to injury – The student is placed on conduct probation and, at the student's expense, must submit to a substance abuse evaluation administered by a qualified authority. The student will provide the evaluation results or authorize the release of the evaluation results to the Conduct Administrator or designee.
- iii. Second infraction in the Academic Year with injury or conduct likely to lead to injury – The student is placed on conduct probation, and, at the student's expense, must submit to a substance abuse evaluation performed by a recognized authority. The student will provide the evaluation results or authorize the release of the evaluation results to the Conduct Administrator. The Conduct Administrator or designee may share all records of the incident with the Pocatello Police Department or other appropriate law enforcement agencies as deemed necessary.
- iv. Third infraction in the Academic Year without injury or conduct likely to lead to injury – The student is suspended from the University for one academic semester.
- v. Third Infraction in the Academic Year with injury or conduct likely to lead to injury – The student is suspended from the University for at least one academic year and all records involving the incident may be shared with the Pocatello Police Department or other appropriate law enforcement agencies as deemed necessary by the Conduct Administrator or designee.

b. Recording Cycle for Violations

For the purpose of recording alcohol violations, the University will use the academic calendar year beginning on the first day of school.

c. Right of Appeal

Students may appeal to the Vice President for Student Affairs. The procedure described in the Code will apply for all appeals. Students who reside in University Housing and violate the alcohol regulations while on or in housing premises will be governed by the policy and appeals process described in the University Housing Standards of Residence Life Handbook.

**Z. Misuse of the Student Conduct Code and Conduct Proceedings** include but are not limited to:

1. Failing to comply with a notice from a Conduct Officer, Conduct Board, or other University official to set an appointment or appear for a meeting or hearing.
2. Falsifying, distorting, or misrepresenting information before a Conduct Officer or Conduct Board.
3. Disrupting or interfering with conduct proceedings.
4. Submitting a complaint in bad faith.
5. Attempting to discourage others from participating in or using conduct proceedings.
6. Attempting to influence the impartiality of a Conduct Officer or a member of a Conduct Board prior to, and/or during the course of conduct proceedings.
7. Harassing or intimidating a Conduct Officer or a member of a Conduct Board prior to, during, and/or after a conduct proceeding.
8. Failing to comply with the sanction(s) imposed through a conduct proceeding.
9. Influencing or attempting to influence another person to commit an abuse of the Code.
10. Retaliating against any person for participating in a protected activity. The university considers the following activities protected:
  - Making a report that alleges misconduct
  - Speaking with University investigators about alleged misconduct
  - Supporting a person who is participating in an investigation or conduct proceeding
  - Sharing information with the University as a witness in an investigation or conduct proceeding.

**AA. Other Acts of Misconduct:** Violations of any local, state or federal laws and/or any published University policies may be actionable under the Code.

**Article IV: Student Conduct Process and Procedural Rights**

**A. Information Alleging Student Misconduct**

Any person may share information with the University alleging a student has violated the Code. Most often, information about an alleged violation is shared with ISU Public Safety officers who then create a standard report and forward it to the Conduct Administrator for consideration as a possible violation of the Code. Alternatively, a person may prepare a written statement containing information that alleges a violation and submit it to the Conduct Administrator or the Office of Student Affairs. Information about alleged violations of the Code should be shared as soon as possible. However, there are no time limitations on when information alleging misconduct can be brought to the attention of Public Safety, Student Affairs, or the Conduct Administrator.

Any allegation that a student has violated Article III. Section P. (“Discrimination”) or Q. (“Harassment”) based on a protected class shall be reported to the ISU Office of Equal Opportunity, Affirmative Action, and Diversity.

Any allegation that a student has violated Article III. Section R. (“Relationship Violence and/or Intimate Partner Abuse”), Section S. (“Stalking”), or Section U. (“Gender-Based and Sexual Misconduct”) shall be reported to the ISU Office of Equal Opportunity, Affirmative Action, and Diversity, or to the Title IX Coordinator.

**B. Review of Information Alleging Misconduct**

The Conduct Administrator reviews ISU Public Safety reports and statements from concerned individuals to determine if the alleged facts, if true, would constitute a violation of the Code’s provisions. At the time of review, the Conduct Administrator assumes the claims made by the reporter to be true.

**C. Investigations**

Depending on the amount, clarity, and specificity of the information presented to the Conduct Administrator, it may be helpful for the Conduct Administrator or designated Conduct Officer to investigate the allegations for the purpose of obtaining additional information. Often, the content of reports from Public Safety or others is sufficiently informative to request meetings with students accused of alleged misconduct without conducting an investigation. The decision to conduct an investigation for most allegations of misconduct is the prerogative of the Conduct Administrator and based on her/his professional judgment and discretion.

For allegations of discrimination or harassment based on a protected class, (Article III. Section P. or Q.), the decision to conduct an investigation is the prerogative of the Director of the Office of Equal Opportunity, Affirmative Action, and Diversity based on his/her professional judgment and discretion. Such investigations are conducted pursuant to the procedures set forth in ISU Policy 3100 (“Non-Discrimination and Anti-Harassment”), Section V.

For allegations of relationship violence and/or intimate partner abuse, stalking or gender-based and sexual misconduct (Article III. Section R, S. or U.), the decision to conduct an investigation is the prerogative of the Director of the Office of Equal Opportunity, Affirmative Action and Diversity or the Title IX Coordinator based on his/her professional judgment and discretion. Such investigations are conducted pursuant to the procedures set forth in ISU Policy 3100 (“Non-Discrimination and Anti-Harassment”), Section V.

Additional information may be found at:

<https://www.isu.edu/media/libraries/aeo/3100-NonDiscrim-AntiHarass-4-27-15.pdf>

<https://www.isu.edu/media/libraries/aeo/Sexual-Assault-Policy-Guide 2015 Aug 2.pdf>

Students may be asked to meet with the Conduct Administrator or designated Conduct Officer as part of the preliminary investigation for the purpose of gathering information that corroborates the alleged facts. During these meetings, students may admit to misconduct and agree to participate in an Administrative Resolution Meeting (see below) while concurrently participating in an investigation.

When the amount, clarity, and specificity of the information presented in a report of misconduct is sufficient for a reasonable person to conclude the accused student is responsible, students will be invited to participate in an Administrative Resolution Meeting without an investigation.

#### **D. Administrative Resolution Meetings**

The Conduct Administrator or designated Conduct Officer will notify students accused of misconduct in writing and request a meeting to discuss the allegations. This meeting will provide the student with an opportunity to:

1. Review the Student Conduct Code’s procedural provisions;
2. Learn about the allegations and specific policies that may have been violated;
3. Discuss the information alleging misconduct; and
4. Present an alternative explanation for the allegations.

Students who do not respond to the notice of allegations and request for an Administrative Resolution Meeting within three (3) business days may be subject to the decision of the Conduct Administrator or designated Conduct Officer without input. The same result may occur if the student schedules a meeting and subsequently chooses not to attend.

The Administrative Resolution Meeting with students is considered an opportunity to be heard on the allegations and will afford students many of the procedural rights provided to students during a Student Conduct Board hearing. The Administrative



Resolution Meeting provides the student with an opportunity to resolve the allegations in a less formal setting. The Administrative Resolution Meeting may be audio recorded at the discretion of the Conduct Administrator or designated Conduct Officer or student.

#### **E. Outcomes of an Administrative Resolution Meeting**

The following outcomes may result from an Administrative Resolution Meeting:

##### **1. A Finding of No Responsibility**

The accused student may persuade the Conduct Administrator or designated Conduct Officer that no violation occurred based on an alternative explanation of alleged facts and corroborative evidence. The student will be found not responsible for the alleged misconduct.

##### **2. Mutual Finding of Responsibility**

The accused student may review the alleged facts and available evidence and admit responsibility for the misconduct. In these circumstances, the finding is mutual because both the Conduct Administrator or designated Conduct Officer and the accused student agree the student was responsible. A student's willingness to acknowledge a violation of University policy will be considered when determining commensurate sanctions.

##### **3. Administrative Finding of Responsibility**

The accused student may offer an alternative explanation of the alleged facts and contend she/he is not responsible for the alleged misconduct, but the available evidence contradicts and outweighs the student's explanation. The Conduct Administrator or designated Conduct Officer may find the student responsible notwithstanding the alternative explanation and impose commensurate sanctions.

The accused student may reject the administrative finding of responsibility and request the report of alleged misconduct be reviewed and adjudicated by a Student Conduct Board.

#### **F. Student Conduct Board Hearings**

Student Conduct Board hearings are held when the accused student rejects an administrative finding of responsibility. The first objective of the empaneled Conduct Board members is to ascertain whether the accused student is responsible for the alleged misconduct. If a student is found to be responsible, the Conduct Board's second objective is to determine what sanctions are commensurate with the committed violation.

The Conduct Board is comprised of faculty, staff, and students who are trained to serve as adjudicators. Conduct Board members serve on a voluntary basis. To the extent possible, the Conduct Administrator seeks to identify Conduct Board members who are representative of a diverse campus community. The Conduct Board for the hearing will be composed of no fewer than three (3) and no more than five (5) members drawn from a larger pool of trained personnel. The composition of the Conduct Board may be affected by the time of year at which the hearing occurs

and the availability of Conduct Board members at times that are suitable for the complainant and the accused.

**G. Procedural Guidelines for Student Conduct Board Hearings**

1. Student Conduct Board Hearings are private. Only the complainant, accused, their advisors, witnesses, members of the Conduct Board, and the Student Conduct Administrator or Officers may attend. However, at the discretion of the Conduct Administrator, other persons may be admitted. Hearings are recorded. The recording is the property of the University and maintained according to applicable laws and policies.
2. The complainant and accused may be accompanied by an advisor of their choosing. The advisor may not be a witness. Students should provide the name of their advisor to the Conduct Administrator no fewer than three (3) business days prior to the hearing. The advisor does not speak directly to Conduct Board members or otherwise participate in the hearing. However, the advisor may confer with the student she/he has accompanied. The complainant and accused are responsible for presenting their own information. A student should select an advisor whose schedule permits attendance. No delays shall be granted on the basis of an advisor's scheduling conflicts. If requested, the Conduct Administrator will recommend an advisor.
3. The hearing may be held even if the complainant or accused does not attend, provided the Conduct Board can confirm there was a good faith effort to notify the complainant and the accused in writing. A complainant or accused may not appeal a Conduct Board decision based on her/his absence at the hearing unless unusual, exigent circumstances beyond his/her control, prevented attendance as determined by the Conduct Administrator, whose decision is final.
4. The complainant and the accused may request that an empaneled Conduct Board member be excluded from participating in a hearing on the basis of an inability to serve impartially.
5. The complainant and accused may call and question witnesses. All questions asked of witnesses must be directed to the Conduct Board Chair. The names of witnesses who will be called to testify at the hearing must be provided to the Conduct Administrator no fewer than three (3) business days prior to the hearing. The University cannot compel witnesses to testify. It is the responsibility of the complainant and the accused to persuade their witnesses to attend. In general, character witnesses are inappropriate and do not contribute to fact-finding or determining responsibility. Rather, the Conduct Board's focus is on witnesses who may have information about the incident(s) in question.
6. The complainant and accused may present evidence (e.g., records, exhibits, artifacts, written statements, etc.) of their choosing at the hearing. Whether the evidence is relevant or accepted as information for consideration by the Conduct Board is at the sole discretion of the Conduct Board Chair.
7. Formal rules of process, procedure, and/or technical rules of evidence, such as

those applied in criminal or civil court, are not used in Conduct Board proceedings.

8. All procedural questions and/or exceptions are subject to the final decision of the Conduct Board Chair.
9. The complainant and accused will be invited to give opening statements. Then the complainant presents his/her case followed by the accused student's presentation. The complainant and the accused will have the opportunity to question witnesses through the Conduct Board Chair. Last, the complainant is invited to give a closing statement followed by the accused.
10. The Conduct Board shall go into closed session following the hearing with only Conduct Board members present. Deliberations are not recorded. The Conduct Board's decision shall be based on a preponderance of the evidence, whether "it is more likely than not," that the accused is responsible for the alleged Code violation(s). The Conduct Board's decision may be rendered with or without statements of fact or comments. However, in cases involving sexual misconduct, relationship violence, and stalking, the Conduct Board will provide a reason for its finding.
11. If an accused student or complainant chooses not to attend the hearing, the hearing may commence without his or her presence. However, no assumptions shall be made about the accused student's responsibility due to his or her absence.
12. The Conduct Board may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, accused, and/or witnesses during the hearing by providing accommodations not limited to separate facilities, using a visual screen, and/or by permitting participation by telephone, videophone, closed circuit television, video conferencing, videotape, audio tape, written statement, or other means. Implementing such measures is done at the sole judgment of the Conduct Administrator.
13. The complainant and accused may be verbally notified by the Conduct Administrator of the outcome of the hearing within forty-eight (48) hours after the Conduct Board has reached a decision. Written notification will be sent within five (5) business days.

## **H. Sanctions**

1. In keeping with the University's focus, sanctions may include educational and learning based outcomes as appropriate. The following sanctions may be imposed, singly or in combination, upon any student found to have violated the Code:
  - a. Written Warning – A written notice to the student that the student is violating or has violated University policy. A record of the warning is kept in the student's file.
  - b. Probation – A written reprimand for violation of specified policy. Probation is

for a designated period of time. Sanctions may include loss of privileges or benefits. Additional sanctions up to and including suspension or expulsion may occur for additional violations of the Code.

- c. Loss of Privileges – Denial of specified privileges for a designated period of time, including the privilege of representing the University in official capacities. However, decisions about eligibility to participate in NCAA intercollegiate competitions are reserved to the Athletic Department.
- d. Restitution – Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement. Financial penalties may be added to the student’s ISU financial account.
- e. Discretionary Sanctions – Work assignments, essays, service to the University or the community, or other related discretionary assignments.
- f. University Housing Suspension – Separation of the student from University Housing for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
- g. University Housing Expulsion – Permanent separation of the student from University Housing.
- h. University Suspension – Separation of the student from the University for a definite period of time, after which the student is eligible to apply to return. Conditions for readmission may be specified and all sanctions must be completed prior to applying for re-admission. Suspension shall in no case be longer than two (2) calendar years. Suspensions will be recorded on the student’s University transcripts.
- i. University Expulsion – Permanent separation of the student from the University. Expulsions will be recorded on the student’s University transcripts.
- j. Alcohol Sanctions – Sanctions have been established for alcohol violations at the University (see Article III.W.3.).
- k. Revocation of Admission and/or Degree – Admission to or a degree awarded from ISU may be revoked for fraud, misrepresentation, or other violation of University standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- l. Withholding Degree – ISU may withhold awarding a degree otherwise earned until the completion of the student conduct process set forth in the Code, including the completion of all sanctions imposed, if any.

## 2. Sanctions for Sexual Misconduct

- a. Any student found responsible for Non-Consensual Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous Code violations.
- b. Any student found responsible for Non-Consensual Sexual Intercourse will likely

receive a sanction of suspension or expulsion depending on the severity of the incident, and taking into account any previous Code violations.

- c. Any student found responsible for Sexual Exploitation or Sexual Harassment will likely receive a sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous Code violations.

The Conduct Administrator or the Conduct Board may broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. There will be no deviation from the range of recommended sanctions unless compelling justification exists to do so.

3. A conduct sanction becomes part of the student's permanent academic record only as set forth in this paragraph. A student's permanent academic record includes any conduct sanction that comprises:
  - a. suspension, which the University automatically records onto the student's academic transcript, or
  - b. expulsion, which the University automatically records onto the student's academic transcript, or
  - c. any revocation or withholding of the student's degree.
4. Each registered student organization is offered the privilege to conduct its activities at the University, subject to its compliance with the Code. Accordingly, the University has discretion to impose upon any registered student organization any one or more of the following sanctions:
  - a. each sanction described in Article IV.H.1;
  - b. loss of any applicable University-related privilege during any time period that the University specifies; and
  - c. permanent loss of either University registration or any other applicable University-related privilege.

## **I. Appeals**

1. A decision reached or sanction assigned by the Conduct Board may be appealed by the accused student to the Vice President for Student Affairs within five (5) business days of receipt of the decision. In cases of alleged sexual misconduct, relationship violence, or stalking, the complainant may also appeal. Such appeals shall be in writing and shall be delivered to the Office of the Vice President for Student Affairs.
2. Appeals may be heard by either the Vice President for Student Affairs or a three-person board at the discretion of the Vice President for Student Affairs.
3. The appeal shall consist of a conversation with the appellant (in cases of sexual misconduct, with both parties) and a review of the verbatim record of the Conduct Board hearing or any notes from the hearing and supporting documents for one or more of the following purposes:
  - a. To determine whether the Conduct Board hearing was conducted fairly in

light of the charges and information presented, and in conformity with prescribed procedures giving the complainant a reasonable opportunity to prepare and to present information that the Code was violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures will not be a basis for sustaining an appeal unless significant prejudice results.

- b. To determine whether the decision reached regarding the accused student was based on substantial information.
  - c. To determine whether the sanction(s) imposed were appropriate for the violation of the Code that the student was found to have committed.
  - d. To consider new information or evidence, unknown or unavailable to the parties during an investigation or prior conduct proceeding, that is sufficient to alter a decision of the Student Conduct Board.
4. If the appellate body grants the appeal based on any of the above grounds for appeal, then the following will occur:
- a. If there was significant prejudice resulting from procedural irregularities, the case will be remanded for a new hearing.
  - b. If there was insufficient information for a finding of responsibility or non-responsibility, the appellate body may either reverse the decision or remand the case for a new hearing.
  - c. If the sanctions are inappropriate for the violation, new sanctions may be imposed.
  - d. If there is new information sufficient to alter a decision or other relevant facts not known to the person appealing at the time of the original hearing, the case will be remanded for a new hearing.
  - e. Normally sanctions issued following Conduct Board hearings shall not be implemented until all appeals have been exhausted, waived, or made impermissible by time. However, exceptions may be made on a case by case basis and sanctions may be implemented immediately based upon the potential threat or danger to the community.
  - f. The appellant will be notified of the Appellate Board's or the Vice President for Student Affairs' decision within five (5) business days following the conclusion of the appellate process.

The Vice President for Student Affairs determines if remanded cases will be re-heard by the same Conduct Board or by a newly empaneled Conduct Board.

5. The State Board of Education (SBOE), as the governing body of the state's postsecondary educational institutions, has established the following procedure for review of institution decisions regarding student complaints/grievances:
  - a. The SBOE designates its Executive Director as the SBOE's representative for reviewing student complaints/grievances, and authorizes the Executive Director, after such review, to issue the decision of the SBOE based on such review. The

Executive Director may, in his/her discretion, refer any matter to the SBOE for final action/decision.

- b. A current or former student at a postsecondary educational institution under the governance of the SBOE may request that the Executive Director review any final institutional decision relating to a student's attendance at the institution as set forth under paragraph c. The student must have exhausted the complaint/grievance resolution procedures that have been established at the institution level. The Executive Director will not review complaints/grievances that have not been reported to the institution, or processed in accordance with the institution's complaint/grievance resolution procedures.
- c. Matters involving a violation of an institution's code of student conduct will only be reviewed if the basis for the request is that the institution substantially failed to follow its procedures resulting in a failure to give the student reasonable notice of the violation and opportunity to be heard, or to present testimony. Sanctions imposed by the institution will remain in effect during the pendency of the review.
- d. A request for review must be submitted in writing to the SBOE office to the attention of the Chief Academic Officer, and must contain a clear and concise statement of the reason(s) for SBOE review. Such request must be received in the SBOE office no later than thirty (30) calendar days after the student receives the institution's final decision on such matter. The student has the burden of establishing that the final decision made by the institution on the grievance/complaint was made in error. A request for review must include a copy of the original grievance and all proposed resolutions and recommended decisions issued by the institution, as well as all other documentation necessary to demonstrate that the student has strictly followed the complaint/grievance resolution procedures of the institution. The institution may be asked to provide information to the SBOE office related to the student complaint/grievance.
- e. The Chief Academic Officer will review the materials submitted by all parties and make a determination of recommended action, which will be forwarded to the Executive Director for a full determination. A review of a student complaint/grievance will occur as expeditiously as possible.
- f. The SBOE office may request that the student and/or institution provide additional information in connection with such review. In such event, the student and/or institution must provide such additional information promptly.
- g. The SBOE's Executive Director will issue a written decision as to whether the institution's decision with regard to the student's complaint/grievance was proper or was made in error. The Executive Director may uphold the institution's decision, overturn the institution's decision, or the Executive Director may remand the matter back to the institution with instructions for additional review. Unless referred by the Executive Director to the SBOE for final action/decision, the decision of the Executive Director is final.

6. The SBOE staff members do not act as negotiators, mediators, or advocates concerning student complaints or grievances.

**J. Disclosure of the Outcome of Student Conduct Hearings to Victims and/or Others**

When an alleged Code violation constitutes a crime of violence (e.g., battery, sexual assault) and the Conduct Administrator or Conduct Board finds the alleged violator responsible, the University shall disclose the outcome and the sanction to the victim.

In addition, when the alleged Code violation constitutes a crime of violence and the alleged violator is found responsible, the University, under applicable federal law, retains the right to disclose the name of the violator, the portion of the Code that was violated and the sanctions, to anyone to whom that information may be re-disclosed. For a legal reference, see the Family Educational Rights and Privacy Act, §99.31(a)(13) and 20 U.S.C. 1232g.

**K. Interim Suspension**

In certain circumstances, the Conduct Administrator may impose an interim University or residence hall suspension prior to the initiation of conduct proceedings.

1. Interim suspension may be imposed only:
  - a. to ensure the safety and well-being of members of the University community or preservation of University property; or
  - b. if the student poses an ongoing threat of disruption of, or interference with, the normal operations of the University.
2. During the interim suspension, a student shall be denied access to University Housing and/or to the campus (including classes) and/or all other University activities or privileges for which the student might otherwise be eligible, as the Conduct Administrator may determine to be appropriate.
3. The interim suspension does not replace the regular student conduct process, which shall proceed on the normal schedule, up to and through a Conduct Board hearing, if required.
4. Students placed on interim suspension may appeal the action by submitting a letter to the Conduct Administrator.

The student must be notified in writing of this action and the reasons for the interim suspension.

Students may request, in writing, that the Conduct Administrator reconsider the interim suspension after three (3) business days.

**Article V: Interpretation, Revision and Records**

- A.** Any question of interpretation or application of the Code shall be referred to the Conduct Administrator, or designee, for final determination.



- B.** Where the provisions and procedures of the Code conflict with specific laws and provisions of the United States of America, the State of Idaho, the policies of the Idaho State Board of Education or Idaho State University, the specific laws and policies would apply. If state or federal statutory provisions, regulatory guidance, or court interpretations or guidance provided by any authorized regulating agency change or conflict with University policy and/or procedure including but not limited to the hearing procedures set forth in the Code, the University’s policy and/or procedure will be deemed amended as of the time of the decision, ruling, legislative enactment, or guidance.<sup>14</sup>
- C.** The Code shall be reviewed annually under the direction of the Conduct Administrator.
- D.** Student Conduct files and official records will be stored in the Office of the Vice President for Student Affairs. The access, storage, and destruction of these files and records will be in accordance and compliance with current law, related University policies, and the Family Educational Rights & Privacy Act (FERPA).

**PRESIDENTIAL CERTIFICATION**

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 Approved by Arthur C. Vailas  
 President, Idaho State University

Date: \_\_\_\_\_

<sup>14</sup> Language adapted from West Virginia University Parkersburg.