

MEMORANDUM

TO: Liz Brandt, Faculty Secretary
Patrick Hrdlicka, Chair

FROM: Chuck Staben, President 

DATE: October 17, 2017

SUBJECT: Enactment of Temporary Emergency Policy

The University of Idaho holds student safety and campus well-being as a top priority. At the Faculty Senate meeting held on October 10, 2017, the Faculty Senate voted to adopt changes to FSH 2400 and FSH 1640.83, relating to the disciplinary process for alleged violations of the Student Code of Conduct. This vote was the culmination of a large undertaking and very collaborative effort, with input from key constituents and stakeholders across campus, but most importantly, input and feedback from students.

As this collaboration was coming to a close, the Department of Education's Office of Civil Rights released two documents: a "Dear Colleague" Letter and a Q&A on Campus Sexual Misconduct, which, among other things, informed institutions that the Dear Colleague Letter dated April 4, 2011, and the Q&A document dated April 29, 2014, were withdrawn. However, this will not change how the University of Idaho responds to reports of sexual misconduct, nor cause a need to alter the recently passed conduct process. Our commitment to due process, Title IX, and overall campus safety has not wavered in light of the local and federal changes. These changes to our policy enhance the safety of our community and the rights of our students. Thank you to those who provided valuable feedback, critique and input.

Upon review, I find that it is in the best interests of the university to enact these changes to policy immediately on a temporary emergency basis. Enacting the policies immediately, with instructions on how to transition pending cases from the current disciplinary process to the new disciplinary process, will allow a smooth transition between the policies and provide certainty and guidance to the Office of the Dean of Students and to students who are facing potential disciplinary action.

NOW, Therefore, pursuant to FSH 1460 C-3, I hereby adopt the changes to FSH 2400 and FSH 1640.83, as approved by the Faculty Senate on October 10, 2017, and direct that for all student discipline matters commenced after today, the changes shall take effect immediately. I further direct that for each disciplinary case that is currently pending, the Dean of Students, in conjunction with the Office of Civil Rights and Investigations, will review the status of the case to determine whether the new policy standards may still be met in a timely fashion. If so, the new policy will apply, if not, the matter will continue under the previous policy. Students may also elect to proceed under the new policy subject to the approval of the Dean of Students.

A copy of the new policy, as adopted by the Faculty Senate, is attached.

FSH 1640.83

STUDENT CONDUCT BOARD (SCB)

[This section was removed from FSH 2400 and placed here in July 2008. In 2014 University Judicial Council was renamed Student Disciplinary Review Board following a complete review of the Student Code of Conduct. In 2017 this board was created by collapsing the Student Appeals Committee with the Student Disciplinary Review Board to reflect a major rewrite of the code disciplinary process in FSH 2400]

A. FUNCTION. UI's process for reviewing alleged violations of the Student Code of Conduct (FSH 2300) is set forth in FSH 2400. The SCB is the reviewing body involved in the conduct process set out in FSH 2400 D., E. and F. [*rev. 7-14, 7-16*]

B. STRUCTURE AND MEMBERSHIP. The SCB is broadly representative of the UI community and is composed of 21 voting members: seven faculty, seven staff, and seven students. The student members should include at least one graduate student and at least one law student. Hearing panels will be drawn from these committee members. Given the nature of responsibility of the Chair of SCB, Committee on Committees shall first consider a tenured faculty member. Pursuant to FSH 2400 the chair will appoint the three person panels. [*rev. 7-14, 7-16*]

C. SPECIAL CONSIDERATION. Each committee member shall be required to participate in Title IX training and other training as needed. Members of the SCB should be aware that federal regulations governing the handling of disciplinary matters recommend a specific hearing time schedule. Therefore, SCB members may need to be available on short notice and during the summer months. Outgoing committee members should be aware that their appointment will continue until their replacement is confirmed and has received the required Title IX training (typically by early fall). [*add. 1-14, rev. 7-14, rev. & ren. 7-16, rev. 1-17*]

2400

UNIVERSITY DISCIPLINARY PROCESS FOR ALLEGED VIOLATIONS OF STUDENT CODE OF CONDUCT

PREAMBLE: This section outlines UI's student disciplinary system to inform students of the University process for resolving alleged violations of the Student Code of Conduct. In July 1993 membership and quorum was changed on the University Judicial Council and July 2008 the committee composition was moved into FSH 1640 Committee Directory. This section dates from the 1979 Handbook with relatively minor revisions as noted until 2014. In 2014 the Dean of Students Office, General Counsel, and a sub-committee of University Judicial Council and Faculty Senate, conducted a thorough review of all policies related to the Student Code of Conduct. All disciplinary language from FSH 2200 Statement of Student Rights and FSH 2300 Student Code of Conduct was consolidated into this policy and updated removing redundancies in policy. In July 2016, the taskforce was reconvened to review the new process and address some cumbersome processes that arose which were affecting the ability to resolve cases quickly. It was also noted that a complete review was necessary and the task force reconvened. In 2017, the task force provided this complete rewrite that found middle ground between the early 1970's court trial format and the strong investigative model which had unintentionally created many delays to this less confrontational investigative model. The objective is to provide a process that allows for fact-finding and decision-making that balances the rights of the individual with the legitimate interests of the University. For further information, contact the [Dean of Students](#) (208-885-6757). [rev. 7-08, 7-14, 10-17]

Note: While the disciplinary process contained in FSH 2400 is uniquely crafted to meet the University of Idaho's individual needs, portions of the process and Code are adapted from the NCHERM Group Model Developmental Code of Student Conduct and is used here with permission. Other portions are adapted from Edward N. Stoner II and John Wesley Lowery, Navigating Past the "Spirit of Insubordination": A Twenty-First Century Model Student Conduct Code With a Model Hearing Script, 31 Journal of College and University Law 1 (2004).

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A. INTRODUCTION. The purpose of the Student Code of Conduct (Code) is to help protect the safety of the University community and educate students about appropriate and responsible behavior and their civic and social responsibilities as members of the University community, while complying with applicable state and federal laws and institutional policy. The primary focus of the disciplinary process is on educational and corrective outcomes; however, sanctions including suspension or expulsion from the University may be necessary to uphold community standards and to protect the campus community. University discipline is not in the nature of punishment for a crime, and the University's discipline process is not equivalent to state or federal criminal prosecutions. University disciplinary proceedings for any and all matters encompassed within the Code [FSH 2300] and the Statement of Student Rights [FSH 2200] are addressed under the following rules and regulations.

B. DEFINITIONS:

B-1. Advisor: the person of the student's choosing who has agreed to advise the student during the University disciplinary process and attend scheduled meetings with the student. The Advisor's role is simply to advise the student, and the Advisor is not permitted to speak during hearings, conferences, or interviews unless allowed by the University official conducting the interview.

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B-2. Chief Student Affairs Officer (CSA Officer): the Dean of Students, unless the President appoints a different official to serve as the CSA Officer.

B-3. Code: the Student Code of Conduct, which is currently found in FSH 2300 and FSH 2400.

B-4. Complainant: the person(s) reportedly harmed by the Respondent's alleged violation of the Code.

B-5. Days: days that the university is open for business, not including Saturdays, Sundays, Fall Recess, Winter Recess, Spring Recess, or University holidays.

B-6. Investigator: the person assigned by the University to conduct an investigation into a report of a violation of the Code. In all Title IX cases, the Title IX Coordinator shall assign the investigator. In all other cases, the investigator may be any qualified person assigned by DOS.

B-7. Student Conduct Administrator (Administrator): the official at the University of Idaho who has been designated by the CSA Officer to serve in this role. It shall also include the Administrator's designee.

B-8. DOS: the Office of the Dean of Students at the University of Idaho.

B-9. Hearing Officer: a person appointed by the Administrator to serve as the person presiding over a hearing in accordance with Section G.

B-10. Parties: the Respondent and, in Title IX cases only, the Complainant.

B-11. Respondent: the student who is alleged to have violated the Code.

B-12. Student: includes, but is not limited to, all persons admitted to the University, either full-time or part-time, to pursue undergraduate, graduate, or professional studies, and includes non-degree seeking students. The following persons are also considered "students":

- a. Persons who withdraw after allegedly violating the Code;
- b. Persons who are eligible to enroll for classes without submitting an application for re-admission;
- c. Individuals participating in the American Language and Culture Program, Independent Study of Idaho sponsored by the University of Idaho, the University of Idaho International Student Success Program (UI-ISSP), or any other similar educational program of the University.

B-13. Student Conduct Board (SCB): the body which reviews student disciplinary matters, as set forth in sections D., E., and F., and FSH 1640.83.

B-14. Title IX case: any disciplinary case, investigation, charge, or allegation involving alleged dating violence, domestic violence, sexual assault, sexual harassment, or stalking. The Title IX Coordinator may also designate any other case as a Title IX case.

B-15. University: the University of Idaho, in all of its campus locations, education, outreach and research programs, including extension programs and distance education programs, and at all locations where any of these programs are offered or administered.

C. INVESTIGATION:

C-1. Reporting Alleged Violations. Any member of the University community having knowledge of a potential violation of the Code may report the violation to either DOS or, in Title IX cases, to the Title IX Coordinator. A

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report should be in writing, but may be reported orally to the appropriate University official. A report should be submitted as soon as possible after the event takes place.

C-2. Initial Investigation. The University may conduct an investigation into any report of a violation of the Code. The purpose of the investigation is to determine whether a violation may have occurred and to gather relevant information concerning each allegation of a Code violation.

C-3. Notice of Alleged Violation. The investigator may conduct a preliminary review to determine whether there is sufficient information to engage in a formal investigation. The preliminary review may include interviewing the Complainant, Respondent, and other witnesses. If, after the conclusion of the preliminary review, the investigator decides to engage in a formal investigation, the investigator must notify the Respondent of the allegation.

a. the notice must be in writing and may be delivered either in person to the Respondent, or by email to the student's official University email account. If the notice cannot be delivered either in person or to the student's official University email account, the notice shall be delivered by any means reasonably likely to reach the student.

b. the notice shall inform the Respondent of the specific provision(s) of the Code the Respondent is alleged to have violated and include a short description of the basis of the alleged violation.

c. The notice will include a copy of the University Disciplinary Process for Alleged Violations of the Student Code of Conduct.

C-4. Meeting with Investigator. The investigator must give the Respondent an opportunity to meet with the investigator in person within a reasonable time after the notice of allegation is delivered to the Respondent in order to give the Respondent an opportunity to respond to the notice, present information in his or her defense, present any information the Respondent would like the investigator to consider, and provide the names of any witnesses the Respondent would like the investigator to contact.

C-5. Investigation. At any time during the investigation, either the Complainant or the Respondent may, but is not required to, provide information to the investigator for the investigator to consider. Such information may include documentary information, the names of witnesses, witness statements, suggested questions to ask the other Party or other witnesses, etc. Only information that is presented to the investigator may be used in a hearing under section D.

C-6. Preliminary Report of Investigation.

a. At the conclusion of the investigation, the investigator shall draft a Preliminary Report of Investigation (Preliminary Report) setting forth the steps taken during the investigation; a list of witnesses contacted; a detailed summary of any witness interviews; a detailed summary of any interviews of the Respondent and/or Complainant; a detailed summary of any other information considered as part of the investigation; and complete copies of any relevant documentary evidence gathered during the investigation, including copies of documentary information provided by the Respondent and/or the Complainant.

b. The Preliminary Report shall not include any conclusions, findings, or credibility analysis.

c. The parties shall be provided an opportunity to review the Preliminary Report and may provide a written response to the Preliminary Report within five days of the review of the report. A party shall be deemed to have waived the right to review the report if the party does not make arrangements with the investigator to review the report within five days of being notified that the report is available to be reviewed. The written response may include requests for additional investigation, additional witnesses to interview, or additional questions to ask any witness.

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d. After the time for submitting a written response to the Preliminary Report has passed, the investigator shall review any responses received and determine whether additional investigation is needed. If additional investigation is deemed appropriate, the investigator shall draft a revised Preliminary Report and shall give the parties an opportunity to review the report, as set forth in section C-6. c., above.

e. After reviewing any written responses received within the time-period allowed for submitting written responses, the investigator shall either continue the investigation or draft a Final Report of Investigation. The investigator has sole discretion of determining whether sufficient information has been obtained in order to end the investigation process.

C-7. Final Report of Investigation. The Final Report of Investigation (Final Report) shall contain everything included in the Preliminary Report plus complete copies of any written responses received within the time period allowed for submitting written responses, a credibility analysis, recommended findings, and recommended conclusion (see below) as to whether the Respondent violated the Code. If the Final Report includes a recommended finding that the Respondent violated the Code, the Final Report shall not include recommended sanctions. The Final Report shall be provided to the Administrator. The Administrator shall provide the Final Report simultaneously to the parties.

a. Credibility Analysis. The Final Report should include an analysis of the statements provided by each party and interviewee, as necessary, to determine whether the statements provided by that person are credible. The analysis may include a description of the person's demeanor during the interview(s), a comparison of statements made to known facts or statements from other witnesses, the person's ability to observe the event described, the person's bias, whether the person was under the influence of a controlled substance or alcohol, and any other information that a reasonable person would use in his or her everyday affairs to determine a person's credibility. Not every case will require a detailed credibility analysis of each interviewee, and the credibility analysis may be part of the particular finding. However, in cases where the credibility of the interviewee is material to the conclusion, there should generally be a separate credibility analysis.

b. Recommended Findings. The investigator's recommended findings regarding factual issues shall include a description of the basis for each finding. Each finding shall be based on a more likely than not standard and should include information from the interviews, documentary information obtained during the investigation, and, if relevant to that finding, information regarding the credibility of the Respondent, Complainant and/or witnesses.

c. Recommended Conclusion. In making a recommended conclusion, the investigator must apply the Code to the findings to reach a determination of whether the findings as found by a more likely than not standard constitute a violation of the Code.

D. HEARING PROCESS.

D-1. Student Conduct Administrator's Review:

a. After the Final Report is submitted to the Administrator, the parties may each submit a written response to the Final Report. This response must be provided to the Administrator no later than five days after the Final Report is provided to the parties. The Administrator may meet with the parties, separately, to discuss the Final Report.

b. A party may request that the matter be referred to the SCB for a hearing. The request must be in writing and must be submitted to the Administrator no later than five days after the Final Report is provided to the parties. If a party timely submits a request for the matter to be referred to the SCB:

- (i) In non-Title IX cases, the Administrator shall refer matters to the SCB for a hearing if:
 - (1) The Administrator determines that there is sufficient information in the Final Report such that a finding could be made that the Respondent violated the Code; and
 - (2) The Administrator determines that the appropriate sanction could include suspension,

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expulsion, or the withholding or revoking of a degree.

- (ii) In Title IX cases, the Administrator shall refer matters to the SCB for a hearing in matters in which the Administrator determines that there is sufficient information in the Final Report such that a finding could be made that the Respondent violated the Code.
- (iii) In all other cases, the Administrator shall decide whether the Respondent violated the Code.

c. If a matter is not referred to the SCB for a hearing:

- (i) The Administrator shall decide whether the Respondent violated the Code. The Administrator shall make the decision based on the information contained in the Final Report, the written responses to the report, if any, submitted to the Administrator by the parties, and, if the Administrator chooses to meet with the parties, the information provided at the meeting to the Administrator by the parties.
- (ii) The Administrator should adopt the findings and credibility analysis contained in the Final Report, unless the Administrator finds that the findings or credibility analysis are not more likely than not to be true. Any additional or different findings issued by the Administrator must be based on a more likely than not standard.
- (iii) The Administrator is not required to defer to the recommendation contained in the Final Report as to whether the Respondent violated the Code, but is entitled to freely apply the Code to the findings in order to determine whether the Respondent violated the Code.
- (iv) If the Administrator determines that the Respondent violated the Code, the Administrator shall determine the appropriate sanction.
- (v) The Administrator's decision shall be in writing and include the basis for the decision. The written decision shall be simultaneously provided to the parties.
- (vi) The Administrator's decision may be appealed in accordance with section E.

d. At any time before the matter is submitted to the SCB, DOS may refer a charge of a violation of the Code to mediation or other forms of appropriate conflict resolution. All parties must agree to participate with DOS in the conflict resolution process. Complaints of physical sexual misconduct or violence shall not be referred for alternative resolution under this paragraph, except in unique circumstances approved by the Title IX Coordinator after consultation with the Office of General Counsel and the CSA Officer.

D-2. Student Conduct Board Hearing:

a. In matters referred to the SCB, the Administrator (or designee) must send written notice to the SCB and the parties.

- (i) The notice shall be in writing and may be delivered either in person to the parties, or by email to the student's official University email account. If the notice cannot be delivered either in person or to the student's official University account, the notice may be delivered by any means reasonably likely to reach the student.
- (ii) The notice must inform the Respondent of the specific provision(s) of the Code the Respondent is accused of violating, and include a short description of the basis of the alleged violation, the date and time for the hearing, and the deadline for submitting written materials to the Administrator.
- (iii) The written notice shall also include the Final Report and any responses to the Final Report which were timely submitted to the Administrator.

b. Except in cases referred to a Hearing Officer under Section G, the chair of the SCB shall appoint three to five members of the SCB to serve as a Hearing Panel to review each matter.

- (i) The chair of the SCB shall appoint one of the Hearing Panel members to serve as chair of the panel. A student may not serve as chair of a Hearing Panel.
- (ii) The Administrator (or designee) shall serve as a non-voting, ex-officio member of every Hearing Panel and may be present and available as a resource during all deliberations. The Administrator is responsible for informing the panel of any previous conduct violations or other relevant disciplinary actions involving the Respondent.

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c. In every case submitted to a Hearing Panel, the parties may submit written materials for the panel to review as part of its decision. To be considered by the Hearing Panel, all written materials must be submitted to the Administrator prior to the deadline set forth in the notice. The Administrator shall ensure that any materials timely submitted are distributed to the parties and the Hearing Panel prior to the hearing. The written materials may only consist of the following:

- (i) Suggested questions for the panel to ask the Respondent or the Complainant;
- (ii) Written discussion or argument addressing the information contained in the Final Report;
- (iii) Information (as opposed to a discussion of the information contained in the report) that was not considered by the investigators in the Final Report only if the information was not available prior to the completion of the Final Report or if the information was provided to the investigator prior to the completion of the investigation but the information was not included in the Final Report.

D-3. Hearing Procedures:

a. The hearing shall be held at the time and place listed in the notice. The hearing shall be held no less than five days after the notice is provided to the parties.

b. All hearings are closed to the public. The only people allowed to be present during the hearing are the parties, each individual party's Advisor, the investigator(s), the Administrator, the Title IX Coordinator (or designee) in Title IX cases, one or more attorneys from the Office of General Counsel, and the members of the Hearing Panel. The panel chair may give permission for others to attend the hearing in the panel chair's discretion, after consultation with the Administrator.

c. The only witnesses at the hearing shall be the investigator(s), the Complainant, and the Respondent. In non-Title IX cases, the Complainant may only be present during the portion of the hearing where the Hearing Panel questions the Complainant, unless the chair determines in appropriate cases that the Complainant may remain for the entire hearing. In extraordinary circumstances, if the investigator is unable to be present at the hearing, the DOS may designate a representative to be there in the place of the investigator. Neither the Complainant nor the Respondent is required to say anything at the hearing.

The panel chair, in consultation with the Administrator, may call additional witnesses if the panel chair determines that the additional witnesses are necessary for the Hearing Panel to properly resolve the case. This discretion should be used sparingly. The intention of the Code is that the Final Report, in the vast majority of cases, should provide a sufficient basis for the Hearing Panel's decision, recognizing that the parties may speak in person to the Hearing Panel and to respond to the Final Report.

d. It is each party's responsibility to inform the panel chair and the Administrator of scheduling conflicts no less than three days prior to the scheduled hearing. The Administrator shall have the sole discretion as to whether to reschedule the hearing. Except in cases of grave or unforeseen circumstances, if either party fails to appear, the hearing will proceed as scheduled.

e. If a report of a violation of the Code involves more than one Respondent, the Hearing Panel shall conduct a joint hearing with all Respondents. However, the panel chair may permit the hearing pertinent to each Respondent to be conducted separately. In joint hearings, separate determinations of responsibility shall be made for each Respondent.

f. Only the chair of the Hearing Panel may ask questions during the hearing, and doing so is at the sole discretion of the chair. However, the chair may seek input from panel members on areas for questioning. The parties may submit suggested questions in writing as long as the questions are received prior to the deadline for submitting written materials contained in the notice. Questions based on information that arises during the hearing may be submitted in writing during the hearing at the discretion of the panel chair.

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g. For complaints involving sexual misconduct, discrimination, or other complaints of a sensitive nature, the panel chair, in consultation with the Title IX Coordinator and the Administrator, may allow the Complainant to attend the hearing, answer questions, and make a statement from behind a partition or from another room or location through audio/video technology.

h. The panel chair has discretion as to how to conduct the hearing. Generally, however, the hearing should be conducted as follows:

- (i) Opening statement by the Respondent addressing the Final Report and the allegations that the Respondent violated the Code;
- (ii) In Title IX cases, opening statement by the Complainant addressing the Final Report and the allegations that the Respondent violated the Code;
- (iii) Questions, if any, by the panel chair of the investigator(s), Respondent, and/or Complainant;
- (iv) Final statements by the Respondent and, in Title IX cases, the Complainant.

i. In making its decision, the Hearing Panel shall consider all relevant information from the following sources:

- (i) the Final Report, including the findings and conclusions contained in the report;
- (ii) any written information provided by the parties as provided above; and
- (iii) the information received at the hearing.

j. In Title IX cases involving allegations of sexual misconduct, the past sexual history or sexual character of either party shall not be considered by the Hearing Panel except in extremely unusual cases where the panel chair determines that the information is critical to a proper understanding of the specific facts of the case at hand. Demonstration of pattern, repeated, and/or predatory behavior, in the form of previous findings in any legal or campus proceeding, or in the form of good faith allegations, may be considered in making the findings and, if a violation of the Code is found, the sanction.

k. There shall be a single record, such as an audio recording, for all hearings. Deliberations shall not be recorded. Failure to record the hearing for any reason is not to be considered a procedural error that substantially impacts the decision and will not be grounds for appeal or reversal of the Hearing Panel's decision.

D-4. Hearing Panel Decision.

a. The Hearing Panel shall issue a written decision, which should be issued within ten days after completing deliberations. The panel chair shall provide the written decision to the Administrator, who shall then simultaneously provide the decision to the parties

b. The Hearing Panel should adopt the findings and credibility analysis contained in the Final Report, unless the Hearing Panel finds that the information presented at the hearing warrants a different finding or the Hearing Panel finds that the findings or credibility analysis are not more likely than not to be true. Any findings issued by the Hearing Panel must be based on a more likely than not standard.

c. The Hearing Panel is not required to defer to the recommendation contained in the Final Report as to whether the Respondent violated the Code, but is entitled to freely apply the Code to the findings in order to determine whether the Respondent violated the Code.

d. Unless the panel chair is a Hearing Officer appointed to serve as chair without a vote, the panel chair shall participate in all votes, and all Hearing Panel decisions shall be made by a majority vote.

e. If the Hearing Panel determines that the Respondent violated the Code, the Hearing Panel shall determine the appropriate sanction(s). The Administrator shall serve as a resource to the Hearing Panel to help ensure that sanctions are reasonably consistent among similar cases.

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- f.** The Hearing Panel may return the matter for additional investigation if the Hearing Panel determines that:
- (i) The investigator failed to properly investigate the allegation and the failure was both substantial and to the student's detriment; or
 - (ii) There is new information that could substantially affect the outcome and the new information could not have been discovered before the issuance of the Final Report.

D-5. Either party may appeal a Hearing Panel's decision.

D-6. Sanctions imposed by the Hearing Panel shall generally not go into effect until either the time period for an appeal has expired and no appeal has been filed or until the decision is upheld on appeal. However, the CSA Officer may impose any sanction imposed by the Hearing Panel as an interim action pending the appeal.

E. APPEALS.

E-1. Any party may appeal the Administrator's or Hearing Panel's final decision. Appeals must be submitted in writing to the Administrator and must set forth the grounds for the appeal. The appeal must be filed no later than five days after the decision is delivered to the parties. The Administrator shall ensure that the parties receive a copy of the appeal.

E-2. Appeals are limited to the following grounds:

- a.** A procedural error occurred in the investigation process that significantly impacted the outcome of the hearing;
- b.** New information, unavailable during the investigation or hearing, that could substantially impact the original finding or sanction has been presented in the appeal documents;
- c.** The sanctions imposed are substantially disproportionate to the severity of the violation (the imposition of an administrative fee is not a sanction, and therefore cannot be appealed); or
- d.** The decision is not based on substantial information. A decision is based on substantial information if there are facts in the case that, if believed by the fact finder, are sufficient to establish that a violation of the Code occurred.

E-3. An appeal shall be limited to a review of the decision, the Final Report, any written material considered in the decision, the recording of the hearing held before the Hearing Panel, and any written materials submitted with the appeal. Where an appeal is based on the discovery of new information, the new information may be considered only to determine whether the information was unavailable at the time of the decision and whether the new information could substantially impact the original finding or sanction.

E-4. Appeal Panel Procedures:

- a.** The chair of the SCB shall appoint three to five members of the SCB to serve on the Appeal Panel, and shall designate one member to serve as chair of the Appeal Panel. Any member who served on a Hearing Panel shall not serve on the Appeal Panel on the same case. A student may not serve as chair of an Appeal Panel.
- b.** In Title IX cases, the non-appealing party may file a response to the appeal within five days of the filing of the appeal.
- c.** The Appeal Panel shall issue a written decision. The decision should be issued within fifteen days of receiving the appeal. The chair of the Appeal Panel shall provide the written decision to the Administrator, who will then simultaneously provide the decision to the parties.

E-5. Results of the Appeal Panel. The Appeal Panel may:

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- a. uphold the Administrator's or Hearing Panel's decision;
- b. uphold the finding that the Respondent violated the code, but revise the sanction(s);
- c. return the matter for reconsideration; or
- d. return the matter for additional investigation.

E-6. Unless the case is returned for reconsideration or to the investigator for additional investigation, the decision of the Appeal Panel is the final institutional decision. If the decision upholds the findings that the Respondent violated the Code, the sanctions imposed shall go into effect immediately.

F. Student Conduct Board.

F-1. The description and make-up of the SCB can be found in FSH 1640.83.

F-2. A member of the SCB shall not serve on any Hearing Panel or Appeal Panel in any case where the member has a conflict of interest or bias for or against either party.

F-3. If procedures call for the appointment of three or more members to serve on a Hearing Panel or Appeal Panel, the chair of the SCB should endeavor to appoint at least one student to the Hearing Panel or Appeal Panel. A student may not serve as chair of the Hearing Panel or Appeal Panel. In disciplinary cases involving allegations of academic misconduct, a majority of the Hearing Panel or Appeal Panel should ordinarily be faculty members.

F-4. All members of the SCB must receive annual training as determined by DOS, the Title IX Coordinator, and/or the Office of General Counsel. A member cannot serve on either a Hearing Panel or Appeal Panel until the member has completed this training.

F-5. Proceedings before the SCB, whether before a Hearing Panel or Appeal Panel, are confidential and protected by the Family Educational Rights and Privacy Act (FERPA). In specific disciplinary cases, members of the SCB must protect the confidentiality of the information they receive in fulfilling their duties as members of the SCB. Panel members must not discuss specific cases or share any information regarding specific disciplinary cases or their deliberations with anyone other than the SCB Chair, the Office of General Counsel, the Administrator, or fellow panel members appointed to the same panel in that specific case, and in all such instances, the discussion or sharing of information must be reasonably necessary for the panel's consideration of the specific case.

G. USE OF A HEARING OFFICER.

G-1. In any case requiring a hearing before a panel of the SCB, the University may use a Hearing Officer to conduct that hearing.

G-2. The decision as to whether to appoint a Hearing Officer shall be made by the Administrator. The decision as to whether to appoint a Hearing Officer may not be appealed and may not be challenged on appeal as a procedural error.

G-3. The Hearing Officer may be appointed to serve as follows:

- a. As a non-voting chair of the Hearing Panel whose duties are to run the hearing and ensure all proper procedures are followed;
- b. As a voting chair of the Hearing Panel whose duties are to run the hearing, ensure that all proper procedures are followed, and to have a vote on the decision; or
- c. As the chair and only member of the Hearing Panel whose duties are to run the hearing, ensure that all proper

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procedures are followed, and to issue the decision. When the Hearing Officer serves as the sole decision-maker, the Hearing Officer's decision shall be treated for all purposes the same as the decision of a Hearing Panel under the Code.

d. In cases involving allegations of academic dishonesty, a Hearing Officer may only be appointed as a non-voting chair of the Hearing Panel, but may not be appointed as a voting member of the Hearing Panel or as the chair and only member of the Hearing Panel.

G-4. The Administrator shall appoint the Hearing Officer from a list of Hearing Officers approved by the Office of General Counsel. The Hearing Officer must not have a conflict of interest or bias for or against either party.

G-5. The Office of General Counsel shall determine the appropriate qualifications for a person to serve as a Hearing Officer and shall make a list of approved Hearing Officers available to the Administrator.

H. INTERIM ACTION.

H-1. At any time before a final institutional decision, the CSA Officer, or designee, may impose restrictions on a student and/or separate the student from the University community pending the final institutional decision. If circumstances allow, the CSA Officer (or designee) should meet with the student prior to imposing the interim action.

H-2. Other than issuance of no contact orders, an interim action issued prior to a hearing before the Hearing Panel may only be imposed when the CSA Officer determines that the student represents a threat of serious harm to any person; the student is facing allegations of serious criminal activity; the action is necessary to preserve the integrity of the investigation; the action is necessary to preserve University property; and/or the action is necessary to prevent disruption of, or interference with, the normal operations of the University. After the Hearing Panel's decision, pending an appeal of the decision, the CSA Officer may impose a sanction issued by a Hearing Panel as an interim action at the discretion of the CSA Officer.

H-3. In any Title IX case, the investigator, in consultation with DOS, may issue a no contact order prohibiting the Respondent and/or the Complainant from contacting the other. A no contact order should be routinely issued in Title IX cases and there need not be a specific determination made as provided above.

H-4. Interim actions may include, but are not limited to, the following:

- a.** Suspension from the University pending a final institutional decision;
- b.** Issuance of a no contact order;
- c.** Exclusion from University property;
- d.** Removal from the residence halls;
- f.** Removal from extracurricular activities, including participation on athletics teams;
- g.** Withholding the award of a degree pending the conclusion of the investigation and hearing process; or
- h.** Any other action deemed necessary and appropriate by the CSA Officer to maintain orderly and appropriate University operations.

H-5. Where a student is suspended from the University, or directed to not attend certain classes, alternative coursework options may be pursued, with the approval of the CSA Officer and the appropriate college dean, to ensure as minimal an impact as possible on the responding student.

H-6. An interim action must be made in writing and is effective when the CSA Officer delivers the Notice of Interim

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Action to the responding student either in person or by email sent to the student's official University of Idaho email account.

H-7. The Respondent may appeal the imposition of any interim action by filing an appeal with the CSA Officer. There are no formal procedures for this appeal, and the interim sanctions remain in effect unless overturned by the CSA Officer.

H-8. A violation of the provisions of an interim action shall be considered a violation of the Code.

I. SANCTIONS.

I-1. The following sanctions may be imposed upon any student determined to have violated the Code:

a. Warning: a written notice to the student.

b. Probation: a written reprimand accompanied by a probationary period during which the student must not violate the Code in order to avoid more severe disciplinary sanctions.

c. Loss of Privileges: denial of specified privileges for a designated period of time.

d. Restitution: compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

e. Educational Sanctions: completion of work assignments, essays, service to the University, community service, workshops, or other related educational assignments.

f. 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 return may be specified.

g. 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 return. Conditions for return may be specified.

i. University Expulsion: permanent separation of the student from the University.

j. Revocation of Admission and/or Degree: admission to or a degree awarded from the University 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.

k. Withholding Degree: the University may withhold awarding a degree otherwise earned until the completion of all sanctions imposed.

I-2. More than one of the sanctions listed above may be imposed for any single violation.

I-3. A student who fails to comply with the sanction(s) imposed shall have a disciplinary hold placed on his/her record until the student complies with all sanctions imposed.

I-4. Disciplinary sanctions other than suspension, expulsion or revocation or withholding of a degree shall not be made part of the student's permanent academic record, but shall become part of the student's disciplinary record. Such sanctions shall be expunged from the student's disciplinary record seven (7) years after final disposition of the case.

I-5. The student shall be responsible for administrative and educational costs of any and all sanctions imposed for alcohol related violations.

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J. MISCELLANEOUS.

J-1. Agreement: At any point during the disciplinary process prior to a final institutional decision, the Administrator and the parties may agree to an appropriate resolution without further investigation, hearing, or appeal. The agreed upon resolution may include the use of appropriate alternative dispute resolution methods.

J-2. Role of an Advisor: In accordance with the educational purpose of the Code, all students, including Respondents and Complainants, are expected to speak for themselves at all stages of proceedings under the Code, including, but not limited to, during the investigation, hearing, and any appeal. Any student may have an Advisor present at any time during any interview, meeting, or proceeding under the Code, but the Advisor's role is to advise the student, not to speak for the student or make any presentation on behalf of the student. The student may, at any time and for a reasonable period of time, confer with the Advisor. If the University official conducting the proceeding determines at any time that the Advisor is acting outside of these parameters, the Advisor may be required to leave the proceeding at the official's discretion. In appropriate circumstances, at the sole discretion of the University official conducting the proceeding, the University official may allow the Advisor to speak on behalf of the student and/or make a presentation on behalf of the student.

J-3. Fee: Any time a student is found to have violated the Code, DOS may charge the student an administrative fee of \$150. This is not considered a sanction and may not be appealed.

J-4. Parent Notification: The University may notify parents of students under the age of 21 when a student has been found to have committed a drug or alcohol-related violation. This is not considered a sanction, and the decision as to whether to notify the parents or not rests entirely within the discretion of DOS.

J-5. Training: All members of the SCB, the Administrator, the Title IX Coordinator, and the investigators shall receive annual training in accordance with the requirements of the policies of the Board of Regents of the University of Idaho and the Idaho State Board of Education (said policy is currently found at Section I, Subsection T), the Clery Act and implementing regulations (see, *e.g.*, 34 C.F.R. § 668.46(k)(2)(ii)), and Title IX.

J-6. Timeframe: With the exception of the deadlines for filing an appeal (see section E) or for requesting a hearing before the SCB (see section D-1.b.), all other timeframes contained in the Code are suggested timeframes. While the timeframes should be followed absent exceptional circumstances, the failure to conduct any action within a designated timeframe is not grounds for appeal or reversal of any decision.

J-7. Interpretation: Any question of interpretation regarding the Code or these procedures will be referred to the CSA Officer or his/her designee for final determination.

J-8. Disclosure: The University will, upon written request, disclose to the alleged victim of any crime of violence (as that term is defined in section 16 of title 18, United States Code), or a non-forcible sex offense, the report on the results of any disciplinary proceeding conducted by the University against a student who is the alleged perpetrator of such crime or offense with respect to such crime or offense. If the alleged victim of such crime or offense is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph.

J-9. Review by President: Any decision or action taken under the Code may be reviewed by the President at the President's discretion.

J-10. Review by Board of Regent's: Appeals of a final institutional decision to the Board of Regents must be made in accordance with Idaho State Board of Education Governing Policies and Procedures Section III.P.18.