**FS-12-038**

2350

SEXUAL HARASSMENT & SEXUAL VIOLENCE POLICY PERTAINING SPECIFICALLY TO STUDENTS

*PREAMBLE. In March of 2012 President Nellis, enacted the following policy (in the form of an emergency policy pursuant to FSH 1460 C-3) to implement revisions to University Policy addressing claims of Sexual Harassment (including Sexual Violence) and claims of Gender-Based Harassment to conform to legal requirements promulgated by the U.S. Department of Education.*

NOTE: The following policy will apply to claims of Sexual Harassment (including Sexual Violence) and claims of Gender-Based Harassment whether occurring on or off campus. The terms of this policy supplement current University policy regarding Sexual Harassment, and supersede any contrary terms in any current University policy (including any contrary terms in FSH [2200](http://www.webs.uidaho.edu/fsh/2200.html) - Statement of Student Rights; FSH [2300](http://www.webs.uidaho.edu/fsh/2300.html) - Student Code of Conduct; FSH [2450](http://www.webs.uidaho.edu/fsh/2450.html) - Appeals to Faculty Senate in Disciplinary Cases; FSH [3215](http://www.webs.uidaho.edu/fsh/3215.html) – Non-Discrimination on the Basis of Sexual Orientation and Gender Identity/Expression; FSH [3220](http://www.webs.uidaho.edu/fsh/3220.html) – Sexual Harassment).

**A. DEFINITIONS:**

**A-1.** “Gender-Based Harassment” includes acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

**A-2.** “Sexual Harassment” is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual Violence is a form of Sexual Harassment.

**A-3.** “Sexual Violence” refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent. A number of different acts fall within the definition of Sexual Violence, including but not limited to rape, sexual assault, sexual battery, and sexual coercion. All such acts of Sexual Violence are forms of Sexual Harassment.

**A-4.** “Educational Setting” refers to all the academic, educational, extracurricular, athletic and other programs of the University of Idaho, whether those programs take place in a University facility, at a University class or training program, or elsewhere.

**B. REPORTING SEXUAL VIOLENCE.** For information and resources available for survivors of sexual violence, please see the Administrative Procedure Manual (APM) [95.20](http://www.uihome.uidaho.edu/default.aspx?pid=120297).

**C. JURISDICTION.** The jurisdiction of University of Idaho disciplinary regulations shall expand to govern off-campus conduct when such off-campus conduct constitutes Sexual Harassment or Gender-Based Harassment that may have continuing adverse effects in the Educational Setting.

**D. VIOLATIONS OF THE STUDENT CODE OF CONDUCT:**

**D-1.** Sexual Harassment and Gender-Based Harassment are violations of the Student Code of Conduct (see [FSH 2300](http://www.webs.uidaho.edu/fsh/2300.html)).

**D-2.** Because campus security and safety are critical to the essential operation of the University, even a single violation of the Student Code of Conduct’s prohibition of Sexual Harassment or Gender-Based Harassment may merit expulsion.

**E. CHARGES OF SEXUAL HARASSMENT OR GENDER BASED HARASSMENT:**

**E-1.** When the allegations in a student’s complaint include Sexual Harassment or Gender-Based Harassment, the Dean of Students office (“DOS”) must investigate the incident and take immediate steps to protect the complainant in the Educational Setting. This applies whether the alleged conduct occurred on or off campus.

**E-2.** A preponderance of the evidence (more likely than not) standard will be used to evaluate allegations of Sexual Harassment or Gender-Based Harassment.

**E-3.** The DOS may determine to temporarily delay fact-finding in an investigation regarding Sexual Harassment or Gender-Based Harassment while law enforcement authorities are gathering evidence; but once notified that law enforcement has completed gathering evidence, the DOS must promptly resume fact finding. The DOS may not await the ultimate outcome of a law enforcement investigation or the filing of charges before resuming or beginning fact finding.

**E-4.** Both parties must be afforded similar and timely access to any information that will be used at the hearing, other than each party’s work product (or that of the party’s advisor), consistent with FERPA and other relevant laws, including any recognized privilege.

**F. RIGHT TO A HEARING:**

**F-1.** The University Judicial Council (“UJC”) (see FSH [2400 B-2](http://www.webs.uidaho.edu/fsh/2400.html#B.) & [1640.93](http://www.webs.uidaho.edu/fsh/1640.html#1640.93)) hearing shall be private when the matter involves charges of Sexual Harassment or Gender-Based Harassment.

**F-2.** During a hearing involving charges of Sexual Harassment or Gender-Based Harassment, neither the accused student nor his or her representative will be permitted to directly question the complainant(s). Instead, such persons may submit written questions to the chair of the UJC (“Chair”), who will ask questions the Chair determines to be appropriate.

**G. TYPICAL TIMEFRAME OF THE PROCESS:** (see [FSH 2300 X](http://www.webs.uidaho.edu/fsh/2300.html#ARTICLE X)).A typical timeframe for the complaint investigation and hearing procedure is as follows: (1) The University investigation of the complaint is generally completed within 60 calendar days following receipt of a complaint; (2) Both parties receive a response regarding the outcome of the complaint within 10 business days following the UJC’s decision; (3) Either party may appeal the UJC’s decision within 14 calendar days in accordance with the Appeals provision below. Both parties should receive periodic updates from the DOS. A number of factors may influence the timeframe of any particular complaint investigation and hearing procedure; this typical timeframe is provided for informational purposes only and does not bind the University to this timeframe for any particular complaint.

**H. APPEALS: (see** [**FSH 2450**](http://www.webs.uidaho.edu/fsh/2450.html)**)**

**H-1.** Either party has the right to appeal the decision of the UJC by notifying the Office of the Faculty Secretary to that effect in writing, within 14 calendar days following receipt by the party of the written decision of the UJC. Parties wishing to appeal must include valid contact information. Appeals may be sent to: Office of the Faculty Secretary, P.O. Box 441106, Moscow, ID 83844-1106.

**H-2.** A subsequent hearing before the UJC or another board as the result of an appeal by either party, shall not be considered a second “trial” for purposes of [FSH 2200](http://www.webs.uidaho.edu/fsh/2200.html) IV(10).

**H-3.** This Section H specifically supersedes any contrary provision of [FSH 2450](http://www.webs.uidaho.edu/fsh/2450.html), including, specifically, subsection D-10.

**I. DISCLOSURE OF OUTCOME OF DISCIPLINARY PROCEEDING:**

**I-1.** Both the complainant and the accused student will be notified, in writing, of the outcome of a complaint and any appeal. “Outcome” for these purposes means whether the harassment was found to have occurred. The University will only disclose information about the sanctions imposed when they directly relate to the harassed student, such as a sanction of no contact with the complainant.

**I-2.** When the allegations include a crime of violence or a non-forcible sex offense (as defined by FERPA), the University will disclose to the alleged victim of such crime or offense the final results of any disciplinary proceeding conducted by the University against a student who is an alleged perpetrator of such crime or offense. If the alleged victim 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. The University may disclose to anyone, upon written request, the final results of a disciplinary proceeding if the University determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution’s rules or policies. “Final results” for these purposes means the name of the accused student, any violation found to have been committed, and any sanction imposed against the accused student by the University.

**I-3.** When the allegations include a sex offense (as defined by FERPA), both the complainant and the accused student must be informed of the outcome of any institutional disciplinary proceeding (APM [95.20](http://www.uihome.uidaho.edu/default.aspx?pid=120297) G-2) brought against the accused student. “Outcome” for these purposes means the University’s final determination with respect to the alleged sex offense and any sanctions imposed against the accused student.