SUBJECT
Board Policy III.P Student and I.T. Title IX– Second Reading

REFERENCE
April 2016 The Board approved the first reading of Board Policy I.T. Title IX and a second reading of III.P Students.

June 2016 The Board approved the second reading of Board Policy I.T. Title IX and discussed the institutions providing additional information regarding their compliance with the new policy requirements and their internal appeal processes at a future Board meeting.

December 2016 Board considered first reading of proposed changes to Board Policies I.T. and III.P.

June 2017 Board approved first reading of proposed changes to Board Policies I.T. and III.P.

APPLICABLE STATUTE, RULE, OR POLICY
Idaho State Board of Education Governing Policies & Procedures, Section I.T. and III.P.
Education Amendments of 1972, 10 USC §1681Title IX, CFR §106.1

BACKGROUND/DISCUSSION
Board Policy III.P.18

The attached revision to Board Policy III.P.18 clarifies that students are allowed to request Board review of any final institutional decision regarding a student’s attendance at the institution, except that for matters involving a violation of an institution’s code of student conduct, the matter will only be heard 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.”

Board Policy III.P.12

The attached policy revisions also include a revision to Board Policy III.P.12 which would require that an institution’s code of conduct also provide students with “an opportunity to appeal any disciplinary action.” Currently Board Policy III.P.12 requires that amendment to an institution’s statement of student rights and code of conduct requires review and approval by the institution’s chief executive officer. The Board may want to consider requiring institutional amendments to statements of student rights and codes of conduct be reviewed and approved by the Board, if the Board is concerned that future revisions might diminish existing student protections.
Board Policy I.T.

The attached policy revisions also include a revision to Policy I.T. to clarify that in cases involving allegations of sexual misconduct, an institution must provide both the complainant and respondent with an opportunity to review the institution’s investigation report and an opportunity to provide a written response within a reasonable amount of time.

IMPACT

The proposed policy amendments will clarify that students may request Board review of any final institution action except that matters involving student misconduct will only be heard if there is an allegation that an institution failed to comply with the requirements for its review process. Institutions will ensure reasonable timeframes are provided for complainants and respondents to review and respond to a Title IX investigation report.

ATTACHMENTS

Attachment 1 – Board Policy, III.P Students. Page 3
Attachment 2 – Board Policy, I.T. Title IX Page 13

STAFF COMMENTS AND RECOMMENDATIONS

Prior to consideration of the proposed policy amendments each of the institutions provided a brief written summary to the Board at the June 2017 Board meeting of their procedures and status on appeals processes implementation of Board Policy I.T. Title IX. Institutions also addressed questions raised by the Board at the meeting. There were no changes between the first and second reading.

Staff recommends approval of the second reading of the proposed policy amendments.

BOARD ACTION

I move to approve the second reading of amendments to Board Policy III.P. Students and I.T. Title IX as submitted in Attachments 1 and 2.

Moved by __________ Seconded by __________ Carried Yes _____ No ______
The following policies and procedures are applicable to or for any person designated as a student at an institution under governance of the Board. A "student" means any person duly admitted and regularly enrolled at an institution under governance of the Board as an undergraduate, graduate, or professional student, on a full-time or part-time basis, or who is admitted as a non-matriculated student on or off an institutional campus.

1. Nondiscrimination

It is the policy of the Board that institutions under its governance must provide equal educational opportunities, services, and benefits to students without regard to race, color, religion, sex, national origin, age, handicap, or veterans status, including disabled veterans and veterans of the Vietnam era in accordance with:

a. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.

b. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving federal financial assistance.

c. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs and activities receiving federal financial assistance.

d. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.

e. Chapter 59, Title 67, Idaho Code, and other applicable state and federal laws.

2. Sexual Harassment

Each institution must establish and maintain a positive learning environment for students that is fair, humane, and responsible. Sexual discrimination, including sexual harassment, is inimical to any institution.

Sexual harassment violates state and federal laws and the Governing Policies and Procedures of the Board. "Sexual harassment" means an un-welcomed sexual advance, request for sexual favors, or behavior, oral statements, or physical conduct of a sexual nature when:
a. submission to such conduct is made either explicitly or implicitly a term or condition of a student's grade, receipt of a grade, or status as a student;

b. an individual student's submission to or rejection of such conduct is used as a basis for a decision affecting the student; or

c. such conduct has the purpose or effect of substantially interfering with a student's learning or learning performance, or creating an intimidating, hostile, or offensive learning environment.

Each institution must develop and make public procedures providing for the prompt, confidential, and equitable resolution of student complaints alleging an act of sex-based discrimination, including sexual harassment.

3. Academic Freedom and Responsibility

Institutions of postsecondary education are conducted for the common good and not to further the interests of either the individual student or the institution as a whole. Academic freedom is fundamental for the protection of the rights of students in learning and carries with it responsibilities as well as rights.

Membership in an academic community imposes on students an obligation to respect the dignity of others, to acknowledge the right of others to express differing opinions, and to foster and defend intellectual honesty, freedom of inquiry and instruction, and free expression on and off the campus of an institution. Expression of dissent and attempts to produce change may not be carried out in ways which injure individuals, damage institutional facilities, disrupt classes, or interfere with institutional activities. Speakers on the campuses must not only be protected from violence but must also be given an opportunity to be heard. Those who seek to call attention to grievances must do so in ways that do not significantly impede the functioning of the institution.

Students are entitled to an atmosphere conducive to learning and to fair and even treatment in all aspects of student-teacher relationships. Teaching faculty may not refuse to enroll or teach a student because of the student's beliefs or the possible uses to which the student may put the knowledge gained from the course. Students must not be forced by the authority inherent in the instructional role to make personal or political choices.

4. Catalog and Representational Statements

Each institution will publish its official catalogue and admissions, academic, and other policies and procedures which affect students. (See also "Roles and Missions," Section III, Subsection I-2.)

Each institutional catalogue must include the following statement:

Catalogues, bulletins, and course or fee schedules shall not be considered as binding contracts between [institution] and students. The [institution] reserves the right at any time, without advance notice, to:
(a) withdraw or cancel classes, courses, and programs; (b) change fee schedules; (c) change the academic calendar; (d) change admission and registration requirements; (e) change the regulations and requirements governing instruction in and graduation from the institution and its various divisions; and (f) change any other regulations affecting students. Changes shall go into force whenever the proper authorities so determine and shall apply not only to prospective students but also to those who are matriculated at the time in [institution]. When economic and other conditions permit, the [institution] tries to provide advance notice of such changes. In particular, when an instructional program is to be withdrawn, the [institution] will make every reasonable effort to ensure that students who are within two (2) years of completing graduation requirements, and who are making normal progress toward completion of those requirements, will have the opportunity to complete the program which is to be withdrawn.

No employee, agent, or representative of an institution may make representations to, or enter into any agreement with, or act toward any student or person in a manner which is not in conformity with Board Governing Policies and Procedures or the approved policies and procedures of the institution.

5. Student Records

The collection, retention, use, and dissemination of student records is subject to the requirements of the Family Educational Rights and Privacy Act of 1974, as amended, and implementing regulations. Each institution will establish policies and procedures for maintenance of student records consistent with the act and implementing regulations and will establish and make public an appeals procedure which allows a student to contest or protest the content of any item contained in his or her institutional records.

6. Residency Status - Procedure for Determination

Rules and procedures for the determination of residency status for purposes of paying nonresident tuition are found in the State Board of Education Rule Manual IDAPA 08.01.04.

7. Full-Time Students

a. Undergraduate Student

For fee and tuition purposes, a “full-time” undergraduate student means any undergraduate student carrying twelve (12) or more credits (or equivalent in audit and zero-credit registrations).

i. Student Body Officers and Appointees

For fee and tuition purposes, the president, vice president, and senators of the associated student body government are considered full-time students when
carrying at least the following credit loads: (a) president, three (3) credits and (b) vice president and senators, six (6) credits.

ii. Editors

Editors of student published newspapers are recognized as full-time students when carrying a three credit load, and associate editors are recognized as full-time students when carrying a six credit load.

b. Graduate Student

For fee and tuition purposes, a “full-time” graduate student means any graduate student carrying nine (9) or more credits, or any graduate student on a full appointment as an instructional or graduate assistant, regardless of the number of credits for which such instructional or graduate assistant is registered.

8. Student Governance

The students at each institution may establish a student government constitution for their own duly constituted organization, which must be consistent with Board Governing Policies and Procedures. Each student constitution must be reviewed and approved by the Chief Executive Officer. Any amendments to the student constitution must also be reviewed and approved by the Chief Executive Officer.

9. Student Financial Aid

Each institution will establish policies and procedures necessary for the administration of student financial aid.

   a. Transfer of Delinquent National Direct Student Loans. (See Section V, Subsection P)

   b. Student Financial Aid Fraud

   Each institution under governance of the Board should, as a matter of policy, initiate charges against individuals who fraudulently obtain or misrepresent themselves with respect to student financial aid.

10. Fees and Tuition

   a. Establishment

   Policies and procedures for establishment of fees, tuition, and other charges are found in Section V, Subsection R, of the Governing Policies and Procedures.

   b. Refund of Fees

   Each institution will develop and publish a schedule for refund of fees in the event a student withdraws in accordance with regulations governing withdrawal.
11. Student Employees

a. Restrictions

No student employee may be assigned to duties which are for the benefit of personal and private gain, require partisan or nonpartisan political activities, or involve the construction, operation, or maintenance of any part of any facility which is used for sectarian instruction or religious worship. No supervisor may solicit or permit to be solicited from any student any fees, dues, compensation, commission, or gift or gratuity of any kind as a condition of or prerequisite for the student's employment.

b. Policies and Procedures

Each institution will develop its own policies and procedures regarding student employment, including use of student employment as a part of financial assistance available to the student. Such policies and procedures must ensure that equal employment opportunity is offered without discrimination and that wage administration is conducted in a uniform manner. Such policies also must include a statement of benefits available to student employees, if appropriate.

c. Graduate Assistants

Each institution is delegated the authority to appoint within the limitations of available resources graduate assistants in a number consistent with the mission of the institution. Graduate assistantships are established to supplement a graduate student's course of study, with employment appropriate to the student's academic pursuits.

Each institution will establish its own procedures for appointment of graduate assistants which will include (a) qualifications, (b) clear and detailed responsibilities in writing, and (c) maximum number of hours expected and wages for meeting those requirements.

Matriculation, activity, and facility fees for graduate assistants will be paid either by the student or by the department or academic unit on behalf of the student. Graduate students will be covered by appropriate insurance in accordance with institutional procedures for work-related illness or injury.

d. Hourly or Contractual Employment

Each institution may employ students on an hourly or contractual basis in accordance with the needs of the various departments or units, available funds, and rules of the Division of Human Resources (or the University of Idaho classified employee system) or federal guidelines when work-study funds are used.
12. Student Conduct, Rights, and Responsibilities

Each institution will establish and publish a statement of student rights and a code of student conduct. The code of conduct must include procedures by which a student charged with violating the code receives reasonable notice of the charge and is given an opportunity to be heard and present testimony in his or her defense, and an opportunity to appeal any disciplinary action. Such statements of rights and codes of conduct, and any subsequent amendments, are subject to review and approval of the chief executive officer.

Sections 33-3715 and 33-3716, Idaho Code, establish criminal penalties for conduct declared to be unlawful.

13. Student Services

Each institution will develop and publish a listing of services available to students, eligibility for such services, and costs or conditions, if any, of obtaining such services.

14. Student Organizations

Each student government association is responsible, subject to the approval of the institution's chief executive officer, for establishing or terminating student organizations supported through allocation of revenues available to the association. Expenditures by or on behalf of such student organizations are subject to rules, policies, and procedures of the institution and the Board.

15. Student Publications and Broadcasts

Students are responsible for making arrangements for coverage of their medical needs while enrolled in a post-secondary institution on a part- or full-time basis. Accidents, injuries, illnesses, and other medical needs of students (with limited exceptions in the case of student employees of an institution who experience workplace injuries within the course and scope of their employment) typically are not covered by the institution’s insurance policies. The types and levels of medical/clinical support services available to students varies among the institutions and among the local communities within which institutions conduct operations.

16. Student Health Insurance

The Board’s student health insurance policy is a minimum requirement. Each institution, at its discretion, may adopt policies and procedures more stringent than those provided herein.

a. Health Insurance Coverage Offered through the Institution

Each institution, at the discretion of its chief executive officer, may provide the opportunity for students to purchase health insurance through an institution-offered
plan. Institutions are authorized to provide student health insurance plans through consortium arrangements, when this option serves the interests of students and administration. Institutions which elect to enter contractual arrangements to offer student health insurance plans (either singly or through consortium arrangements) should comply with applicable Board and State Division of Purchasing policies. Institutions which elect to offer health insurance plans to their students are authorized, at the chief executive officer’s discretion, to make student participation in such plans either optional or mandatory.

b. Mandatory Student Health Insurance

Each institution, at the discretion of its chief executive officer, may require all or specified groups (for example, international students, intercollegiate athletes, health professions students engaged in clinical activities, student teachers, etc.) to carry health insurance that meets coverage types and levels specified by the institution. Administration and enforcement of any such health insurance requirements, and procedures for dealing with any exceptions thereto, lie within the authority of the institution presidents or their designees.

c. Other Medical Support Services and Fees

Institutions are authorized to support or supplement students’ medical needs through services provided by college/university clinics, health centers, cooperative arrangements with community/regional health care providers, etc. In cases where such services are provided, institutions are authorized to establish optional or mandatory fees to cover the delivery cost of such services.

d. Financial aid considerations

Any medical insurance or health services-related fees which are mandated by an institution as a condition of participation in any institutional program are considered a bona fide component of the institution’s cost of college and are a legitimate expenditure category for student financial aid.

17. Students Called to Active Military Duty

The Board strongly supports the men and women serving in the National Guard and in reserve components of the U.S. Armed Forces. The Board encourages its institutions to work with students who are called away to active military duty during the course of an academic term and provide solutions to best meet the student’s current and future academic needs. The activated student, with the instructor’s consent, may elect to have an instructor continue to work with them on an individual basis. Additionally, institutions are required to provide at least the following:

a. The activated student may elect to completely withdraw. The standard withdrawal deadlines and limitations will not be applied. At the discretion of the institution, the
18. Student Complaints/Grievances.

The State Board of Education and Board of Regents of the University of Idaho, 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 Board designates its Executive Director as the Board’s representative for reviewing student complaints/grievances, and authorizes the Executive Director, after such review, to issue the decision of the Board based on such review. The Executive Director may, in his/her discretion, refer any matter to the Board for final action/decision.

b. A current or former student at a postsecondary educational institution under the governance of the Board may request that the Executive Director review any final institutional decision relating to a complaint or grievance instituted by such student related to such individual’s attendance at the institution, except 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. Requests for review of matters involving a violation of an institution’s code of student conduct will may only be reviewed by the Board if the basis for the request for review 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 Board office to the attention of the Chief Academic Officer, and must contain a clear and concise statement of the reason(s) for Board review. Such request must be received in the Board 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 Board office related to the student complaint/grievance.

**d.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.

**e.f.** The Board 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.

**f.g.** The Board’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 Board for final action/decision, the decision of the Executive Director is final.

The Board staff members do not act as negotiators, mediators, or advocates concerning student complaints or grievances.
1. This subsection shall apply to the University of Idaho, Boise State University, Idaho State University, Lewis-Clark State College, Eastern Idaho Technical College, College of Southern Idaho, College of Western Idaho, and North Idaho College (hereinafter “Institutions”).

Title IX of the Education Amendments of 1972 and its implementing regulations, 34 C.F.R. Sec. 106 (“Title IX”), prohibit discrimination on the basis of sex in federally funded education programs and activities. Title IX protects students, employees, applicants for admission and employment, and campus visitors from all forms of sexual harassment, including sexual violence and gender-based harassment.

Sexual violence includes sexual intercourse without consent, sexual assault, and sexual coercion. Prohibited gender-based harassment may include 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.

This Policy is intended to supplement, not duplicate, Title IX guidance from the federal Department of Education’s Office of Civil Rights (“OCR”) for Institutions regarding their compliance with Title IX, specifically in regard to sexual harassment or sexual violence. Institutions should go beyond the requirements of this policy as necessary to address Title IX issues unique to individual campus populations so that students are able to fully receive the benefits of educational programs.

2. Institution Title IX policies.

Each institution shall publish its Title IX policies and procedures for students, staff and faculty. Such policies and procedures shall be updated as necessary and appropriate to comply with Title IX and guidance from OCR. Title IX coordinators shall be involved in the drafting and revision of such policies to ensure compliance with Title IX. If an institution is represented by legal counsel, its attorney also shall review the institution’s policies for compliance with Title IX and OCR guidance. Policies shall clearly describe the process for resolving alleged violations of Title IX.

3. Notification of institution Title IX policy and resources.

Notification of institution Title IX policy and resources shall be readily accessible. Institutions shall ensure that the notices of nondiscrimination on the basis of sex required by Title IX are placed prominently on their website home pages, in addition to the placement of notices in offices where students receive services, and included in printed publications for general distribution. Webpage notices shall include easily
accessible links to all applicable institution policies as well as a clear and succinct direction regarding:

- reporting Title IX violations
- accommodations and services available for complainants
- the investigation and hearing process, including appeal rights, and all applicable time frames
- the institution’s Title IX coordinator, including the Title IX coordinator’s name and contact information

4. Title IX Coordinators.

Each institution shall designate a Title IX Coordinator who shall be an integral part of an institution’s systematic approach to ensuring Title IX compliance. Title IX coordinators shall have the institutional authority and resources necessary to promote an educational environment that is free of discrimination, which includes stopping any harassment and preventing any reoccurring harassment, as well as the authority to implement accommodations during an investigation so that the complainant does not suffer additional effects of the sexual discrimination or violence.

Institutions are encouraged to facilitate regular communication between Title IX coordinators in order for them to share best practices and training resources.

5. Education of Students and Training to Prevent Sexual Violence.

Institutions shall implement evidence informed strategies that seek to prevent sexual harassment, sexual assault, gender based violence and high-risk activities, including alcohol education programming and other student outreach efforts (e.g. bystander education programming). Data shall be collected from an institution’s constituency on a regular basis to evaluate and improve on the institution’s efforts to prevent sexual discrimination.

6. Education of parties receiving or adjudicating Title IX complaints.

All employees shall receive training pertaining to Title IX and the institution’s Title IX policy. Employees likely to witness or receive reports of sexual harassment and sexual violence shall receive enhanced training which, at a minimum, includes the requirements of Title IX, the proper method for reporting sexual harassment and sexual violence, and the institution’s responsibilities for responding to reports of sexual harassment and sexual violence. Institution employees who will likely require enhanced training include: Title IX coordinators, campus law enforcement personnel, student conduct board members, student affairs personnel, academic advisors, residential housing advisors, and coaches. All employees who learn of an allegation of sexual harassment, including sexual violence and gender-based harassment, (and are not required by law to maintain the confidentiality of the disclosure, such as
licensed medical professionals or counselors) are required to report it to the Title IX coordinator within 24 hours.

Fact finders and decision makers involving resolution of Title IX violations shall also have adequate training or knowledge regarding sexual assault, including the interpretation of relevant medical and forensic evidence.

7. Investigation and resolution of Title IX violations
An institution shall take immediate steps to protect a complainant in the educational setting. Individuals reporting being subjected to sexual violence shall be notified of counseling and medical resources, and provided with necessary accommodations such as academic adjustments and support services, and changes to housing arrangements. In some cases, a complainant may need extra time to complete or re-take a class or withdraw from a class without academic or financial penalty. Institutions shall not wait for the conclusion of a criminal investigation or proceeding before commencing a Title IX investigation.

Institution Title IX policies shall include a prompt and equitable process for resolution of complaints as early as possible in order to effectively correct individual or systemic problems. Both the complainant and the respondent shall be provided an opportunity to explain the event giving rise to the complaint. Once an institution has completed its investigation report, both the complainant and the respondent shall be given an opportunity to review the report and to provide a written response to it within a reasonable amount of time. All timeframes shall be clearly communicated with the parties and regular status updates shall be provided. Both parties to a complaint shall be notified in writing of the outcome of the complaint, including whether sexual harassment or violence was found based upon a preponderance of the evidence to have occurred and, in accordance with federal and state privacy laws, the sanction imposed. Both the complainant and respondent shall have the same rights of appeal.

In cases involving a student-respondent, withdrawal from the institution shall not be used as a method to avoid completion of the investigation. An institution may place a hold on a student-respondent’s student account or otherwise temporarily restrict his or her ability to request an official transcript until completion of the investigation.

8. Disciplinary Actions
If a student is found to have violated an institution’s Title IX policy, disciplinary action shall be imposed in accordance with the institution’s student code of conduct. If the student is suspended or expelled, that action shall be noted in the student’s education records and communicated to a subsequent institution at which the student seeks to enroll, provided that the subsequent institution or student has requested the student’s education record from the prior institution. If an institution employee is found to have violated an institution’s Title IX policy, disciplinary action will be imposed in accordance with the applicable institution’s human resources policies and procedures.