

Sexual Misconduct Policy

POLICY STATEMENT

Consistent with federal laws known as Title IX, the Clery Act and the Violence Against Women Reauthorization Act of 2013 (“VAWA”), the University of Indianapolis is committed to having an educational and working environment free from sex discrimination in any form, including sexual harassment, misconduct and violence.

REASON FOR POLICY

As required by federal law, this Sexual Misconduct Policy (“Policy”) defines prohibited conduct and outlines procedures for reviewing, investigating and resolving complaints of sex discrimination, sexual harassment, sexual misconduct, domestic violence and stalking involving students, faculty and staff (collectively “Employees”) and visitors, contractors, and vendors (collectively “Third Parties”). No Division, Office, Department, Unit, and/or College is permitted to develop and/or adopt policies or procedures that contradict, modify, or supplement this Policy. The person responsible for implementing this policy is the Title IX Coordinator. If circumstances so require the Title IX Coordinator may designate another person to implement the policy.

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U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Scope of the Policy

A. To Whose Conduct Does the Policy Apply?

1. Students (those enrolled in any courses in any format at the University or those have a continuing relationship with the University such as those eligible and/or applying for re-enrollment and/or readmission or those involved in an appeal or grievance process);
2. Employee (all persons legally defined as employees of the University); and
3. Third Parties (visitors, contractors, vendors).

B. Where and When Does This Policy Apply?

1. This policy applies to prohibited conduct where:
 - a. The conduct occurs on campus or other property owned or controlled by the University;
 - b. The conduct occurs in the context of a University employment or education program or activity, including but not limited to a University-sponsored study abroad, research, online, or University-approved internship programs; or
 - c. The conduct occurs outside the context of a University employment or education program or activity but has continuing adverse effects that create a hostile environment for students or employees while on campus or other property owned or controlled by the University or in any University employment or education program or activity.
2. Time for making a report
 - a. The University encourages all individuals to report violations of this Policy immediately. Making a report to the University does not automatically result in an Administrative Investigation Process. Individuals who have experienced sexual misconduct may make a report to the University and communicate that they do not wish to move forward with the Administrative Investigation Process outlined in this policy. Please see REQUESTS FOR NO UNIVERSITY ACTION for additional information.
 - b. All individuals should note that the University's ability to effectively investigate alleged violations of this Policy may be limited as time passes.
 - c. For information on making a report, please see REPORTING VIOLATIONS TO THE UNIVERSITY and REPORTING TO LAW ENFORCEMENT.

PROHIBITED CONDUCT AND RELATED DEFINITIONS

The University of Indianapolis prohibits all forms of sexual misconduct. **Sexual Misconduct** includes sex- or gender-based discrimination and harassment, sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence, and stalking.

Retaliation is also prohibited under this Policy. Please see below for additional information.

A. SEX- OR GENDER-BASED DISCRIMINATION AND HARASSMENT

Sex- or gender-based discrimination and harassment is unwelcome conduct based on sex gender, sexual orientation, gender identity, or gender expression, including verbal, nonverbal, or graphic acts of aggression, intimidation, or hostility, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with, limits, or prevents an individual from participating in or benefitting from the University's education or employment programs and/or activities. Conduct must be deemed severe,

persistent, or pervasive from both a subject and an objective perspective. The University will consider the totality of known circumstances, including but not limited to:

1. The frequency, nature, severity, location, duration, and context of the conduit and
2. Whether the conduct implicates concerns related to academic freedom or protected speech.

This Policy distinguishes sex-and gender-based discrimination and harassment from unwelcome conduct of a sexual nature. Unwelcoming conduct of a sexual nature is addressed under the definition of SEXUAL HARASSMENT, below.

B. SEXUAL HARASSMENT

Sexual Harassment is any unwelcome sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, nonverbal, graphic, physical, electronic or otherwise, when the conditions outlined in (1) and/or (2), below, are present.

1. **Quid Pro Quo:** Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing or participation in any University programs and/or activities or is used as the basis for University decision affecting the individual; or
2. **Hostile Environment:** A "hostile environment" exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's education or employment programs and/or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:
 - a. The frequency, nature, severity, location, duration and context of the conduct;
 - b. Whether the conduct implicates concerns related to academic freedom or protected speech.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident if sufficiently severe. The more severed the conduct, the less need there is to show a repetitive series of incident of sexual assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

C. SEXUAL ASSAULT

Sexual Assault is:

1. Nonconsensual Sexual Contact

Touching of the breasts, buttocks, groin or genitals of another, whether clothed or unclothed, intentionally touching another with any of these body parts and/or making another person touch you or themselves with or on any other theses body parts without consent.

2. Nonconsensual Sexual Penetration

- a. Penetration, no matter how slight, of the vagina or anus with any body part or object without consent, and/or
- b. Any contact between the mouth of one person and the genitalia of another person without consent.

D. CONSENT

Consent is voluntary words or action mutually understood by each party to be agreement or permission to engage in a specific act at a specific time.

Consent cannot be inferred from silence, passivity, or the absence of resistance, nor can it be inferred from the existence of a current or prior relationship or from consent given previously. The party who initiates sexual activity is responsible for obtaining consent for the activity.

Consent can be withdrawn at any time by any party. Once consent is withdrawn, sexual activity must cease immediately.

There is no consent if any of the following are present:

1. Force

a. The use of physical violence that would reasonably overcome an individual's freedom to choose whether to participate in sexual activity.

2. Intimidation or Threat

a. Express or implied threat of immediate or future physical, emotional, reputational, financial, or other harm to an individual or others that would reasonably place an individual in fear and that is employed to compel someone to engage in sexual activity.

3. Coercion

a. Unreasonable pressure to engage in sexual activity.
i. When evaluating reasonableness, the University will consider the totality of known circumstances, including, but not limited to, duration, frequency, isolation, and intensity.

4. Incapacitation

a. An individual is incapacitated when they are unable to understand the who, what, when, why, and how of the situation due to the use of alcohol and/or other drugs, mental or physical disability, being asleep or unconscious, and/or age (as defined by Indiana State Law).

b. There is no consent when:

i. The individual who initiated the sexual activity knew of the other party's incapacitation, or
ii. A reasonable person in the same situation would have known of the other party's incapacitation.

E. Sexual Exploitation

Sexual Exploitation is purposely or knowingly doing any of the following:

1. Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity;
2. Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., livestreaming of images) without the consent of all subjects or participants.;
3. Engaging in voyeurism (e.g., watching private sexual activity without the consent of all participants or viewing another person's intimate parts (including genitalia, groin, breasts or buttocks) in a place where the person would have reasonable expectation of privacy;
4. Recording or photographing private sexual activity and/or a person's intimate parts without the consent of all subjects or participants;
5. Disseminating or posting images of private sexual activity or/ or a person's intimate parts without the consent of all subjects or participants;
6. Prostituting another person; or
7. Exposing another person to a sexually transmitted infection or virus without the other's knowledge.

F. DATING VIOLENCE

Dating violence is violence or the threat of violence committed by an individual toward another with whom they have a current or previous relationship of a romantic or intimate nature. The existence of a romantic or intimate relationship will be determined based on the following factors:

1. Length of the relationship,
2. Type of relationship,
3. Frequency of interaction between the people involved in the relationship.

G. DOMESTIC VIOLENCE

Domestic violence is violence or the threat of violence committed by an individual toward another who:

1. Is a current or former spouse,
2. Is or has cohabitated with the individual as an intimate partner, or
3. Has a child in common with the individual.

H. STALKING

Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstance that would cause a reasonable person to fear bodily injury or to experience substantial emotional distress.

1. Course of Conduct means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.
2. Substantial emotional distress means significant mental suffering or anguish.
3. Stalking includes "cyber-stalking," a particular form of stalking in which a person uses electronic media, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

I. Retaliation

Retaliation is material adverse action taken against a person for making a good faith report of prohibited conduct or participating in the process. Material adverse action limits or denies an individual's ability to participate in or benefit from the University's educational or employment opportunities and/or activities. Vague criticisms, stray remarks, and petty slights are generally not considered sufficient to constitute a materially adverse action.

Even where there is a finding of not responsible, retaliation is prohibited. A good faith pursuit of civil, criminal, or other legal action, even in response to an initial report under this Policy, does not constitute retaliation.

Reports of retaliation may be consolidated into an ongoing Administrative Investigation Process at the discretion of the Title IX Coordinator.

Individuals who experience retaliation are encouraged to report the retaliatory conduct as soon as possible to the Title IX Coordinator or to the University Police Department. Making a report to the University does not automatically result in an investigation of the alleged retaliatory conduct. An individual can request no University action. Individuals should note that the University's ability to effectively investigate alleged acts of retaliation may be limited as time passes.

REPORTING PROHIBITED CONDUCT

A. REPORTING A VIOLATION TO THE UNIVERSITY

A person who has experienced sexual misconduct has the option of making a report to the University. Under this Policy, an individual reported to have experienced sexual misconduct is referred to as the Complainant. An Individual alleged to have violated this Policy is referred to as the Respondent.

If someone wishes to make a report of sexual misconduct to the University, they can do so by contacting the Title IX Coordinator via online report, phone call, or email. Individuals may also file a report with University Police or the Universities counseling center. The online report form for the Title IX Coordinator can be found at <https://www.uindy.edu/campus-life/titleIX>.

A report of sexual misconduct may result in formal resolution through the Administrative Investigation Process. Please see The Administrative Investigation Process for information regarding investigations.

Complainants may make a report to the University and communicate that they do not wish to move forward with the Administrative Investigation Process outlined below. Please see **Requests for no University Action and/or No Administrative Investigation Process** for information about how the University addresses such requests. Complainants also have the option to pursue informal resolution of a report of sexual misconduct. Please see **Informal Resolution** for additional information.

B. EMPLOYEE REPORTING OBLIGATIONS

Most University employees, including student employees, have an obligation to report to the University when an individual makes them aware of sexual misconduct. Those Employees are referred to as **responsible employees**, defined below.

Some University employees do not have an obligation to report sexual misconduct. Those employees are referred to as **confidential employees**, defined below.

1. Responsible Employees

- a. Under Title IX, responsible employees include those who:
 - i. Have the authority to take action or redress sexual misconduct, or
 - ii. Have a duty to report sexual misconduct to appropriate school official, or
 - iii. A student could reasonably believe has this authority or duty.
- b. Responsible employees at the University of Indianapolis include:
 - i. Those who offer course instruction, whether in-person or online including full-time and part-time faculty, adjunct, and Teaching Assistants,
 - ii. Advisors,
 - iii. Coaches and athletics staff who interact with students,
 - iv. Students Affairs staff members, except those designated as confidential employees, below,
 - v. Residence life staff members, including Residence Assistants,
 - vi. Those who work in offices or areas that interface with students.
- c. Responsible employees are required to report to the Title IX Coordinator when they are made aware of an incident of sexual misconduct.
- d. Privacy and Confidentiality

- i. Responsible employees may not promise confidentiality to a person who shares information related to an incident of sexual misconduct. Responsible employees must inform that person of their obligation to report to the university.
- ii. Responsible employees must keep information related to a report of sexual misconduct as private as possible, sharing only with those at the University who have a legitimate need to know.

2. Confidential Employees

- a. Those employees whose professional licenses or codes of conduct require confidentiality do not have an obligation to report when they are made aware of sexual misconduct. The University also has the ability to designate certain employees as confidential
- b. Confidential employees at the University of Indianapolis are:
 - i. Counselors at Counseling and Consultation Services,
 - ii. Health Services Staff members,
 - iii. Pastoral counselors in the Center of Faith and Vocation

C. REPORTING TO LAW ENFORCEMENT

A complainant also has the option of making a criminal report to the appropriate law enforcement agency. Incidents alleged to have occurred on campus should be reported to the University of Indianapolis Police Department (UIPD). Incidents alleged to have occurred off campus should be reported to the appropriate local law enforcement agency.

The Complainant has the right to pursue both the University's Administrative Investigation Process and the criminal process simultaneously. The Complainant may also choose to pursue either the Administrative Investigation Process exclusively. The Complainant's decision regarding pursuit of the criminal process does not impact the Administrative Investigation process.

The Administrative Investigation Process is distinct from the criminal process. Any investigation conducted by the University will be conducted independently and separately from any investigation conducted by law enforcement. The University may undertake a short delay to allow evidence collection when criminal charges on the basis of the same behaviors that invoke this Process are being investigated. Actions that take place in the criminal process, including placing reducing, or dismissing, and/or plea agreements, will not determine the resolution of the University process. This information may be considered in the course of the Administrative Process, if determined to be relevant.

If a complainant wishes to pursue a criminal complaint exclusively, the Complainant may request in writing that the Title IX Coordinator temporarily defer the Administrative Investigation Process. In most cases, the Complainant's wishes will be respected. However, the University may continue the Administrative Investigative Process where the allegation leads the University to believe that the Respondent may be an imminent threat to the safety of the Complainant, other students or faculty/staff members.

UNIVERSITY RESPONSE TO REPORTS OF SEXUAL MISCONDUCT

A. INITIAL DETERMINATION- When information regarding a potential Title IX violation is reported to either the Title IX or Deputy Title IX Coordinator, the coordinator will hear the complaint from the reporting party to determine if a potential Title IX violation is present in the complaint.

B. INTERIM SUSPENSION

1. Interim Suspension of Students may be appropriate based on the nature of the potential violation. Students placed on interim suspension will also be removed from University housing for the suspension period. A student who is deemed a risk for harm to self or others will be placed on an interim suspension during the investigation.
2. Interim Suspension of Staff may be appropriate based on the nature of the potential violation. A staff member who is deemed a risk for harm to self or others will be placed on an interim suspension during the investigation. Staff may be placed on a paid suspension as determined by the office of Human Resources.
3. Interim Suspension of Faculty may be appropriate based on the nature of the potential violation. A faculty member who is deemed a risk for harm to self or others will be placed on an interim suspension during the investigation. Faculty may be placed on a paid suspension as determined by the office of Human Resources.

C. REQUESTS FOR NO UNIVERSITY ACTION AND/OR NO ADMINISTRATIVE PROCESS

Students have the right to report an incident and also request no action be taken by the Police or the University Title IX office. Students may, at any time, change their mind and request an investigation, keeping in mind that memories and evidence fade over time. The University reserves the right to take action despite a party's request for no action when the safety of the community is at risk if no action is taken.

D. INFORMAL RESOLUTIONS

Students may request an informal resolution to a complaint if that complaint will not be investigated by the UIPD or the Title IX office. Informal resolution may come in various formats such as

E. INTERIM MEASURE

1. Interim measures may include:
 - Referral to counseling and health services
 - Extension of time or other course-related adjustments
 - Modifications of work or class schedules
 - Alternate housing situations
 - Referral to the Employee Assistance Program
 - Providing campus escorts
 - Implementing contact limitations and restrictions between the parties
 - Interim suspension

F. FORMAL RESOLUTION: THE ADMINISTRATIVE INVESTIGATION PROCESS

1. Consolidation of Investigation. Once it is determined that a complaint has identified a potential Title IX violation, the Title IX coordinator will assigned two investigators to manage the investigation. The University reserves the right to utilize non-employee investigators for cases determined to be sufficiently complicated as to require use of an outside investigator or attorney.

2. Appointment of an Investigator. The Title IX Coordinator will identify two investigators from the pool of trained investigators to manage the investigation.
3. Advisors. Parties may bring an advisor of their choice (friend, parent, spouse, mentor, attorney, etc.) to all meetings and interviews regarding the investigation. The advisor may act in an advisory and support role only. The advisor may not act in an advocate role.
4. Investigation timeline. The timeline for investigations will be managed by the investigators and will be impacted by the number of parties and witnesses in each individual case. It is the goal of the University to complete the investigation in a timely, fair, and thorough fashion. Parties to an investigation can expect progress reports from the investigators and are encouraged to participate fully with the investigation to ensure timely completion.
5. Investigation. The investigators will interview all parties as well as witnesses identified by parties that were present for the reported action or who can speak to factual questions. Character witnesses are not utilized for an investigation.
6. Investigation reports
 - a. Investigation Report. Each party has the right to review interview statements from all parties and witnesses. Parties will be required to view statements in the office of the Title IX coordinator and will not be able to take the statements from the office. Parties have the right to reply to witness or opposing party statements to clarify or deny information found in those statements.
 - b. Report Review. Each party and witness will be asked to review their statement and confirm that the statement is an appropriate representation of the information they provided to the Investigators. Any changes should be requested and the investigators should make requested changes and note the difference between the initial statements and the updated statements.
 - c. The Final investigative report will include all statements gathered by the investigators that they deem to have had an impact on the final determination. Investigators will review any conflicting information, describing their thought process in determining why they chose to believe one version of a story over another. Investigators will include their impressions of the honesty and forthrightness of each party and witness and how it impacted their decision. Investigators will include a statement of finding the responding party either “responsible” or “not responsible” and if they find the party “responsible” they will include suggestions for sanctions in the report. The final report is delivered to the Title IX Coordinator for approval and confirmation of sanctions, if any. The report is then delivered simultaneously to the parties. Generally, outcomes are delivered via attachment to UIndy email account.
7. Determination of Outcome. The Title IX coordinator makes the final decision in determining the sanctions, if any, to a “responsible” finding in an investigation.
8. Sanctions and/or remedies
 - b. Sanctions and Remedies; Students face a variety of sanctions, based on the seriousness of the violation. Some additional reasons sanctions may vary include forthrightness during the investigation, prior similar violations, impact on individuals and the campus community, to name just a few. Sanctions include, but are not limited to, removal of residential privileges, removal from a class or classes, suspension for a semester or more, expulsion with a right to request permission to re-enroll, expulsion with no right to re-enroll and campus education.
 - i. Standing Sanctions
 - c. Sanctions and Remedies: Employees
 - d. Sanctions and Remedies: Contractors and Visitors
 - e. Failure to complete sanctions will be considered a separate violation of the code of conduct and additional, likely more severe sanctions, will be determined based on that violation. Record of the violation will be included in the student file.

9. Appeals. Both parties have a right to appeal the findings of an investigation. There are three basis upon which a party can appeal:

- a. Discovery of new information that was not available to the party during the initial investigation.
- b. Concern for the severity/leniency of the sanctions.
- c. Belief that the investigation did not follow the policies and guidelines as described in the policy.

Students wishing to appeal an outcome have 3 business days from the day they receive the determination to appeal to the Dean of Students. The non-appealing party must be made aware that the appealing party has requested a review of the outcome at the time of the appeal. The Dean of Students may affirm or modify the decision and imposition of sanctions and will simultaneously advise both parties of the determination, which is final and not subject to further appeal.

10. Withdrawl or Resignation while the Case is Pending

If, during a pending investigation, a student chooses to withdraw from school, the investigation will continue, a determination will be made and sanctions, if any, will be determined. If a student returns to school at any time, the student will be required to fulfill the sanction obligations upon their return.

Employees- If, during a pending investigation, an employee chooses to resign from their position, the investigation will continue, a determination will be made, and sanctions, if any, will be determined. Final outcome information will be included in the employee's record and will be consulted for any future employment considerations.

G. RECORDS.

If a student is found responsible for a violation, the student file will include the final report of the investigation and will be disclosed upon receipt of a FERPA waiver. If the finding is "not responsible" no record of the investigation will appear in the student file.

If an employee is found responsible for a violation, the employee file will include the final report of the investigation and will be disclosed upon request of personnel files by the employee/former employee. If the employee is found "not responsible" no record of the investigation will appear in the employee file.