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922 Sexual Misconduct

Last updated on: December 13, 2019

Authority: Approved by the Board of Trustees

922.1 General Statement of Policy and Notice of Non-Discrimination

Indiana State University (ISU) is committed to fostering an educational environment free from discrimination, including sexual misconduct, relationship violence, and stalking. ISU does not tolerate any form of sexual misconduct, whether physical, mental, or emotional in nature. Unlawful sex discrimination can interfere with a student's ability to participate in or benefit from university academic and non-academic programs, an employee's ability to function in the workplace, or a campus visitor's ability to utilize university programs and services. The university recognizes its responsibility to increase awareness of sexual misconduct, relationship violence, and stalking, prevent its occurrence, support students and employees, promptly and equitably investigate reports of misconduct, and deal fairly and firmly with those who are found in violation of the policy. The University recognizes that Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs or activities receiving Federal Financial Assistance. Sexual violence and sexual harassment constitute forms of discrimination and will not be tolerated within the ISU community.

922.2 Scope of the Policy

This Policy sets forth how the University defines and addresses sexual misconduct, relationship violence, and stalking. It applies to all applicants, students, faculty, staff, independent contractors, guests, visitors, ISU departments and programs, and recognized student organizations. It applies to all incidents occurring on the ISU campus, at ISU events off campus, and to any incidents occurring off campus that affect the educational environment for students.

922.3 Options for Assistance

Indiana State University has an obligation to address sexual misconduct, relationship violence, and stalking when it knows or should have known about such instances. Any applicant, student, faculty member, staff member, independent contractor, guest or visitor is strongly encouraged to report a violation of this policy to the Title IX Coordinator and/or University Police. In addition, many ISU employees are considered Responsible Employees who are required to share information with the Title IX Coordinator. Any individual or group of individuals found to have violated this policy will be subject to disciplinary action, up to and including termination of employment or suspension from the University.

922.3.1 Confidential Reporting for Students. If a student would like the details of an incident to be kept confidential, the student may speak with on-campus counselors, campus health service providers, a victim advocate, off-campus local rape crisis counselors, domestic violence resources, or members of the clergy/chaplains who will maintain confidentiality except in extreme cases of immediacy of threat or danger, abuse of a minor, or as otherwise required by law. Students may access a Victim Advocate and/or campus counselors in the ISU Student Counseling Center, the Psychology Clinic, or the Grosjean Counseling Clinic. Contact information for confidential resources may be found at <https://www.indstate.edu/equalopportunity-titleix>.

922.3.2 Confidential Reporting for Employees. If an employee would like the details of an incident to be kept confidential, the employee may discuss the matter confidentially with the Employee Assistance Program, the Psychology Clinic, the Grosjean Counseling Clinic, off-campus local rape crisis counselors,

domestic violence resources, or members of the clergy/chaplains who will maintain confidentiality except in extreme cases or immediate threat or danger, abuse of a minor, or as otherwise required by law. Employees may also access the Employee Assistance Program. Contact information for confidential resources may be found at <http://www.indstate.edu/equalopportunity>.

933.3.3 Interim Measures. Interim measures may be available to students and employees involved in an alleged violation of Policy 922 at the discretion of the Title IX Coordinator.

922.4 Title IX Coordinator

922.4.1 Designation. The designated Title IX Coordinator is:

Director of Equal Opportunity/Title IX Coordinator
Equal Opportunity and Title IX Office
Rankin Hall, Room 426
Indiana State University
Terre Haute, Indiana 47809
(812) 237-8954
equalopportunity-titleIX@indstate.edu

922.4.2 Authority. ISU has designed a Title IX Coordinator who has the authority to oversee compliance with all aspects of the sex discrimination and misconduct policy, including violence and harassment, relationship violence, and stalking as prohibited by federal and state law. The Title IX Coordinator may appoint deputy Title IX investigators, as necessary, to fulfill the obligations of the Title IX Coordinator as required by this policy.

922.4.3 Duties. The Title IX Coordinator may delegate responsibilities under this section of the policy. The Title IX Coordinator is responsible for:

922.4.3.1 Assessment of Reports of Violations. The Title IX Coordinator is responsible for assessment of reports of sexual misconduct.

922.4.3.2 Investigation. If the Title IX Coordinator determines that an investigation is warranted, the Title IX Coordinator will conduct or assign an investigator to conduct an adequate, reliable, and impartial investigation of the complaint. During the investigation phase, both the complainant and respondent will have the opportunity to give a statement, present witnesses, and provide evidence. The Title IX Coordinator will publish investigation and hearing procedures, approved by the President. Investigation procedures may differ based on the role of the respondent as student, employee, or visitor to campus. When substantive changes to the procedures are proposed, the Title IX Coordinator or the General Counsel will consult with the officers of the shared governance units.

922.4.3.3 Campus Notifications. Title IX Coordinator will cooperate with the ISU Chief of Police to make the decisions about notification to the campus about health and safety emergencies that might arise as a result of a report of a violation of this policy.

922.4.3.4 Privacy. All initial contacts between the Title IX Coordinator and the complainant will be treated with the maximum possible privacy. In all cases, the University will give consideration to the complainant with respect to how the complaint is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution when an alleged victim chooses not to initiate or participate in a formal complaint.

922.4.3.5 Interim Measures. Following a report of sexual misconduct involving employees or students, the Title IX Coordinator may implement appropriate interim measures during the investigation period to provide for the safety of parties and the campus community and the avoidance of retaliation. In the event an employee is the respondent, the Title IX Coordinator will consult with the vice president of the area in which the respondent is employed about interim measures that may impact the respondent.

922.4.3.6 Issuance of Determinations and Outcomes. Title IX Coordinator will make the final determination about disciplinary outcomes involving students, which may differ from the Panel's recommendation. The Title IX Coordinator will make a determination about whether it is more likely than not that a faculty, staff, or visitor committed a violation of this policy, in accordance with the published procedures to the Vice President to whom the respondent reports.

922.4.3.7 Prevention, Education, and Training. The Title IX Coordinator is responsible for providing and coordinating periodic, comprehensive training to ISU employees who will be directly involved in processing, investigating and/or resolving complaints related to this policy, mandatory training and prevention program for students, and training to university employees.

922.5 Prohibited Conduct and Definitions

Indiana State University has developed the following definitions to provide guidance in the investigation and adjudication of cases reported under this policy.

922.5.1 Sexual Misconduct. Sexual misconduct includes both sexual harassment and sexual violence, as defined below.

922.5.1.1 Sexual harassment refers to the unwelcome imposition of sexual attention often in the context of a relationship of unequal power. The policy applies to people of all genders and sexuality. Sexual harassment is any conduct, physical or verbal, that is sexual in nature and which has the effect of unreasonably interfering with an individual's or a group's educational or work performance, or which creates an intimidating, hostile, or abusive educational or work environment. It can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature made by someone from or in the workplace or educational setting.

922.5.1.2 Sexual Violence is any sexual act that is perpetrated against someone's will. Sexual violence encompasses a range of offenses, including but not limited to a completed or attempted nonconsensual sex act (i.e., rape), abusive sexual contact (i.e., unwanted touching), and non-contact sexual abuse (e.g., threatened sexual violence, exhibitionism, verbal sexual harassment). All types involve victims who do not consent, or who are unable to consent or refuse to allow the act.

922.5.2 Relationship Violence. Relationship violence – sometimes referred to as domestic battery or dating violence - describes physical, sexual, or psychological harm by a current or former partner or spouse. This type of violence can occur between individuals of all genders and does not require sexual intimacy. Relationship violence can vary in frequency and severity. It occurs on a continuum, ranging from verbal abuse that may or may not impact the victim to chronic, severe battering. There are four main types of relationship violence including but not limited to:

922.5.2.1 Physical Violence. Physical violence is the intentional use of physical force with the potential for causing death, disability, or injury. Physical violence includes, but is not limited to, scratching; pushing; shoving; throwing; grabbing; biting; choking; shaking; slapping; punching; burning; use of a weapon; and use of restraints or one's body, size, or strength against another person.

922.5.2.2 Sexual Violence is defined in Section 922.5.3.

922.5.2.3 Threats of Physical or Sexual Violence. The use of words, gestures, or weapons to communicate the intent to cause death, disability, or injury.

922.5.2.4 Psychological/Emotional Violence involves trauma to the victim caused by acts, threats of acts, or coercive tactics. Psychological/emotional abuse can include, but is not limited to, humiliating the victim, controlling what the victim can and cannot do, withholding information from the victim, deliberately doing something to make the victim feel diminished or embarrassed, isolating the victim from friends and family, and denying the victim access to money or other basic resources. It is also considered psychological/emotional violence when there has been prior physical or sexual violence or prior threat of physical or sexual violence.

922.5.3 Stalking. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress. For purposes of determining if stalking has occurred, the Title IX Coordinator will utilize the following definitions.

922.5.3.1 Course of Conduct. The term "course of conduct" means two or more acts, including but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

922.5.3.2 Reasonable Person. The term "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.

922.5.3.3 Substantial Emotional Distress. The term "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

922.5.4 Consent. Consent is a knowing, voluntary, and clear mutual agreement to engage in sexual activity. Consent must be freely and actively given, and communicated by clearly and mutually understandable words or actions to participate in each form of sexual activity. Consent may be withdrawn at any time. Consent to some sexual contact cannot be presumed to be consent for other sexual activity including previous consent or the existence of a current or previous relationship. Silence or the absence of resistance is not the same as consent.

922.5.4.1 Lack of Consent. Lack of Consent means:

- a. The person has not given consent; or
- b. The person is incapable of giving consent because of mental, developmental, or physical disability; or
- c. Force is used or threatened; or
- d. The person is incapable of giving consent as a result judgment-inhibiting intoxication without regard to the intoxicant; or
- e. The person is not sufficiently conscious to provide consent.
- f. The person is not old enough to give consent. In Indiana, any person who has reason to believe that a child is a victim of child abuse or neglect has a duty to make a report to Child Protective Services or to the police.

922.5.5 Responsible Employee. A Responsible Employee is defined as any employee who has the authority to take action to address sexual misconduct, relationship violence, or stalking; an employee who has been asked to report incidents of sexual misconduct, relationship violence, or stalking; or any employee whom a student believes has the authority or duty to report sexual misconduct, relationship violence, or stalking. University officers, coordinators, faculty, advisors,

and resident assistants will generally be considered Responsible Employees. The Title IX Coordinator will annually notify those who are considered Responsible Employees under this policy. All Responsible Employees receiving reports of a potential violation of this policy must promptly contact the Title IX Coordinator.

922.6 Non-Confidential Reporting

922.6.1 Obligation to Report by Responsible Employees. Responsible Employees, as defined in 922.5.5, have an obligation to promptly report sexual misconduct, relationship violence, and stalking to the Title IX Coordinator.

922.6.2 Relationship between University Police and Title IX Coordinator. ISU Police will promptly report allegations of sexual misconduct, relationship violence, and stalking to the Title IX Coordinator.

922.6.3 Reports of Crimes in Progress. All university community members should contact University Police to report all crimes-in-progress.

922.6.4 Reports Involving Minors. In Indiana, any person who has reason to believe that a child is a victim of child abuse or neglect has a duty to make a report to Child Protective Services or to the police.

922.7 Investigation

922.7.1 Procedures. Investigators will comply with published procedures developed by the Title IX Coordinator and approved by the University President.

922.7.2 Support During the Investigation. Complainants and Respondents will have the opportunity to have a support person of their choosing present during the investigation and appeal process as provided for in the published procedures.

922.7.3 Equal Rights During Investigation and Appeal. Complainants and respondents shall be given the same opportunities for notice and support during the investigation and appeal.

922.8 Determinations and Disciplinary Outcomes for Students

A three-member Title IX panel will determine if a student respondent has violated the policy and will impose disciplinary outcomes, if appropriate, to the Title IX Coordinator. The members of the panel will be chosen from a Title IX Committee, consisting of twelve (12) regular faculty or full-time employees. The Title IX Coordinator will coordinate an open, campus-wide nomination process for members of the Title IX Committee and the President will make the final decision on its composition. Members will serve rolling three-year terms and may be removed at the will of the President.

922.8.1 Standard of Review. The standard of review for determination of a violation of this policy shall be a preponderance of the evidence or whether the respondent more likely than not violated the policy.

922.8.2 Review and Determination. The Title IX Panel will receive the investigation report and conduct a hearing in accordance with procedures approved by the President and guided by standards of due process. The Panel will make the determination about whether or not it is more likely than not that the respondent violated the policy. If the panel finds a violation of the policy, the Panel will make a recommendation to the Title IX Coordinator about the type and severity of the disciplinary outcome. The Title IX Coordinator is responsible for making the determination about the disciplinary outcome. The disciplinary outcome may include a conduct warning, conduct probation, mandated assessments, educational requirements, and/or temporary or permanent separation from Indiana State University in accordance with the Code of Student Conduct. In the event the Title IX Coordinator conducted the investigation or has a conflict of interest, the Dean of Students will make the determination about disciplinary outcome.

922.8.3 Notification to Complainant and Respondent. Both the complainant and the respondent will be notified in writing of the determination and, if appropriate, the disciplinary outcome.

922.8.4 Appeal. In cases involving student respondents, both the complainant and the respondent will have the opportunity to appeal the determination of the Panel or the disciplinary outcome to the Vice President for Student Affairs, or designee, within ten (10) calendar days of notification of the determination. Appeals of the determination of the policy violation may only be based on (1) a lack of procedural due process, which is defined as a notice of the investigation and the right to be heard and (2) a claim that the disciplinary outcome is unreasonable in light of the determination.

922.9 Determinations and Disciplinary Outcomes for Faculty, Staff, and Other Respondents

The determination about whether it is more likely than not that a faculty, staff, or visitor committed a violation of this policy will be made by the Title IX Coordinator in accordance with the published procedures. The Vice President to whom the respondent reports shall make determinations regarding disciplinary outcomes.

922.9.1 Standard of Review. The standard of review for determination of a violation of this policy shall be a preponderance of the evidence or whether the respondent more likely than not violated the policy.

922.9.2 Appeal. ISU faculty, staff, and visitors will have the opportunity to appeal the Title IX Coordinator's determination within 20 working days of receipt of the determination. The appeals process will follow the published procedures.

922.10 No Retaliation

Retaliation, adverse employment or educational action, or creation of a hostile environment for individuals who report or participate in the investigation of violations of this policy, is a serious violation of this policy and will be treated as another possible instance of harassment or discrimination subject to investigation.

922.11 Prevention, Education, and Training

Students will be required to participate in a mandatory training and prevention program. Employees will be expected to complete mandatory training every two years. Training will be the responsibility of the Title IX Coordinator, who will collaborate with the Division of Student Affairs, the Division of Academic Affairs, the Office of Human Resources and the Office of the General Counsel.