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## **923 Non-Discrimination and Anti-Harassment (Interim)**

**Last updated on: July 01, 2021**

**Authority: Approved by the President**

This policy has been approved by the President in the interim effective July 1, 2021. These changes are consistent with the Department of Education requirements.

### **923.1 Policy of Nondiscrimination**

Indiana State University prohibits discrimination on the basis of: age, disability, genetic information, national origin, pregnancy, race/color, religion, sex, gender identity or expression, sexual orientation, veteran status, or any other class protected by federal and state statutes. Discrimination based upon any protected class is strictly prohibited in ISU programs and activities or that interferes with the educational or workplace environment. ISU recognizes that discrimination and harassment may take many forms, and it is our collective commitment to respond promptly and vigorously to discriminatory or harassing behavior.

### **923.2 Definitions**

- A. Complainant: An individual who is alleged to be the victim of conduct that could constitute discrimination or harassment.
- B. Consent: 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 Consent may be withdrawn at any time.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. Lack of consent means:
  - 1. The person has not given consent;
  - 2. The person is incapable of giving consent because of mental, developmental, or physical disability;
  - 3. Force is used or threatened;
  - 4. The person is incapable of giving consent because of judgment-inhibiting intoxication without regard to the intoxicant;
  - 5. The person is not sufficiently conscious to provide consent; or
  - 6. 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.
- C. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

- D. **Domestic Violence:** A felony or misdemeanor crime of violence committed by (i) a current or former spouse or intimate partner of the victim; (ii) a person with whom the victim shares a child in common; (iii) a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (iv) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; (v) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Indiana.
- E. **Education Programs or Activities:** All the operations of the University, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the University. It also includes off-campus locations, events, or circumstances over which the University exercises substantial control over the Respondent and the context in which the alleged misconduct occurs, including conduct occurring in any building owned or controlled by a student organization that is officially recognized by the University.
- F. **Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute discrimination or harassment.
- G. **Sexual Assault:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent, and includes the sex offenses of rape, attempted rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape as defined in 20 U.S.C. §1092(f)(6)(A)(v). The definition of sexual assault encompasses:
1. The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim and regardless of the gender of the individuals.
  2. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
  3. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  4. Sexual intercourse with a person who is under the statutory age of consent.
- H. **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for the person's safety or the safety of others or (ii) suffer substantial emotional distress.

For the purposes of this definition, 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.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

### **923.3 Categories of Prohibited Conduct**

**923.3.1 Discrimination.** Discrimination means treating someone differently because of their membership in a protected class (or a perception that someone is a member of a protected class) in matters of admissions, employment, housing, services, or any other educational programs or activities of the University. Disparate treatment discrimination occurs when there has been an adverse impact on the individual's work or educational environment, individuals outside of the protected class have received more favorable treatment, and there is no legitimate, non-discriminatory reason for the action. Disparate impact discrimination occurs when a University policy or practice adversely impacts persons in a protected class even though the policy or practice is neutral on its face.

**923.3.2 Prohibited Harassment.** Prohibited Harassment may be categorized as hostile environment harassment or *quid pro quo* harassment. Hostile environment harassment is defined as unwelcome verbal or physical conduct directed toward an individual because of their membership in a protected class (or a perception that someone is a member of a protected class) that has the purpose or effect of substantially interfering with the individual's educational or work performance, or creating an intimidating, hostile or offensive working or academic environment. A person's subjective belief that behavior is intimidating, hostile, or offensive does not make that behavior harassment. The behavior must create a hostile environment from both a subjective and objective perspective and must be so severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives a member of the community of the ability to participate in or to receive benefits, services, or opportunities from the University's education or employment programs and/or activities. In determining whether a hostile environment exists, the University examines the context, nature, scope, frequency, duration, and location of incidents, as well as the relationships of the persons involved.

*Quid pro quo* harassment occurs where submission to or rejection of prohibited conduct is used, explicitly or implicitly, as the basis for decisions adversely affecting an individual's education, employment, or participation in a University program or activity.

Examples of Prohibited Harassment include offensive jokes, slurs, name calling, intimidation, ridicule, mockery, or displaying or circulating offensive objects and pictures that are based on a protected class. Prohibited Harassment may also include unwelcome sexual advances, requests for sexual favors, physical conduct and other verbal or physical conduct of a sexual nature that falls outside the scope of Title IX Sexual Harassment.

**923.3.3 Title IX Sexual Harassment.** Title IX Sexual Harassment is conduct on the basis of sex that constitutes *quid pro quo* harassment, Title IX Hostile Environment Sexual Harassment, sexual assault, domestic violence, dating violence, or stalking and that occurs in the United States and within the University's Education Programs or Activities.

"Title IX Hostile Environment Sexual Harassment" is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University's Education Programs or Activities.

**923.3.4 Sexual Misconduct.** Sexual Misconduct is sexual assault, domestic violence, dating violence, or stalking that occurs off-campus, in a private setting, and/or outside the scope of the University's Education Programs or Activities.

#### **923.4 Other Harassing, Intimidating, or Physically Abusive Conduct.**

Conduct that seeks to intimidate or harass or constitutes unwelcome or abusive physical contact but is not discriminatory is also prohibited by [Policy 410 Code of Student Conduct](#), [Policy 502 Prohibition on Hostile or Intimidating Workplace Behavior](#) and other ISU policies as may be adopted from time to time.

### **923.5 Commitment to Freedom of Expression and Academic Freedom.**

ISU values the principles of freedom of expression and academic freedom, even when speech or academic discourse is uncomfortable and challenging. However, speech that is discriminatory and harassing is not protected and will be subject to investigation and possible disciplinary action.

### **923.6 Reporting Discrimination and Harassment.**

All ISU employees are expected to report discrimination and harassment to the Equal Opportunity and Title IX Office. Those individuals who act in a supervisory capacity or who serve as faculty/staff advisors to ISU student organizations should be especially mindful of the obligation to report discrimination and harassment promptly. Reports of discrimination or harassment should be directed to:

[Equal Opportunity and Title IX Office](#)

Rankin Hall, Room 426

Indiana State University

Terre Haute, Indiana 47809

(812) 237-8954

[ISU-equalopportunity-titleix@mail.indstate.edu](mailto:ISU-equalopportunity-titleix@mail.indstate.edu)

[https://cm.maxient.com/reportingform.php?IndianaStateUniv&layout\\_id=10](https://cm.maxient.com/reportingform.php?IndianaStateUniv&layout_id=10)

**923.6.1 Confidential Reporting.** ISU has designated certain employees to be confidential resources to students and employees. These confidential resources may be found on the Equal Opportunity and Title IX website.

**923.6.2 Review of Reports of Discrimination and Harassment.** ISU has designated the Equal Opportunity and Title IX Office to review all reports of discrimination and harassment. Upon receipt of a report, the Director of Equal Opportunity/Title IX Coordinator will undertake a continuing assessment to determine the form of discrimination or harassment at issue and which adjudication procedures are applicable.

In all matters where the Complainant's identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures; to discuss and consider the Complainant's wishes with respect to supportive measures; to inform the Complainant about the availability of supportive measures with or without filing a formal complaint; and to explain the process for filing and pursuing a formal complaint. The Complainant will also be provided options for filing complaints with the local police and information about resources that are available on campus and in the community.

**923.6.3 Filing of Formal Complaints.** Upon receipt of a report of discrimination or harassment, the Director of Equal Opportunity/Title IX Coordinator will contact the Complainant, if their identity is known, and explain the process for filing a formal complaint. A formal complaint is submitted by the Complainant to the Office of Equal Opportunity and Title IX in person, by mail, or by email. The formal complaint must contain the Complainant's physical or digital signature, or otherwise indicate that the

Complainant is the person filing the formal complaint. At the time of filing a formal complaint of Title IX Sexual Harassment, a Complainant must be participating in or attempting to participate in the University's Education Programs or Activities.

The Director of Equal Opportunity/Title IX Coordinator has discretion to file a formal complaint even if the Complainant chooses not to, and even if the Complainant chooses not to participate in the investigation or adjudication process. In general, the Director of Equal Opportunity /Title IX Coordinator will seek to respect the Complainant's wishes not to file a formal complaint.

The Director of Equal Opportunity/Title IX Coordinator will file a complaint on behalf of the University in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the University community. Factors the Director of Equal Opportunity/Title IX Coordinator may consider in deciding whether to file a complaint include (but are not limited to): (a) was a weapon involved in the incident; (b) were multiple assailants involved in the incident; (c) is the accused a repeat offender; and (d) does the incident create a risk of occurring again.

**923.6.4 Required Dismissal of Title IX Sexual Harassment Complaints.** At any time during the handling of a formal complaint, the Director of Equal Opportunity/ Title IX Coordinator will dismiss a formal complaint of Title IX Sexual Harassment if it is determined that:

- The conduct alleged in the formal complaint would not constitute Title IX Sexual Harassment if proved;
- The conduct alleged in the formal complaint did not occur in the University's Educational Programs or Activities;
- The conduct alleged in the formal complaint did not occur against a person in the United States.

The parties will be notified in writing that the allegations of Title IX Sexual Harassment must be dismissed and the reason for dismissal. If the behavior at issue would still, as alleged, constitute Discrimination, Prohibited Harassment, or Sexual or Gender-Based Misconduct, the allegations will continue to be addressed under this Policy and the applicable adjudication procedures.

If a formal complaint of Title IX Sexual Harassment is dismissed for one of the above reasons, the parties may appeal that dismissal using the appeal process described in Section 923.12.

**923.6.5 Other Dismissal and Closure.** In addition to the dismissal of a formal complaint for Title IX purposes, the Director of Equal Opportunity/Title IX Coordinator may dismiss a formal complaint if at any time:

- The Complainant notifies the Director of Equal Opportunity/Title IX Coordinator in writing that the Complainant would like to withdraw their formal complaint;
- The Respondent is no longer a student of or employed by the University, as applicable; or

- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination on the underlying allegations of the formal complaint.

If a formal complaint is dismissed pursuant to this section, the parties may appeal that dismissal using the appeal process described in Section 923.12.

### **923.7 Reports of Other Misconduct.**

Reports of misconduct other than discrimination or harassment will be referred by the investigator to the Office of Human Resources for Staff, the appropriate Dean for faculty, or the Office of Student Conduct and Integrity for students, including student employees.

### **923.8 Alternative Resolution.**

The University offers voluntary alternative resolution for complaints of discrimination and harassment, except where the Respondent is a non-student employee accused of committing Title IX Sexual Harassment against a student. Information about alternative resolution can be found in the Complaint Resolution and Investigation Procedures.

### **923.9 Complaint Resolution and Investigation Procedures; Guiding Principles.**

The Director of Equal Opportunity/Title IX Coordinator is responsible for conducting the investigation or assigning an investigator to investigate the complaint of discrimination. The Director of Equal Opportunity/Title IX Coordinator will publish Complaint Resolution and Investigation Procedures, approved by the President, for all investigations of discriminatory conduct, including sexual harassment. When substantive changes to the procedures are proposed, the Director of Equal Opportunity/Title IX Coordinator or the General Counsel will consult with the officers of the shared governance units about the proposed changes.

The Complaint Resolution and Investigation Procedures will comply with the Guiding Principles for the investigation of discriminatory behavior set forth below:

1. The Investigator will remain fair, objective, and impartial throughout the investigation process and will not have a conflict of interest or bias.
2. ISU will ensure that the Title IX Coordinator, investigators, decision-makers, and any individual who facilitates alternative resolution will receive appropriate training.
3. The investigator will provide sufficient notice to the Respondent and appropriate time to prepare a response before an interview, consistent with the Complaint Resolution and Investigation Procedures.
4. The Director of Equal Opportunity/Title IX Coordinator, in consultation with appropriate university officials, may remove a student Respondent from an education program or activity, including student employment, on an emergency basis if ISU determines that an immediate threat to the physical health or safety of any student, faculty member, staff member or visitor exists arising from the allegations of sexual harassment. The Respondent will be given notice and an opportunity to challenge the decision immediately following removal.
5. Non-student employees may be reassigned consistent with [Policy 501 Principles of Conduct for Faculty and Staff, Section 501.2 Extraordinary Action](#).
6. The Respondent will be presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the adjudication process.

7. ISU, not the Complainant or Respondent, is responsible for gathering information sufficient to reach a determination that Respondent violated the policy.
8. Complainants and Respondents will have an equal opportunity to have a support person or advisor present at interviews, consistent with the Complaint Resolution and Investigation Procedures.
9. Complainants and Respondents will have an equal opportunity to present witnesses, including fact and expert witnesses, and other evidence, consistent with the Complaint Resolution and Investigation Procedures.
10. Complainants and Respondents will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint, consistent with the Complaint Resolution and Investigation Procedures.
11. The investigation and determination will be completed reasonably promptly.
12. The investigator will produce a report that will be available to both Complainant and Respondent in a manner consistent with the Complaint Resolution and Investigation Procedures.

### **923.10 Standard of Evidence.**

The standard of evidence in all discrimination matters is preponderance of evidence. The investigator or Hearing Panel (as applicable) will determine whether it is more likely than not that the Respondent violated this policy.

### **923.11 Determinations of Discriminatory Behavior.**

The specific procedures for adjudicating prohibited conduct depend upon the nature of the Respondent's relationship to the University, and when a Respondent is an employee or a third party, on the type of prohibited conduct at issue.

**923.11.1 Determinations of Discriminatory Behavior.** In all investigations except those involving allegations of Title IX Sexual Harassment, Prohibited Harassment (sexual) with a student Respondent, or Sexual Misconduct with a student Respondent, the assigned investigator will make a determination about whether or not it is more likely than not that discrimination or harassment prohibited by this policy has occurred.

The final investigation report, including the determination, will be provided to the appropriate Cabinet Member(s). The Cabinet Member to whom the Respondent reports will make a determination about disciplinary action or sanctions, if warranted. The appropriate Cabinet Member may take disciplinary action against a Respondent based on the contents of the investigation report and the determination of discrimination.

**923.11.2 Determinations of Title IX Sexual Harassment.** Formal complaints of Title IX Sexual Harassment will be adjudicated by a Hearing Panel after the conclusion of the fact-gathering investigation. The Hearing Panel will hold a live hearing that is governed by the Guiding Principles set forth in Section 923.11.6 and conducted in accordance with Hearing Procedures approved by the President. The Hearing Panel will make the determination about whether it is more likely than not that the Respondent engaged in Title IX Sexual Harassment as defined by Section 923.3.3.

**923.11.2.1 Disciplinary Outcomes in Title IX Sexual Harassment Determinations.** If the Hearing Panel determines that the Respondent engaged in Title IX Sexual Harassment, federal law requires the Hearing Panel to include the sanction within its

written determination. Disciplinary outcomes for students may include, but are not limited to, 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. Disciplinary outcomes for faculty and staff will be consistent with University policies and procedures related to employee discipline.

**923.11.3 Determinations of Prohibited Harassment (Sexual) or Sexual Misconduct (Students).** Formal complaints of Prohibited Harassment (sexual) or Sexual Misconduct involving student Respondents will be adjudicated by a Hearing Panel after the conclusion of a fact-gathering investigation. The Hearing Panel will hold a live hearing that is governed by the Guiding Principles set forth in Section 923.11.6 and conducted in accordance with Hearing Procedures approved by the President. The Hearing Panel will make the determination about whether or not it is more likely than not that the Respondent engaged in Prohibited Harassment, as defined by Section 923.3.2, or Sexual Misconduct, as defined in Section 923.3.4.

**923.11.4 Other Misconduct.** In cases where the final investigation report identifies misconduct other than discriminatory conduct, the Cabinet member may refer the matter for further review or take disciplinary action based on the contents of the investigation report. All such disciplinary action will be consistent with ISU policy.

**923.11.5 Allegations of more than one form of discrimination.** If more than one form of discrimination is alleged, the investigator will make the determination regarding all allegations of discrimination or harassment that would not otherwise be determined by a Hearing Panel pursuant to this policy.

**923.11.6 Hearing Procedures; Guiding Principles.** The Director of Equal Opportunity/Title IX Coordinator will publish Hearing Procedures, approved by the President, for all adjudications of Title IX Sexual Harassment, Prohibited Harassment (sexual), and Sexual Misconduct. When substantive changes to the procedures are proposed, the Director of Equal Opportunity/Title IX Coordinator or the General Counsel will consult with the officers of the shared governance units about the proposed changes.

The Hearing Procedures will comply with the following Guiding Principles:

1. The Hearing Panel will remain fair, objective, and impartial throughout the investigation process and will not have a conflict of interest or bias.
2. ISU will ensure that the Hearing Panel and Advisors provided by ISU will receive appropriate training.
3. All Complainants and Respondents will be entitled to have an Advisor present during the hearing, and the Advisor will have the opportunity to question witnesses, the investigator, and the other party. The Complainant and Respondent may choose the Advisor, or, at the request of the Complainant or Respondent, ISU will provide the Advisor. No party will be allowed to ask questions of any witness, the investigator, or the other party.
4. All Complainants and Respondents will be entitled to have a support person, subject to the Hearing Procedures.
5. The hearing may, at the request of any party, be conducted in separate areas, and connected to the hearing using technology resources.

6. The Respondent will be presumed not responsible for the alleged conduct until a determination regarding responsibility is made final.
7. Complainants and Respondents will have an equal opportunity to present information to the Hearing Panel, consistent with the Hearing Procedures.

**923.11.7 Notification to Complainant and Respondent.** In all investigations of discriminatory conduct, both the Complainant and the Respondent will be notified in writing of the determination and, where appropriate, the disciplinary outcome.

### **923.12 Appeal.**

Either party may appeal the determination to the President on the following grounds:

1. Procedural irregularity that affected the outcome.
2. New evidence, not reasonably available at the time of determination or dismissal was made, that could reasonably affect the outcome.
3. Conflict of interest or bias that affected the outcome of the hearing.

The Director of Equal Opportunity/Title IX Coordinator will publish Appeal Procedures, approved by the President, for all investigations of discriminatory conduct, including sexual harassment. When substantive changes to the procedures are proposed, the Director of Equal Opportunity/Title IX Coordinator or the General Counsel will consult with the officers of the shared governance units about the proposed changes.

The President's decision on the merits of the appeal will be final.

### **923.13 Retaliation.**

Retaliation against participation in the reporting, investigation, or determination of discriminatory or harassing conduct is prohibited and will constitute a separate violation of this policy.

### **923.14 Campus Notifications.**

The Director of Equal Opportunity/Title IX Coordinator will cooperate with the ISU Chief of Police on any notifications to the campus about health and safety emergencies that might arise because of a report of a violation of this policy.

### **923.15 Privacy.**

All reports of discrimination will be treated with the maximum possible privacy.

### **923.16 Training.**

Those individuals involved in investigation, adjudication, and appeal of allegations of discrimination and harassment will be provided appropriate training and education. The President may require training or education of all employees and students on this policy.