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923 Non-Discrimination and Anti-Harassment

Last updated on: August 14, 2020

Authority: Approved by the Board of Trustees

923.1 Overview.

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.

923.1.1 Forms of Discrimination and Harassment Related to Students.

Discrimination or harassment of students may occur when, on the basis of age, disability, genetic information, national origin, pregnancy, race/color, religion, sex, gender identity or expression, sexual orientation, or veteran status, students are unjustly denied educational services and benefits, treated differently than other peers without a legitimate, non-discriminatory reason, or are subjected to unwelcome conduct that is based on a student's actual or perceived age, disability, genetic information, national origin, pregnancy, race/color, religion, sex, gender identity or expression, sexual orientation, or veteran status and is sufficiently severe, pervasive, or persistent that it interferes with the student's ability to participate in the benefits, services, and activities of the educational environment.

923.1.2 Forms of Discrimination and Harassment Related to Employees.

Discrimination or harassment of employees may occur when, on the basis of age, disability, genetic information, national origin, pregnancy, race/color, religion, sex, gender identity or expression, sexual orientation, or veteran status, employees are unjustly denied employment opportunities or are subjected to adverse employment actions, are subject to policies that disproportionately exclude the employee or a class of employees and are not job related, or are subject to harassing conduct that is sufficiently frequent or severe as to create a hostile work environment.

923.1.3 Sexual Harassment in the Educational Environment.

Sexual harassment is a form of sex discrimination that is prohibited by ISU's policy and state and federal law. The Department of Education has adopted regulations that specifically define sexual harassment under Title IX of the Education Amendments of 1972. Sexual harassment in the educational environment occurs if the conduct occurs on ISU's campus or where ISU exercises substantial control over the educational environment.

A person engages in sexual harassment in the educational environment when

- 1) The person is an employee, including a student employee, and conditions educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- 2) The person commits unwelcome conduct of a sexual nature that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity; or
- 3) The person commits sexual assault, dating violence, domestic violence, or stalking.

(a) Sexual assault is defined as any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Specific examples of sexual assault include rape, fondling, incest, and statutory rape.

Rape is 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. This offense includes the rape of a person of any gender.

Fondling is 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.

Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape is sexual intercourse with a person who is under the statutory age of consent.

(b) Dating violence is defined as 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.

(c) Domestic violence is defined as 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.

(d) Stalking is defined as 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.

(e) Consent is defined as 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. 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 of judgment-inhibiting intoxication without regard to the intoxicant; or
- e. The person is not sufficiently conscious to provide consent; or
- 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.

923.1.4 Sexual Harassment in the Employment Environment.

Sexual harassment also refers to the unwelcome imposition of sexual attention often in the context of a relationship of unequal power. Sexual harassment in the employment context is conduct experienced or engaged in by an employee that is sexual in nature and which has the effect of unreasonably interfering with another person's work or educational performance, or which creates an intimidating, hostile, or abusive environment. It can include unwelcome sexual advances, requests for sexual favors, physical conduct and other verbal or physical conduct of a sexual nature.

923.1.5 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.

923.2 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.

923.3 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

https://cm.maxient.com/reportingform.php?IndianaStateUniv&layout_id=10

922.3.1 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.

923.3.2 Supportive Measures.

Upon receipt of a report of discrimination or harassment, the Director of Equal Opportunity/Title IX Coordinator may provide supportive measures to either party. In the event an employee is the respondent, the Director of Equal Opportunity/Title IX Coordinator will consult with the vice president of the area in which the respondent is employed about supportive measures that may impact the respondent.

923.4 Review of Reports of Discrimination and Harassment; Filing of Complaints.

ISU has designated the Equal Opportunity and Title IX Office to review all reports of discrimination and harassment. Upon receipt of a report and after consultation with the individual who allegedly experienced the discrimination, the Director of Equal Opportunity/ Title IX Coordinator will make a determination about whether or not the allegations sufficiently allege discrimination. If so, a formal complaint will be filed by the individual or the Director of Equal Opportunity/Title IX Coordinator and an investigation will begin. The Director of Equal Opportunity/Title IX Coordinator is

responsible for conducting the investigation or assigning an investigator to investigate the complaint of discrimination.

923.4.1 Reports of Other Misconduct.

Reports of misconduct other than discrimination 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.

923.5 Mediation.

If both the complainant and respondent agree, reports of discrimination may be referred to a university mediator. Investigators will not engage in or participate in mediation between the parties. Even if mediation is pursued, the Director of Equal Opportunity and Title IX Coordinator may make the determination to continue an investigation if the conduct alleged is egregious or if the Director of Equal Opportunity and Title IX Coordinator, upon consultation with the appropriate Cabinet Member, believes there is a continued threat to the educational or workplace environment.

923.6 Investigation Procedures; Guiding Principles.

The Director of Equal Opportunity/Title IX Coordinator will publish 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 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 mediation 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 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 not be presumed 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 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 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 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 Investigation Procedures.

923.7 Standard of Evidence.

The standard of evidence in all discrimination matters is preponderance of evidence. The investigator/hearing officer will determine whether it is more likely than not that the respondent violated this policy.

923.8 Determinations of Discriminatory Behavior

923.8.1 Determinations of Discriminatory Behavior (Non-Sexual Harassment).

In all investigations except allegations of sexual harassment, 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.

923.8.2 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.

923.8.3 Determinations of Sexual Harassment.

Sexual harassment investigations will be adjudicated by a hearing officer, after a live hearing. The hearing will be guided by the guiding principles set forth in 923.6 and conducted in accordance with Sexual Harassment Hearing Procedures approved by the President. The Hearing Officer will make the determination about whether or not it is more likely than not that the respondent engaged in either sexual harassment in the educational environment, as defined by Section 923.1.3, or sexual harassment in the employment environment, as defined in 923.1.4.

922.8.3.1 Disciplinary Outcomes in Sexual Harassment Determinations.

If the hearing officer determines that the respondent engaged in sexual harassment, federal law requires the hearing officer to determine disciplinary outcomes. 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.

923.8.4 Allegations of more than one form of discrimination.

If more than one form of discrimination is alleged, the investigator will make the determination about non-sexual harassment discrimination.

923.8.5 Hearing Procedures; Guiding Principles.

The Director of Equal Opportunity/Title IX Coordinator will publish hearing 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 Hearing Procedures will comply with the Guiding Principles for hearings involving allegations of sexual harassment

1. The Hearing Officer 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 Officer 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. 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 not be presumed responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the hearing process.
7. Complainants and respondents will have an equal opportunity to present information to the Hearing Officer, consistent with the Hearing Procedures.

923.8.6 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.

923.9 Appeal.

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

- a. Procedural irregularity that affected the outcome.
- b. New evidence, not reasonably available at the time of determination or dismissal was made, that could reasonably affect the outcome.
- c. Conflict of interest or bias that affected the outcome of the hearing.

The Director of Equal Opportunity and 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.

923.10 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.

923.11 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 as a result of a report of a violation of this policy.

923.12 Privacy.

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

923.13 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.