

## POLICY STATEMENT

### Subject: SEXUAL MISCONDUCT POLICY

Date Established: August 24, 2003  
Revision Dates: August 8, 2008, February 29, 2012,  
February 29, 2012, April 29, 2014  
August 29, 2014, May 1, 2018

Originating Office: President  
Distribution Code: A

President's Approval:  
Michael A. Driscoll May 7, 2018

#### A. OVERVIEW:

Indiana University of Pennsylvania is committed to maintaining a learning and work environment that is free from sexual violence, sexual harassment, retaliation and other prohibited conduct ("Misconduct"). Acts of sexual harassment and sexual violence, including sexual assault, sexual exploitation, dating violence, domestic violence and stalking, seriously undermine the atmosphere of trust and respect that is essential to a University community and will not be tolerated. IUP will respond promptly and effectively to reports of Misconduct and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this Sexual Misconduct Policy.

This policy is intended to protect members of the university community from Misconduct, not to regulate protected speech. This Policy shall be implemented in a manner that recognizes the importance of rights to freedom of speech and expression as well as the principles of academic freedom. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state laws including Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Pennsylvania Human Relations Act.

This policy is applicable regardless of the sexual orientation and/or gender identity of individuals alleged to have engaged in Misconduct.

#### B. REPORTING OBLIGATIONS:

All IUP employees (including faculty, staff, managers, student employees, and administrators), vendors and designated volunteers are expected to immediately report actual or suspected Misconduct to the Title IX Coordinator. All University employees have a duty to report, unless they have been designated as having privilege or are considered a confidential employee (see below). Failure of employees to report an incident or incidents of Misconduct of which they become aware, may be a violation of University policy subject to disciplinary action.

Generally, climate surveys, classroom writing assignments, classroom discussions, a University-approved research project, or events such as Take Back the Night marches or speak-outs do not constitute notice that must be reported to the Title IX Coordinator. Complainants may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator.

As time passes, it may become more difficult to investigate and resolve complaints. In addition, because there are time limitations for filing external complaints with state and federal agencies, individuals are encouraged to report actual or suspected Misconduct as soon as possible.

Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

**Title IX Coordinator/Compliance Specialist**  
**Delaney Hall, Room B 17**  
**920 Grant Street**  
**Indiana, PA 15705-1046**  
**Phone: 724-357-3402**  
[title-ix@iup.edu](mailto:title-ix@iup.edu)

Any obligations of the Title IX Coordinator as set forth in this policy may be delegated to a deputy Title IX Coordinator or other University official, as appropriate.

If the complaint is against the Title IX Coordinator, the complaint must be filed with the Associate Vice President for Human Resources. If the complaint is against the University President or a member of the Council of Trustees, it must be filed with the Office of Chief Counsel for the State System of Higher Education.

The complainant has the option at any time to file a complaint through an external public agency responsible for enforcing laws regarding discrimination. Generally this filing should take place within 180 days beginning with the date of the last alleged incident.

Equal Employment Opportunity Commission [www.eeoc.gov](http://www.eeoc.gov)  
1000 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 644-3444

Pennsylvania Human Relations Commission [www.phrc.state.pa.us](http://www.phrc.state.pa.us)  
300 Liberty Ave., State Office Bldg., 11th Floor Pittsburgh, PA 15222  
(412) 565-5395

U.S. Department of Education  
Office for Civil Rights [www.ed.gov/about/offices/list/ocr/index.html](http://www.ed.gov/about/offices/list/ocr/index.html)  
400 Maryland Avenue  
Washington D.C. 20202-5151  
(800) 421-3481

**Individuals with Privilege** - IUP recognizes and honors privilege granted by applicable statutes. IUP licensed psychologists, mental health counselors, graduate students in the Counseling Center, licensed psychologists and graduate students in the Center for Applied Psychology, and physicians and nurse practitioners working in the Health Service, are not required to disclose any information concerning an allegation of Misconduct to the IUP Title IX Coordinator without the consent of the individual making the allegation. This privilege may not exempt the employee with privilege from other reporting obligations, including the Clery Act as a Campus Security Authority (CSA) or other policies or laws that require reporting to campus or law enforcement or a child protective service agency. All university mandated reporters must report suspected child abuse and child neglect consistent with the University's Protection of Minors Policy.

**Confidential Employees** - Although a legally recognized privilege may not attach to IUP employees who provide confidential services, the University respects expectations of privacy to the extent permissible by law while still ensuring compliance with other reporting obligations. Individuals authorized by the President, upon recommendation of the Title IX Coordinator, to have confidentiality are required to report the nature, date, time, and general location of an allegation of sexual violence to the Title IX Coordinator. Unless the alleged complainant consents to the release of their name, recognized individuals providing confidential services will not release the name to the Title IX Coordinator. Designated confidentiality may not exempt the employee from other reporting obligations, including the Clery Act as a Campus Security Authority (CSA) or other policies or laws that require reporting to campus or law enforcement or a child protective service agency. All university mandated reporters must report suspected child abuse and child neglect consistent with the University's Protection of Minors Policy.

**Other Confidentiality Requests** - If a complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the complainant may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, IUP may be unable to honor the complainant's request for confidentiality, investigation or pursuit of formal resolution.

**Privacy** - The University will protect the privacy of individuals involved in a report of Misconduct to the extent permitted by law and by university policy. However, an investigation may involve interviews with a number of persons to inquire if they have relevant evidence, and extremely sensitive information may be gathered. While such information is considered confidential, university policy may also require the disclosure of certain information during or following an investigation to the participants in any investigation or hearing and other University officials who, by virtue of their position, have a need to be aware of the complaint, accommodations or corrective or disciplinary action. The knowledge of the complaint among other University members will be limited as much as possible to preserve the privacy of individuals.

**Jurisdiction** – Individuals may be adjudicated for engaging in conduct that violates federal, state, or local law whether such conduct takes place on campus or off campus or whether or not civil or criminal penalties may also be imposed for such conduct. A violation of this policy is not predicated upon a final determination by a court of law. In other words, it is not necessary for an individual to have been actually found to have violated a federal, state, or local law by a court of law in order to be disciplined under this policy. It is only necessary that an individual be found to have engaged in such prohibited acts by processes under this policy. It is specifically noted here that the standard of proof used in administrative actions under this policy is distinct and different from what is applied in criminal federal, state, and local law violations. Any decision issued must be based upon evidence sufficient to make a reasonable person believe that a fact sought to be proved is more likely true than not. A charge alleging a violation of a federal, state, or local law shall identify the federal, state, or local law violated.

**Standard of Proof** - The standard of proof describes the level of proof that must be met in order to find a respondent responsible for a violation. There may be strong, definitive evidence presented to persuade the adjudicator that the respondent did or did not violate a particular section of this policy. There may also be ambiguities and contradictions, which require the adjudicator to decide whom they believe, or whom they think is more credible. An individual is not considered to be “in violation” of any charges until the completion of the process determines that it is more likely than not that the alleged violation of this policy occurred. Decisions will be based upon information sufficient to make a reasonable person believe that a fact sought to be proved is more likely true than not. This standard is lower than the standard required in a court of law.

**Evidence** - Different types of information that may be presented during an investigation or during a hearing. This may include direct evidence, which is based on personal observation or experience. Evidence may be circumstantial, which is information that does not include an eyewitness to the actual event, but does include enough information to lead a reasonable person to the conclusion that the individual did what he/she is alleged to have done. Evidence may be documentary in form, which includes supportive writings or documents including statements, reports, etc., that support or deny a fact at issue. Evidence may also be secondhand, or “hearsay” evidence. While it is acceptable for the adjudicator to consider and hear second hand information, hearsay evidence may not be used to establish a fact necessary to establish guilt or innocence in a case.

The university is not bound by formal rules of evidence; however, evidence shall be inherently reliable. Evidence or information that may not be admissible in a court of law may be admissible in a conduct hearing or as part of an investigation. It is up to the hearing officer or student conduct board chairperson decide what information is admissible as part of a hearing. It is up to the adjudicator to decide the credibility and relevance of information and the weight that they will assign to that information.

**Burden of Proof** - The burden of proof refers to who has responsibility of showing a violation has occurred. It is always the responsibility of the university to show this. The respondent does not have the burden to prove that a violation did not occur. A respondent may decide not to share their side of the story or may decide not to participate in the hearing or an investigation. None of these decisions shifts the burden of proof away from the university.

**Communication** – University-issued electronic mail (email) is the official means of communication between the Office of Student Conduct and students on all matters pertaining to violations of this policy. The University may choose alternate means of communication with employees, vendors or designated volunteers.

**Parent(s)/Guardian(s)** - Parent(s)/guardian(s) can have significant influence over their student's choice to follow the behavioral expectations of the university and are welcomed as partners in the conduct process in accordance with the provisions of the Family Educational Rights and Privacy Act (FERPA).

Parent(s)/guardian(s) will be notified of the outcome concerning a respondent who is their legal dependent Student Conduct outcome when that outcome includes any fine and/or fee in circumstances where the student is under the age of 21 and is legally financially dependent on the legal parent(s)/guardian(s). The Office of Student Conduct will not notify a parent(s)/guardian(s) of any alleged charges or pending processes. Parent(s)/guardian(s) notification will only be sent once an interim or initial outcome has been reached.

**Accommodations** - Any individual who requires reasonable accommodation in order to ensure their full and equal participation in an investigation or proceeding under this policy should make those requests directly to The Department for Disability Access and Advising (D2A2). Students do not have to disclose information about the complaint or charge to request reasonable accommodation, except to the extent that it may assist in the determination of reasonable accommodations. Accommodations are determined on an individual basis by D2A2 staff, based upon appropriate documentation and consultation with the student. Reasonable accommodations are then implemented in cooperation with the Office of Student Conduct. Examples of reasonable accommodation include, but are not limited to, sign language interpretation, real-time communication access during hearings, large print documents, extended time to review documents, or assistance with transcribing questions during interviews or hearings, or reasonable accommodations that facilitate communication during the process.

### C. DEFINITIONS

1. **Adjudicator** - any University official or Student Conduct Board authorized by the University to impose sanctions upon any student(s) found to have violated university policy.
2. **Advisor** - any person identified by a complainant, respondent, or witness to interact and consult privately with that individual during meetings and/or hearings conducted pursuant to this policy. An advisor may be any individual including, but not limited to, another student, a friend, a union representative, an IUP faculty/staff/administrator, a family member, or an attorney. The advisor may not act as the individual's representative. If an advisor does not act within the limitations outlined for him/her, a university official will request that the advisor comply with the limitations and warn him/her that if the noncompliance persists, the advisor will be required to remove himself/herself from the meeting or hearing.
3. **Complainant** - any person who originates or refers an allegation of violation of this policy.
4. **Consent** - a positive, unambiguous, and voluntary agreement to engage in specific sexual activity throughout a sexual encounter. Consent cannot be inferred from the absence of a "no". A clear "yes," verbal or otherwise, is necessary. Consent cannot be obtained from a person whom one knows, or reasonably should know, to be asleep or otherwise mentally or physically incapacitated, whether due to alcohol, drugs, or some other condition. Consent to some sexual acts does not imply consent to others, nor does past consent to a given act imply present or future consent. Consent must be ongoing throughout contact of a sexual nature and can be revoked at any time. Consent cannot be obtained by force. There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is non-consensual, but non-consensual sexual activity is not necessarily forced.
5. **Faculty Member** - any person employed by the university who holds academic rank or performs teaching or research duties.
6. **Force** – use of physical violence (exerting control over another person through physical means) or imposing on someone physically to gain sexual access. Force includes threats, intimidation (implied threats) or coercion that overcomes free will or resistance or that produces consent. Examples of force include, but are not limited to: hitting, kicking, slapping, punching, restraining, choking, and brandishing or using any weapon.
7. **Hearing Officer** - University representative who is designated by the Office of Student Conduct and is appointed by the President of IUP to adjudicate cases concerning a respondent who is a student and alleged to have violated this policy.

8. **Incapacitation** - means that a person lacks the ability or is unable, temporarily or permanently (because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness) to make informed, rational judgments about whether or not to engage in any activity as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition. A person is not necessarily incapacitated merely as a result of drinking or using drugs. The impact of alcohol and other drugs varies from person to person. Being impaired by alcohol or other drugs is not a defense to any violation of policy.
9. **Organization** - a group of persons who have complied with University requirements for registration or recognition.
10. **Respondent** – an individual accused of violating this policy.
11. **Sanction** - one or more consequences or requirements imposed due to the violation of this policy.
12. **Staff** - any person employed by the university or the Student Cooperative Association who is not considered faculty.
13. **Student** - any person from the time she or he accepts admission to Indiana University of Pennsylvania through the date of graduation. This includes, but is not limited to, new students at orientation, persons currently enrolled but who are still seeking a degree from Indiana University of Pennsylvania, persons currently under suspension, and any other person enrolled in a credit-earning course offered by the university. It may also include any person who has graduated from Indiana University of Pennsylvania if the university determines that her or his graduation or receipt of credit may have involved misconduct while working toward that credit or degree.
14. **Student Cooperative Association (Co-op)** - the organization funded by student activity fees, incorporated to provide educational, literary, social, recreational, and cultural benefits of the students, faculty, and staff of Indiana University of Pennsylvania and to operate a bookstore and other facilities.
15. **University** - the community of faculty, staff, and students at IUP, as well as premises and facilities.
16. **University Activity** - any activity on or off campus, which is initiated, aided, funded, authorized, or supervised by the university or the Student Cooperative Association (Co-op).
17. **University Premises** - all buildings or grounds owned, leased, operated, controlled, or supervised by the University or the Student Cooperative Association (Co-op) or other recognized University affiliated organization.
18. **University Regulation** - any written policy of the university as found in, but not limited to, this document, the contracts for residential rooms/suites/apartments (including dining contracts), the university website, and the graduate and undergraduate catalogues.
19. **University Student Conduct Board** - A Student Conduct Board consists of three to six members (inclusive of the board chair), selected from a pool of prospective members who have been trained to participate as Student Conduct Board members and appointed by the University President. A chairperson designated by the Office of Student Conduct oversees the hearing. Board members are trained in the investigatory and fact finding process.
20. **Witness** - any person who has been identified by the complainant and/or respondent as having relevant first-person information concerning the alleged violation of one or more student conduct policies.
21. The terms "will" and "shall" are to be used in the imperative sense, not imparting a choice.
22. The term "may" is to be deemed permissive, imparting a choice.
23. The terms "Vice President for Student Affairs" and "Associate Vice President for Student Affairs" refer to individuals holding those positions or their designees.

#### D. **BEHAVIORAL VIOLATIONS**

**Complaints may include any of the following charges with or without charges from the Student Conduct Policies and Procedures or any other violations of policy, including the Anti-Hazing Policy, etc.**

1. **Coercion** - words, actions, or implied threats that would compel with unreasonable pressure a reasonable person to engage in **unwanted** activity.
2. **Dating Violence** - Conduct by a respondent who is or has been in a sexual, dating, spousal, domestic, or other intimate or romantic relationship with another person that intentionally, or recklessly causes bodily injury to the complainant or places the complainant in reasonable fear of serious bodily injury. The nature of the relationship between the complainant and the respondent is determined by the length, type and frequency of interactions between them.

3. **Domestic Violence** - Conduct by a current or former spouse or intimate partner of the complainant; or a person with whom the complainant shares a child in common, who intentionally, or recklessly, causes bodily injury to the complainant or another, or places the complainant or another in reasonable fear of serious bodily injury.
4. **Intimidation** - Intimidation is an implied threat through word or action or unreasonable pressure that would compel or cause a reasonable person to engage in unwanted sexual activity, or menaces or causes reasonable fear in another person or works to gain favor or access, including, but not limited to, sexual access. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit), or after a decision to stop or not go beyond a certain point of a particular activity, form of sexual contact, or sexual penetration has been made, a continued effort to gain favor or access to persuade, entice or attract a person is inappropriate.
5. **Threat** - words or actions with the intent or effect to cause alarm, fear of harm to another individual, group, or entity or to coerce another individual, group, or entity to engage in unwanted behavior.
6. **Sexual Contact** - Any intentional or unintentional sexual touching or body contact, clothed or unclothed, however slight, with any object or body part, performed by a person upon another person without consent. This includes contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch anyone or themselves with or on any of these body parts. The touching of another person for the purpose of sexual gratification without consent, including instances where the complainant is incapable of giving consent due to age or temporary or permanent mental or physical incapacity is considered sexual contact.
7. **Sexual Assault** - Any penetration, however slight, with any object, by a person upon another person, which is without consent. Vaginal, oral, or anal penetration by a penis, object, tongue, or finger, or by any sex organ or object or any contact, no matter how slight, between the mouth of one person and the genitalia of another person is considered sexual assault.
8. **Retaliation** - acts and/or threats directed against or other adverse action taken against any person in response to that person's participation in or involvement with a process undertaken as part of this policy.
9. **Sexual Exploitation** - includes but is not limited to: prostituting another person; non-consensual recording of nudity or sexual activity; observing, photographing, and/or recording and/or allowing third parties to observe, photograph, and/or record private sexual activity from a hidden location (e.g., closet) and/or through electronic means (e.g., video chat, video call or livestreaming of images) without consent; Engaging in non-consensual voyeurism; exposing someone to a sexually transmitted infection without the knowledge or consent of the person exposed; intentionally or recklessly exposing one's genitals to another person without the consent of that person;
10. **Sexual Harassment** - Unwelcome sexual advances, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise, regardless of gender or gender identity, where:
  - a. submission to or rejection of such conduct is, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs or activities or is used as the basis for University decisions affecting the individual (often referred to as "quid pro quo" harassment); or
  - b. such conduct is sufficiently severe or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the University's education or employment programs and/or activities. Conduct must be deemed severe or pervasive from both a subjective and an objective perspective.
  - c. consideration shall be given to the total circumstances in which the conduct occurred including the relationship of the parties and principles of free speech and academic freedom.
11. **Stalking** - A pattern of conduct directed at another person including (but not limited to): following, monitoring, observing, surveilling, threatening, communicating to or about a person or interfering with a person's property with the intent and/or effect that would cause a reasonable person to have fear for his or her safety or suffer substantial emotional distress. Stalking may be direct, indirect, or through third parties and may be accomplished by any action, method, device, or means. This includes cyber stalking: a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact. Stalking of a non-sexual nature is addressed by other policies including the University's Student Conduct Policies and Procedures.

**E. PROCEDURES FOR MISCONDUCT ALLEGATIONS AGAINST EMPLOYEES, VENDORS, AND DESIGNATED VOLUNTEERS:**

**1. General Procedures**

- a. The complaint, respondent and witnesses may select an advisor to advise her/him during any meeting or hearing under this policy the advisor may consult and interact privately with the student or the witness. However, the advisor is not permitted to have a verbal role in the proceedings or act as a representative.
- b. At any time during the investigation, the investigator or Title IX Coordinator may recommend to IUP administrators that appropriate accommodations be implemented.

**2. Informal Complaint Resolution Procedures**

- a. Informal complaint resolution may be available for the complaint to be resolved by mutual agreement between the complainant and the respondent and the approval of the Title IX Coordinator. This option can be requested by any party who is directly involved. Complaints of sexual violence cannot be addressed through an informal complaint process.
- b. To ensure compliance with the University's legal obligations or as otherwise determined to be appropriate by the complainant or the Title IX Coordinator, the complaint may be moved from the informal complaint resolution process to the formal complaint resolution process at any time.
- c. The Title IX Coordinator is expected to review the complaint expeditiously and explore avenues for informal resolution with the complainant, if appropriate. The written complaint or a summary of the complaint will be provided by the Title IX Coordinator to the respondent. The Title IX Coordinator has the discretion to determine whether the situation warrants meeting(s), either jointly with the complainant and the respondent or separately. The complainant will not be compelled to meet with the respondent. The Title IX Coordinator has the discretion to determine whether the complaint requires an investigation, which may include interviewing other persons who may have witnessed the alleged behavior or might have information that would be helpful.
- d. The Title IX Coordinator should attempt to resolve complaints expeditiously and in a timely manner, but in a manner that is consistent with the severity or complexity of the matter. If informal resolution fails to resolve the matter to the complainant's satisfaction, the complainant may move the complaint to the formal complaint resolution process.
- e. At the conclusion of the informal investigation, all records from the informal resolution process will be maintained by the Title IX Coordinator, in accordance with the University's records retention policy.

**3. Formal Complaint Procedures**

- a. The formal complaint resolution process is initiated by a complaint being transferred from the Informal Complaint Resolution Process or by filing a written complaint with the Title IX Coordinator. The written complaint should describe the incident or incidents as completely as possible. The complainant may seek assistance and guidance regarding the formal submission of the complaint from the Title IX Coordinator.
- b. Allegations of sexual violence, including sexual assault, dating violence, domestic violence, or stalking must be filed through a written complaint with the Title IX Coordinator.
- c. At the direction of the Title IX Coordinator, a University Investigator will conduct an investigation. This will include:
  - i. notifying the respondent in writing, providing a copy of the written complaint or a summary of the complaint to the respondent which includes the alleged violations, the dates, times, and locations of the alleged violations and a summary of the actions which led to the charges;
  - ii. interviews with the complainant and the respondent and with anyone who might have witnessed the behavior or who might have information that would be helpful, as identified by the parties or other witnesses;
  - iii. proceeding in a timely manner consistent with the complexity and severity of the matter and concluded, in most cases, within sixty (60) working days of the date the formal complaint was filed;
  - iv. Preparation of an investigation report that includes a summary of the allegations and issues, the positions of the parties, a summary of the evidence and a finding of violations of this policy; and
  - v. Submission of the investigation report to the Title IX Coordinator, who will transmit the report to the President or his or her designee.

- d. **Review** - The President (or designee) will review investigations under this policy; this will include a review of the summary of the written report, the written report and any comments submitted by the complainant or respondent. The reviewing party may request further investigation; dismiss the complaint if the results of the completed investigation are inconclusive or there is insufficient evidence, based on a preponderance of the evidence, to support the allegation(s); or find this policy was violated. An individual who violates this policy risks a range of sanctions imposed by relevant disciplinary processes. The reviewing party will determine what appropriate action, if any, will be taken. The University shall take steps to prevent the recurrence of discrimination, harassment or retaliation under this policy and to correct any discriminatory effects on the complainant and others, if appropriate.
- e. **Notice of Outcome** - Once the President or designee has rendered a decision and notified the respondent in writing, the formal investigator shall, to the extent permitted by applicable law including the Family Educational Rights and Privacy Act, notify the complainant, in writing, of the results of the investigation and the action taken by the University to resolve the complaint. At the conclusion of the formal investigation, all records from the formal resolution process will be retained by the Office of Social Equity or designee in accordance with the University's records retention policy. Investigation reports and other supporting investigation documentation will not be maintained in official personnel files. Records of disciplinary action taken against an employee will be maintained in the official personnel file and in accordance with the requirements of any applicable collective bargaining agreement.
- f. **Appeal** - The respondent may appeal any discipline rendered as provided in the grievance procedures of his or her respective labor agreement or the Board of Governors' Merit Principles Policy (Policy 1983-01-A), as applicable.

#### **F. PROCEDURES FOR MISCONDUCT ALLEGATIONS AGAINST STUDENT**

1. Anyone may file an allegation of Misconduct against a currently enrolled student under this policy. If a person alleging violence is the complainant, they may elect not to proceed with a Student Conduct hearing.
2. Upon receiving a report, the University Title IX Coordinator will review the allegation to determine if the alleged incident will result in the initiation of the Title IX process. Notification must be sent to the complainant and respondent and shall include information concerning the alleged violations of this policy, the dates, times, and locations of the alleged violations, and a summary of the actions which led to reporting of the allegation(s).
3. If there is a determination that the Title IX process will not be initiated, the complainant and respondent will be notified in writing by the Title IX Coordinator.
4. The Title IX Coordinator's course of action will be guided by a balance of the following considerations: (1) the complainant's wishes to have no investigation conducted, that no disciplinary action be taken against the respondent, and the desire of the complainant to have his or her identity remain confidential; (2) the availability of information or evidence suggesting that a violation of this policy may have occurred; (3) the University's Title IX obligation to investigate or otherwise determine what happened and take corrective action as appropriate to eliminate, prevent and address the effects of the prohibited conduct; and (4) if necessary, to protect the health and safety of the complainant and the University community.  
The University will seek resolution consistent with the complainant's request, if it is possible to do so, based upon the facts and circumstances, while also protecting the health and safety of the complainant and the University community.  
The University's ability to fully investigate and respond to a report may be limited if the complainant requests anonymity or declines to participate in an investigation. The University will, however, pursue other steps to limit the effects of the prohibited conduct and prevent its recurrence.
5. In all cases, the final decision on whether, how, and to what extent the University will conduct an investigation, and whether other measures will be taken in connection with any allegation of prohibited conduct, rests solely with the Title IX Coordinator. In every case in which the complainant reports an allegation of Misconduct against a currently enrolled student and requests an investigation, the Title IX Coordinator will initiate an investigation under this policy. In those instances when the Title IX Coordinator determines that the University must proceed with an investigation despite the complainant's request that it not occur, the Title IX Coordinator will notify the complainant that the University intends to initiate an investigation, and the complainant is encouraged, but not required to participate in the investigation or in any of the actions taken by the University.



## **6. Investigation**

- a. In situations where the complainant wishes to pursue formal action or the Title IX coordinator makes a determination that an investigation should occur, the Title IX Coordinator will assign a University Investigator, as warranted, to investigate the allegation(s) and prepare an investigation report.
- b. To the extent possible, the investigation will be completed within twenty-one (21) calendar days after receipt of the allegation of Misconduct by the Title IX Coordinator unless extenuating circumstances warrant a longer period of time.
- c. An investigator will submit a report of the investigation to the Title IX Coordinator, the respondent, and the complainant. The respondent and complainant will have an opportunity to submit a written response to the investigator to be included in the report.
- d. The Title IX Coordinator will review the Investigation Report and all supplemental documents and make a determination as to whether to proceed with the Title IX process. The Title IX Coordinator will notify the respondent and complainant of the decision.
- e. If the decision is to not proceed, the Title IX Coordinator will inform the complainant and respondent of options and potential next steps (OSC process if allegations of Student Conduct policy exist, criminal process, etc.)
- f. If the Title IX Coordinator determines that the Title IX process is to move forward, the appropriate parties will be notified. A student conduct referral will be filed with the Office of Student Conduct. The Title IX Coordinator (or designee) will provide the OSC with a copy of the investigation report and all supporting documentation and a list of witnesses submitted by the complainant and the respondent. Prior to the hearing the complainant and respondent will receive copies of the investigation report, a list of witnesses and their statements, as well as any other pertinent information, as designated by the Office of Student Conduct.
- g. The Student Conduct Office will schedule a hearing (Administrative or Board). When a hearing is scheduled, the respondent and complainant will be informed in writing of the alleged violation(s), the date(s), time(s), and location(s) of the alleged violation(s) and a summary of the actions which led to the charge(s). The respondent will also receive notification of charges against the respondent.
- h. A student cannot be penalized for missing class and will be provided the opportunity to make up academic work missed during the semester for participation in the investigative process. It is the responsibility of the student to make arrangements with faculty members for completing missed work.

## **7. General Guidelines for Hearings**

- a. A respondent will be given a minimum of three (3) calendar-days' notice prior to appearing before the assigned adjudicator or Student Conduct Board unless the student waives this notice.
- b. Board members will review, in advance of the hearing, all the written materials provided to them by the Office of Student Conduct.
- c. If a student conduct hearing is scheduled, the respondent and complainant shall be provided with specific advance written notice of the alleged violations, the dates, times, and locations of the alleged violations and a summary of the actions which led to the charges. Notification of charges against the respondent shall also include, but is not limited to, the following information:
  - i The date, time, and location of the hearing;
  - ii Whether the case will be adjudicated by a hearing officer or a Student Conduct Board; and
  - iii Information regarding due process rights afforded the respondent prior to and during the hearing.
- d. The respondent shall have their case heard by an impartial adjudicator. Once an adjudicator has been named, they may not publicly or privately discuss the merits of the complaint with anyone not involved in the proceedings, with the complainant/respondent themselves, or with anyone acting on the behalf of the complainant/respondent.
- e. In situations where the original complainant is no longer available or cannot attend the hearing for unavoidable reasons, a proxy may be sent to the hearing by the originating agency to represent the university's case against the respondent throughout the proceedings.
- f. In the event that a respondent, complainant, and/or witness is not able to be physically present at the hearing, they may participate via acceptable technological means including via telephone or video call.
- g. The investigator will present the investigating report, which includes a summary of the charges.

- h. The complainant and respondent and all hearing board members may ask questions of all witnesses. Parties may not directly question each other and will be advised to write their questions at the appropriate times for the utilization of a neutral party questioner. The neutral party questioner is empowered to reframe questions and may seek the opinion of the hearing chair as to questions that may be unfairly prejudicial, irrelevant or redundant. The neutral party questioner will be trained in facilitating questions on behalf of the respondent and the complainant.
- i. The respondent shall have a fair and reasonable opportunity to answer, explain, and defend themselves against charges presented at the hearing, to present information related to specific charges and to call relevant witnesses to appear on their behalf. If the respondent intends to have witnesses present at the hearing, they must notify the Office of Student Conduct at least one business day prior to the hearing.
- j. If the respondent chooses not to appear before the assigned adjudicator, their case will be adjudicated based upon the information related to specific charges presented at the scheduled hearing.
- k. Witnesses will be asked to provide relevant information related to specific charges and to respond to questions from the complainant, the respondent, the hearing officer, and Student Conduct Board members/chairperson. Witnesses are not permitted to ask questions of hearing participants except to clarify a question asked of them.
- l. All student conduct hearings are closed except to designated and approved participants.
- m. The students and witnesses may select an advisor to advise her/him during the Student Conduct proceeding. The advisor may consult and interact privately with the student or the witness during student conduct proceedings. However, the advisor is not permitted to have a verbal role in the proceedings.
- n. At the hearing, if a respondent chooses not to testify, no inference may be drawn from the failure to testify. A respondent's failure to testify does not waive his/her right to ask questions of witnesses or call witnesses.
- o. The respondent may waive in writing their right to a hearing and accept one or more sanctions as determined by the adjudicator. The sanctions will reflect the severity of the current charges against the student, as well as any previous student conduct record. A student who waives their right to a hearing forfeits any right to appeal the sanctions as determined by the adjudicator.
- p. A hearing officer or Student Conduct Board Chair shall have the authority to hold an individual in contempt. Contempt is defined as disorderly or disrespectful conduct by hearing participants and/or the intentional misrepresentation of facts. Individuals found to be in contempt may be removed from the hearing and students may be charged with additional violations of applicable student conduct policies.
- q. The respondent and complainant shall receive a written account of the decision of the adjudicator setting forth with reasonable specificity the facts and reasons for the decision.

**8. Procedures for cases adjudicated by Hearing Officers**

- a. A respondent may challenge the assignment of a specific hearing officer to their case. This challenge must be presented in writing to the Office of Student Conduct at least one business day prior to the scheduled date and time of the hearing. Upon reviewing the details of the challenge, the Associate Vice President for Student Affairs or their designee will either uphold the challenge and appoint an alternate hearing officer and arrange a new hearing time, or deny the challenge. Failure to act shall be deemed denial.
- b. A hearing officer will withdraw from adjudicating any case in which they feel they cannot be impartial and reach a fair and objective decision.
- c. The hearing officer will review all material, hear all information relevant to specific charges pertinent to the case from the complainant, the respondent, and all witnesses, clarify issues raised and render a decision based on the information presented at the hearing.
- d. Following the hearing, the hearing officer will schedule a time to meet with the respondent (if possible) to issue a decision, and, if the student is found to be in violation of any university policy or regulation, issue one or more sanctions. This information is also presented to the student in writing within seven calendar days unless circumstances warrant an extension.
- e. If the respondent is found to be in violation of any university policy or regulation, all materials within the student's past and present student conduct file will be used to determine appropriate sanctioning.

## 9. Procedures for cases adjudicated by Student Conduct Board

- a. Any respondent appearing before a Student Conduct Board may challenge any member of the board sitting in judgment of their particular case. Upon hearing the details of the challenge, the Student Conduct Board will, by majority vote (challenged member not voting), either uphold or deny the challenge.
- b. A Student Conduct Board member will withdraw from participating in any case in which the member feels that they cannot be impartial and reach a fair and objective decision.
- c. The Student Conduct Board will review all materials and hear all information relevant to the specific charges pertinent to the case from the complainant, respondent, and all witnesses. Members of the Student Conduct Board shall be free to ask relevant questions in order to clarify information which is presented.
- d. A Student Conduct Board hearing will be digitally recorded by the University and the recording will be retained at the University in accordance with the records and recordkeeping policy. Under no circumstances are other individuals permitted to record student conduct hearings.
- e. After hearing all the information relevant to specific charges, the board will privately deliberate and make its decision and, if necessary, determine appropriate sanctions.
- f. If the respondent is found to be in violation of university policy or regulation, all materials within the student's past and present student conduct file shall be used to determine appropriate sanctions.
- g. Upon the conclusion of the hearing, the Student Conduct Board chairperson will schedule a time, if possible, to meet with the respondent to communicate the board's decision and, if the student is found to be in violation of university policy or regulation, to communicate the sanctions. This information is also presented to the student in writing within seven calendar days unless circumstances warrant an extension.
- h. In cases where the Student Conduct Board recommends expulsion as the appropriate sanction, the chairperson will recommend the sanction in writing to the Vice President for Student Affairs or their designee within three calendar days.

## 10. Sanctions

Violations of Student Conduct Policies and Procedures which demonstrate malicious intent towards the race, gender, color, religion, national origin, disability, and/or sexual orientation of another person or persons may result in increased sanctions. Any sanction may be put on hold or stayed from implementation for a specified period of time as determined by the hearing officer or Student Conduct Board. The sanction will not be lifted until the date indicated by the hearing officer or Student Conduct Board or the date upon which the student successfully completes all assigned sanctions, whichever comes last. A hearing officer or Student Conduct Board may impose one or more sanctions from the sanctions listed below.

- a. **Disciplinary Warning:** A written warning may be given to the student that indicates that they have been found to be in violation of a university policy or regulation and that failure to comply with a university policy or regulation in the future may result in referral to the student conduct system to be handled as a second offense. A warning remains in effect for a specific period of time.
- b. **Disciplinary Probation:** Disciplinary Probation is an indication that a student's status at the university is seriously jeopardized. During the probationary period, if the student is found to be in violation of another policy or regulation, a more serious sanction will be levied, including possible suspension or expulsion from the university. Disciplinary Probation is in effect for a specific period of time.-
- c. **Extended Disciplinary Probation:** Disciplinary Probation may be extended for a specific period of time.
- d. **Suspension:** A student may be suspended from the university for a specific period of time, not to be less than the remainder of the current semester. Suspension requires that the student remove themselves from University, Student Cooperative Association, owned- or affiliated-entities or properties. They are not permitted to attend classes, social activities, or to be present on University/Student Cooperative Association property during the period of suspension.
- e. **Expulsion:** The Student Conduct Board may recommend to the Vice President for Student Affairs that a student be expelled from the institution. Expulsion from the University is permanent dismissal. The Vice President for Student Affairs or their designee shall endeavor to respond to the respondent in writing regarding the recommendation of expulsion within five calendar days of receiving it.
- f. **Community Service:** A task which benefits the individual, campus, or community.

- g. **Educational Task:** Examples of educational tasks include, but are not limited to, essays, educational workshops provided by the university or outside entities, participating with staff in community development initiatives, apology notes, etc. The student will be required to submit proof of completion of the educational task from a source deemed appropriate by the university.
- h. **Mandatory Housing:** A student may be required to live in university owned/operated housing for a specific period of time.
- i. **Disciplinary Removal from University Owned/Operated Housing:** This condition removes a student from university owned/operated housing facilities on either a temporary or a permanent basis. This is a more severe action usually taken in response to serious or repeated violations of a university policy or regulation.
- j. **Loss of Eligibility for University Owned/Operated Housing:** The student, whether currently living in university owned/operated housing facilities or not, is denied future eligibility for university owned/operated housing on a temporary or permanent basis.
- k. **No Visitation in University Owned/Operated Housing/Facilities:** This condition prohibits a student from being present within university owned/operated housing or other designated facilities for any purpose for a specific time period.
- l. **Restitution:** A student may be required to pay for damages to property, including but not limited to, personal and University/Co-op property, and/or for personal injury. Payment will be made under guidelines determined by the Office of Student Conduct.
- m. **Fine:** A student may be billed an amount of money as determined by the most severe sanction assigned by the hearing officer or Student Conduct Board.
- n. **Letter to Parent(s) or Legal Guardian(s):** The student's parent(s) or legal guardian(s) receive a copy of the hearing officer's or Student Conduct Board's decision. This does not apply if the student is twenty-one years of age or older or if the student presents documentation to demonstrate independence (as defined in section 152 of the Internal Revenue Code).
- o. **Other:** Recommendations may also be made for participation in mediated no contact agreements, assignment to a trained mediator, and other appropriate remedial and education interactions. Any recommendations will be considered and acted upon by the Vice President for Student Affairs or his/her designee.

#### 11. Interim Actions

- a. **Interim Suspension:** In a situation where it is determined that a continuation of the present circumstances presents a potential danger to an individual student, other students, or the university community, the Vice President for Student Affairs or their designee may implement interim suspension. The interim suspension will remain in effect pending final disposition of the case. Interim Suspension is independent of any other measures taken by other parties at the university. After **interim** suspension is implemented, the following process will be followed:
  - i As soon as possible but in any event within 10 working days issuance of the Interim Suspension, unless circumstances warrant an extension, a Student Conduct Board hearing will be conducted to adjudicate the case.
  - ii If the interim suspension is not upheld upon the outcome of the hearing, the interim suspension will no longer be in effect.
  - iii The student cannot be penalized for missing class and will be guaranteed the opportunity to make up academic work missed during the semester in which the interim suspension was imposed. It is the responsibility of the respondent to make arrangements with faculty members for completing missed work.
  - iv When interim suspension has been implemented, upheld by a board, and appealed by the student, the Interim Suspension will remain in effect until an appeal outcome has been reached.

- b. **Interim Measures (Addition to 1. Re: interim suspension Pending Board Of Governors approval):**  
*In a situation where it is determined that a continuation of the present circumstances presents a potential danger to an individual student, other students, or the university community, the Vice President for Student Affairs or their designee may take interim measures. Interim measures may include, but are not limited to, change of housing assignment, ban from residential facilities, ban from campus except for academic purposes, or no contact with specific individuals. The interim measures will remain in effect pending final disposition of the case. Interim Measures are independent of any other measures taken by other parties at the university. After interim measures are taken, the following process will be followed:*
- i *As soon as possible but in any event within 10 working days, unless circumstances warrant an extension, a Student Conduct Board hearing will be conducted to adjudicate the case.*
  - ii *If the interim measures are not upheld upon the outcome of the hearing, the interim measures will no longer be in effect.*
  - iii *When interim measures have been implemented, upheld by a board, and appealed by the student, the Interim Measures will remain in effect until an appeal outcome has been reached.*
- \*NOTE: IUP's set of **Interim Actions** will include **Interim Measures only** if the Board of Governors Policy 1984-13-A is revised to include interim measures.*

## 12. Appeal Process

- a. **Grounds for Appeal** - Upon receiving notification of the outcome of a student conduct hearing, a respondent and complainant may appeal in writing for any of the following reasons:
- i. Procedural error that likely impacted the hearing outcome.
  - ii. New information (applies when there is an acceptable reason to explain why the information could not be presented at the original hearing).
  - iii. Inappropriate sanctions that resulted in one or more of the following: loss of eligibility to live in and/or visit University-owned/operated housing, suspension, and/or expulsion.
- b. **Appeal Procedures**

The respondent and complainant must present a written request that specifically articulates one or more reason(s) for appeal from the grounds listed above to the Vice President for Student Affairs or their designee within ten (10) calendar days of notification of the hearing decision. The ten (10) day requirement may be waived by the Vice President for Student Affairs or their designee where extenuating circumstances prevail and only if the grounds for appeal are met. The person submitting the appeal must include in the written appeal the reason(s) for the appeal, the supporting facts, and the requested solution. Appeals of fines and/or fees will not be accepted. Appeals cannot be submitted by a third party on behalf of the respondent or the complainant. The appeal must include the signature of the person submitting the appeal. An appeal is not a rehearing of the matter and will not have merit simply because the person submitting the appeal disagrees with the outcome.

In cases that do not involve interim measures, once an appeal is filed all sanctions are placed on hold with the exception of any sanction prohibiting contact another individual.

The Vice President for Student Affairs or their designee may assign an appeal board to hear the appeal.

Upon considering an appeal, the Vice President for Student Affairs or their designee may sustain the sanction(s), reduce or increase the severity of the sanction(s), reopen the case with the original Student Conduct Board, or require that the case be reheard by a new Student Conduct Board. The record for appeal is the student conduct file (see "Records and Record Keeping"). Decisions on all appeals will be rendered within ten (10) working days, absent extenuating circumstances. At the conclusion of any appeal process, the respondent and the complainant will be notified in writing of the outcome of the process.

Appeals of expulsion must be submitted to the Office of the President. The University President will respond to a respondent in writing regarding the appeal of an expulsion decision.

### **13. Records and Record Keeping**

The Office of Student Conduct will maintain student conduct files, which contain all necessary and appropriate correspondence, hearing officer and Student Conduct Board decisions, and other documentation pertinent to any student conduct cases involving the respondent. Material deemed unnecessary may be discarded at any time. Student conduct records will be maintained for at least seven years after the last sanction end date in accordance with the University record policy. Other circumstances outside the conduct process may require retention of the record for a longer period of time, including a directive to retain records issued by University Legal Counsel from the Office of the Chancellor. Cases that resulted in expulsion may be retained for a longer period of time.

The University will not release a student's conduct records without the written consent of the student. The only exceptions to this guideline are those outlined in the Family Educational Rights and Privacy Act of 1974. The Office of Student Conduct cannot guarantee confidentiality but will maintain a student's privacy to the greatest extent possible.

### **G. ADMINISTRATIVE RESPONSIBILITIES**

It is the responsibility of the University to disseminate this Policy. It is the responsibility of each member of the University community to read the Policy and to become familiar with its provisions. Failure to follow the procedures set forth in this Policy may inhibit or prevent the University from properly investigating an instance of alleged Misconduct, or from taking appropriate remedial action. It is imperative to maintain an environment free from Misconduct. To provide such an environment, the following actions will be taken:

- A. Deans, directors, department heads, and supervisors will inform all employees that sexual/gender harassment and sexual violence is prohibited. This Policy will be emphasized by the deans at college meetings and explained by department chairs to departmental employees. Managers and directors will discuss the issue in staff meetings. Those who have questions about this Policy will be referred to the Title IX Coordinator.
- B. Deans, department chairs, directors, managers, and residence directors will be encouraged to invite the Title IX Coordinator to talk to others concerning this Policy.
- C. The Title IX Coordinator will ensure this Policy accurately reflects contact persons and is placed in appropriate publications, including the undergraduate and graduate catalogs and appropriate University websites.
- D. The Title IX Coordinator will be responsible for distributing this Policy annually to all employees and students.
- E. The Title IX Coordinator will be responsible for coordinating sexual/gender harassment and sexual violence awareness training for all employees and students, as required by State and Federal Regulations.
- F. The Title IX Coordinator will oversee the Title IX training of Student Conduct Board members.
- G. The Title IX Coordinator will oversee the training to the University investigator(s).
- H. The Title IX Coordinator will oversee the distribution and dissemination of pamphlets and educational materials including resources and support available for display in every University department.
- I. The Title IX Coordinator will ensure the Policy is distributed to appropriate offices that will distribute this Policy to outside vendors.
- J. The Title IX Coordinator will oversee the process of officially recognizing those individuals who may provide confidential services to complainants of sexual violence.
- K. Campus Security Authorities (CSAs) are individuals who serve as an "official of an institution who has significant responsibility for student and campus activities, including but not limited to student housing, student discipline, and campus student conduct proceedings. An official is defined as any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution." IUP has identified individuals as CSAs, to whom campus community members may report crimes, including allegations of sexual violence. CSAs will be trained to inform complainants of all crimes or sexual violence, including sexual assault, dating violence, domestic violence, stalking, or hate crimes, of resources available.

Campus security authorities (CSAs) are required to report Clery crimes to campus police or the director of Public Safety including, but not limited to, crimes involving sexual assault, dating violence, domestic violence, stalking, and hate crimes. Allegations of sexual assault, dating violence, domestic violence, and stalking are reported to the Title IX Coordinator. For a complete list of all crimes that must be reported, see the University’s Annual Security Report. In general, Campus Security Authorities (CSAs) are individuals or organizations of an institution of higher education that, by virtue of their job or position function, are required to report crimes that have been brought to their attention. These mandatory crime reporters encompass four groups of individuals and organizations: campus police/security; individuals responsible for security on campus who are not members of a campus police/security department; individuals/organizations specified by institution policy as receivers of criminal reports; and, an official of the institution who has significant responsibility for student and campus activities. For more information about CSAs and a complete list of individuals/organizations identified as such, please visit: [www.iup.edu/police/about/security](http://www.iup.edu/police/about/security)

(A list of CSAs will be updated annually, and updates will not be considered a change in the approved Policy.)

Mr. Kevin Thelen - Office of Public Safety and University Police:	724-357-2141
Ms. Elise Glenn - Title IX Office:	724-357-3402
Mr. Craig Bickley - Office of Human Resources:	724-357-2431
Mr. Richard Muth - Northpointe, Punxsutawney, Pittsburgh East:	724-294-3309

**H. RECISION:**

The Sexual Misconduct Policy shall be reviewed at least every five years and updated, as necessary, to comply with applicable law, policy or regulation. This Policy will not be rescinded or modified except by action of the IUP President, following consultation with the University Senate, and in accordance with University Senate By-Laws and Constitution.

**I. DISTRIBUTION:**

<b>Distribution Code</b>	<b>Description:</b>
A	All Employees; All Students