

Sexual Discrimination/Misconduct Policy, Rev. 4-30-19

Indiana University of Pennsylvania

Excerpt:

J. Jurisdiction

Individuals may be adjudicated for engaging in conduct that violates University policy or federal, state, or local law whether such conduct takes place on- or off-University property, 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 responsible for violations of University policy.

IUP Police or the law enforcement agency with primary jurisdiction will be provided priority access to crime scenes, victims, witnesses or items of evidence, etc., according to criminal procedure. This does not preclude the University from taking interim action(s) as deemed necessary for the protection of an individual(s), suspension of organizational activities and/or persons associated with an organization, including employees.

K. 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. The University uses the preponderance of the evidence (also known as “more likely than not”) as a standard for proof of whether a violation occurred. This standard is lower than the standard of proof applied in a criminal proceeding. In University resolution proceedings, legal terms like “guilt” and “innocence” are not applicable, but the University never assumes a respondent (person accused of violation the policy) is in violation of University policy. University resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources. There may be strong, definitive evidence presented to persuade the adjudicator that the respondent did or did not violate a particular section of this, or other University 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 “responsible” for any allegations until the completion of the process determines that it is more likely than not that the alleged violation of this policy occurred.

L. Evidence

Different types of information 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 they are alleged to have done. Evidence may include documents, which includes supportive writings or 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 the sole basis for establishing responsibility 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 adjudicator to 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.

M. Burden of Proof

The burden of proof refers to who has responsibility of showing a violation has occurred. The University always carries the burden of proof when adjudicating a case. 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.