

Sexual Discrimination/Misconduct Policy, Rev. 4-30-19
Indiana University of Pennsylvania
Excerpt:

P. Definitions

1. Adjudicator – any University official or Student Conduct Board authorized to assess credibility of parties and witnesses, review evidence, evaluate sexual misconduct matters and determine whether a violation of the Sexual Discrimination/Misconduct Policy or the Code of Student Conduct occurred and ultimately assign sanctions if the finding in the case is of responsibility by the respondent.
2. Advisor – any person identified by a complainant, respondent, or witness to interact and consult privately with that individual prior to or 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 or staff member, a family member, or an attorney. The advisor may consult and interact privately with the student, employee, contractor, vendor, volunteer, or the witness. However, the advisor is not permitted to have a verbal role in the proceedings or act as a representative unless otherwise specified in a collective bargaining agreement, as applicable. If an advisor does not act within the limitations outlined for them, a University official will request that the advisor comply with the limitations and warn them that if the noncompliance persists, the advisor will be required to be removed from the meeting or hearing.
3. Complainant – any person who originates an allegation of sexual discrimination/misconduct in violation of this policy or the Code of Student Conduct.
4. Consent – Consent is clear, and knowing, and affirmative, conscious and voluntary, words or actions, that give permission for specific sexual activity.
 - Consent is active, not passive.
 - Silence, in and of itself, cannot be interpreted as consent.
 - Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
 - Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
 - Previous relationships or prior consent cannot imply consent to future sexual acts.
 - Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
 - In order to give consent, one must be of legal age.
 - Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
 - Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout where the term “blackout” is defined as a period where memory formation is blocked.
 - The question of what the respondent should have known is objectively based on what a reasonable person in the place of the respondent, sober and exercising good judgment, would have known about the condition of the complainant.
 - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
 - This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs – drugs that in any way incapacitate the other person. Possession, use and/or distribution of any

of these substances, including Rohypnol, Ketamine, GHB, Burundanga, or any drug that is used to incapacitate or impair the judgement of another, etc. is prohibited, and administering one of these drugs to another student is a violation of whether a sexual act results from the administration of the drug or not.

5. Faculty Member – any person employed by the University who holds academic rank or performs teaching or research duties.
6. Force – Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent.
 - Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point may be viewed as coercive.

NOTE: 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 by definition non-consensual, but non-consensual sexual activity is not, by definition, forced.

7. Hearing Officer – University representative who is designated by the Office of Student Conduct and is appointed under the authority of the President of the University to adjudicate cases concerning a respondent who is a student alleged to have violated this policy.
8. Respondent – an individual accused of violating this policy.
9. Sanction – one or more consequences or requirements imposed due to the violation of this policy.
10. Staff – any person employed by the University or the Student Cooperative Association who is not considered faculty.
11. Student – any person from the time they accept admission to the University at any academic level, through graduation. This includes, but is not limited to, new students at orientation, persons currently under suspension, and any other person enrolled in a course offered by the University. It may also include any person who has graduated from the University if the University determines that their graduation or receipt of credit may have involved misconduct while working toward that credit or degree.
12. University – the community of faculty, staff, and students at IUP, as well as premises and facilities.
13. University Premises – all buildings or grounds owned, leased, operated, controlled, or supervised by the University or the Student Cooperative Association, or other recognized University-affiliated organization.
14. University Policy, Code, Regulation and Agreements – any written policy or otherwise published statement of expectations or requirements of the University - found in, but not limited to, this document, collective bargaining agreements, the contracts for residential rooms/suites/apartments (including dining contracts), the University website, and the graduate and undergraduate catalogues.
15. University Student Conduct Board – a panel of individuals made up of any combination of students, faculty, and staff empowered to adjudicate any allegation against a student of violation of University policies or the Code of Student Conduct. Board members are trained in the processes and procedures of conduct hearings by the Office of Student Conduct. Sexual Discrimination/Misconduct Policy investigatory and fact-finding process training is provided by the Title IX Coordinator or Deputy Title IX Coordinator.
16. Witness – any person who has been identified by the complainant, respondent, Title IX investigator, University Police, or other authorized investigator as having relevant first-person information concerning the alleged violation of one or more policies.

Q. Consensual Relationships

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee, and some student/student relationships). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of faculty/staff policies or collective bargaining agreements, or this Sexual Discrimination/Misconduct Policy. The University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University.