

SEXUAL MISCONDUCT

Students have the right to study, work, and interact in an environment that is free from sexual misconduct in violation of law or university policy by any member of the university community. Students at Indiana University Southeast are expected to conduct themselves in a manner that does not infringe upon the rights of others.

Physical sexual misconduct encompasses any non-consensual physical contact of a sexual nature that is committed either by force or intimidation or through the use of the victim's mental or physical incapacity, including through consumption of drugs or alcohol.

Sexual misconduct behavior includes, but is not limited to, the following:

- Non-consensual sexual contact, Part II (H20) of the Code
- Forced sexual activity, Part II (H20) of the Code
- Non-consensual sexual intercourse, Part II (H20) or (I2) of the Code
- Forced sexual intercourse, Part II (H20) or (I2) of the Code
- Sexual harassment, Part I (C) of the Code

The above examples include the touching of an unwilling person's intimate parts; touching an unwilling person with one's own intimate parts; or making a person touch you or themselves in a sexual manner. Inappropriate sexual contact is penetration (oral, anal, or vaginal) with any object or body part. Sexual harassment may also encompass non-physical acts and is further defined in Part I (C) of *The Indiana University Code of Student Rights, Responsibilities, and Conduct*.

The university reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students' rights and personal safety. Such measures include, but are not limited to, modification of on-campus living arrangements, removal from class, interim suspension from campus pending a hearing, and reporting to the police. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the university reserves the right to impose differing sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The university will consider the concerns and rights of both the complainant and the accused/respondent of sexual misconduct.

Consent:

Consent is expressed through affirmative, voluntary words or actions mutually understandable to all parties involved. Consent is given for a specific sexual act at a specific time and can be withdrawn at any time. Consent cannot be coerced or compelled by duress, threat, or force. Consent cannot be given by someone who for any reason cannot understand the facts, nature, extent, or implications of the sexual situation occurring, including, but not limited to, those who are under the legal age of consent, asleep, unconscious, or mentally or physically impaired through the effects of drugs or alcohol. Consent cannot be assumed based on silence, the absence of "no" or "stop", the existence of a prior or current relationship, or prior sexual activity.

- Consent is expressed through affirmative, voluntary words or actions mutually understandable to all parties involved.
- Consent is given for a specific sexual act at a specific time and can be withdrawn at any time.
- Consent cannot be coerced or compelled by duress, threat, or force.
- Consent cannot be given by someone who, for any reason, cannot understand the facts, nature, extent, or implications of the sexual situation occurring, including, but not limited to, those who are under the legal age of consent, asleep, unconscious, or mentally or physically impaired through the effects of drugs or alcohol.
- Consent cannot be assumed based on silence, the absence of “no” or “stop”, the existence of a prior or current relationship, or prior sexual activity.

Confidentiality:

The University will work with you to protect your privacy by sharing information with only those who need to know. As such, your information may need to be shared with those involved in investigating the incident, those responsible for providing necessary resources and remedies and those responsible for ensuring the public’s safety. You will be protected from retaliation. Only those University employees who are licensed, professional counselors (e.g. mental health counselors, psychologists) are able to maintain your complete confidentiality and are not required to convey any information regarding your situation without your consent. Most other University employees are required to report names and details of any incident of sexual violence that has been brought to their attention to the Title IX Coordinator or designated Deputy Coordinators on their campus for further investigation. Certain specifically identified non-professional student advocates and health center staff do not have to share identifying information unless you provide your consent. However, they are obligated to provide non-identifying information regarding the nature, date, time, and general location of the incident for purposes of compiling aggregate annual crime statistics and assessing the need to alert the university community of potential dangers. You should discuss your desires regarding the sharing of information with any University employee with whom you speak, to ensure you understand their reporting obligations and what information they may be required to share. Please note that under Indiana law, any person that has a reason to believe a person under the age of 18 is a victim to abuse or neglect, including relationship violence or assault, must make a report to the University Superintendent of Public Safety. This information will be shared with the Indiana Department of Child Protective Services.

Procedures for Responding to Incidents Involving Allegations of Sexual Misconduct by or against Students

The University will promptly respond to all reports of sexual misconduct alleged against a University student following the procedures outlined in this policy. Allegations of sexual misconduct by students will be addressed by the Sexual Misconduct Policy and the Code of Student Rights, Responsibilities and Conduct (“Student Code”). Students may be charged according to specific code violations under the Student Code, which will reference the Sexual Misconduct Policy.

Any individual reporting they have been a victim of sexual violence will be informed of how to, and provided assistance in, making a criminal complaint with the appropriate law enforcement agency. The pursuit of criminal charges may be in addition to, or instead of, pursuing cases through the University process. Individuals who identify as victims/survivors and all members of the Indiana University community are also encouraged to visit the Stop Sexual Violence website at <http://stopsexualviolence.iu.edu> for more information on reporting, campus resources and services available on their campus.

Throughout the process, the parties will have equal opportunities to present information, have advisors present, and pursue an appeal, if applicable. The University will have as a priority, the interests of all parties involved, in regard to fairness, dignity, privacy, and due process.

The investigation and determination of responsibility will generally be concluded within 60 days of the report, absent special circumstances.

Investigation

Upon receipt of a report of sexual misconduct by a victim/survivor (hereinafter referred to as “complainant”) or third party, the University will take immediate and appropriate steps to investigate the incident. If the complainant requests confidentiality or asks that the complaint not be pursued, the University will take all reasonable steps to investigate and respond to the complaint consistent with those requests, keeping in mind that the University must weigh such requests against its obligation to provide a safe, non-discriminatory environment for all students, including the complainant.

- a. If sexual misconduct proceedings are initiated, the parties will be notified, and the student alleged to have engaged in sexual misconduct (hereafter referred to as “accused/respondent”) will be provided a date by which an appointment must be made to discuss the matter. At such time, the respondent shall be informed of the allegations made against them and shall be provided the opportunity to respond.
- b. The investigation may include, but is not limited to, interviews with the complainant, the accused/respondent, and other witnesses identified as having information relevant to the allegations made, as well as the examination of written statements by the parties, relevant documents, and other relevant information. Information for the investigation

may be provided by complainants, accused/respondents, witnesses identified by any party, or the University. Any person believed to have information relevant to an investigation may be contacted and requested to make an appointment to discuss the matter.

- c. Failure to comply with a request to make and/or keep an appointment relevant to an investigation may result in a disciplinary hold being placed on a student's account and/or the initiation of charges for student conduct failure to comply.
- d. All members of the University are expected to cooperate with the investigative process. Failure to do so may result in disciplinary measures pursuant to applicable University policy and procedure.
- e. Upon completion of the investigation, the University will provide notice of all relevant charges and notice of next steps of the sexual misconduct process.

Alternative Resolution Options

In appropriate cases, the University may pursue alternative resolution with the consent of all parties at any point in the investigation process. Alternative resolution options may include, but are not limited to, mediation, development action plans, voluntary resolutions, and/or appropriate sanctions.

Under any alternative resolution, the complainant will not be required to resolve the problem directly with the respondent, unless desired by the complainant. All parties must be notified of the right to end the alternative resolution process at any time, and begin the formal process. Mediation may not be used in cases involving any sexual violence. The Investigator shall document the outcome of any alternative resolution and share with the parties.

Acceptance of Responsibility Option

In cases where facts are generally not in dispute, and the respondent expresses a willingness to accept responsibility for all charges in a case, with the consent of the complainant, the respondent will be offered the opportunity to waive the right to a formal hearing and all related procedural guarantees, and agree to receive a sanction from a designated student affairs conduct officer by whom charges were brought or by the Sexual Misconduct Hearing panel. In such situations, the parties will each be provided the opportunity to submit a written statement to the conduct officer or hearing panel for consideration in determining appropriate sanctions.

The conduct officer or hearing panel shall consider only the parties' written statements regarding sanctions, the relevant facts from the investigation, and past conduct history of the respondent (if applicable). In such cases, the right to appeal will be limited to an appeal on the grounds that the sanction is grossly disproportionate to the violation(s) committed, in light of all relevant aggravating and mitigating factors, and in consideration of applicable university guidelines. The

parties may end this process, and seek full hearing, at any point prior to issuance of the sanction.

Judicial Conference

The accused/respondent is required to attend the judicial conference. The complainant has an equal right to attend the judicial conference and participate to the same extent as the accused/respondent, if he or she chooses. If either accused/respondent or complainant is unavailable to participate in person based on significant travel or schedule restrictions, participation by other means may be made available.

a. Judicial Conference Hearing Panel

1. A hearing panel will be assembled for the judicial conference. The hearing panel will be drawn from the pool of staff and faculty members who have completed the University's required annual training on issues related to sexual misconduct and University policies and procedures. At a minimum, at least one panel member shall be a student affairs administrator.
2. The judicial conference is closed. However, the complainant and accused/respondent may each select one advisor of his/her choice and expense to accompany him/her at any point in the disciplinary process. Advisors are limited to an advisory role and may not speak for students. Both parties will be afforded similar and timely access to view any information that will be used at the hearing.

b. Procedures for a Judicial Conference

1. The Chair of the panel shall review the Charge(s) made against the accused/respondent and the specific facts alleged. The accused/respondent may, but need not, respond to allegations.
2. Both the complainant and the accused/respondent will have equal opportunity to present oral and/or written evidence. The accused/respondent may, but need not, respond to the allegations and evidence.
3. No one other than the hearing panel members, the complainant, and the accused/respondent may pose questions during the hearing. The complainant and accused/respondent may not directly question each other, but may submit questions to the Chair, to be asked of the other party. The Chair or other panel members will review questions prior to posing to the other party to prevent questioning that is not permitted under these proceedings.
4. The judicial conference is recorded. Deliberations by the panel, following the conference, are not recorded.

5. If the accused/respondent fails to appear at the judicial conference, the hearing may proceed without his/her participation. The accused/respondent may explain the failure to appear in writing to the University within two business days of the scheduled hearing. Written documentation supporting the cause of absence must be included. Within three business days after receiving the accused/respondent's letter, the University will notify the accused/respondent and the complainant whether the failure to appear was excused, and if so the judicial conference may be rescheduled. The judicial conference will be rescheduled only under extraordinary circumstances.
6. If the accused/respondent fails to appear and such failure was not excused, the accused/respondent's right to appeal the finding and sanction(s) imposed will be automatically forfeited, and the outcome reached in absentia will go into effect. The accused/respondent shall not lose their right to appeal in the event the hearing panel's finding includes a sanction of expulsion from University housing, suspension from the University, or expulsion from the University.

c. Decision & Sanctions

1. At the conclusion of a judicial conference, the hearing panel shall deliberate without parties present to determine responsibility based on the evidence, and sanctions if applicable.
2. If, after deliberations, the hearing panel determines that the information available in the judicial conference does not support by a preponderance of the evidence (more likely than not) that the accused/respondent is responsible for a violation of the Sexual Misconduct Policy and the Student Code, the hearing panel will notify both the accused/respondent and the complainant by means of written notice. The complainant and/or accused/respondent may request an "Appeal".
3. If, after deliberations, the hearing panel determines that the information available in the judicial conference does support by a preponderance of the evidence (more likely than not) that the accused/respondent is responsible for a violation of the Sexual Misconduct Policy and the Student Code, the hearing panel will notify both the accused/respondent and the complainant and will assign a sanction by means of a written notice. The accused/respondent and/or the complainant may request an "Appeal".
4. Possible sanctions for cases in which students are found in violation of the Student Code for acts of sexual misconduct include, but are not limited to formal warnings, behavioral assessment and/or counseling, required educational training, disciplinary probation, suspension, and/or permanent expulsion.

For possible sanctions, please see IU Southeast Code Procedures:
<http://www.ius.edu/dean-of-students/code-of-conduct/iu-southeast-code-procedures.php>

Appeal

The accused/respondent or the complainant may appeal the decision of the sexual misconduct hearing panel to the Senior Student Affairs Administrator on the respective campus, or his/her designee. To initiate an appeal, accused/respondent or complainant must send written notice of appeal to the designated official. The written notice must include the basis for appeal (see section b.).

a. Timing

The notice of appeal must be filed no later than five calendar days after the date of the written decision of the Sexual Misconduct Hearing Panel is sent. If no written request for an appeal is received by the University within the time specified, the request for an appeal will not be reviewed, any sanction(s) proposed by the hearing panel will be imposed, and the action will be final.

b. Basis for Appeal

The Senior Student Affairs Administrator or designee will have the sole discretion in determining whether the basis for appeal has been met and the appeal can move forward. An appeal must be based on one of the following criteria:

1. Significant procedural error that reasonably would have affected the outcome of the student's case.
2. The sanction imposed is grossly disproportionate to the violation(s) committed, in light of all relevant aggravating and mitigating factors, and in consideration of applicable University guidelines.

c. Decision and Sanction

If the basis for appeal has been met, the Senior Student Affairs Administrator or designee will review the written appeal and the pertinent part of the judicial conference record only. The Senior Student Affairs Administrator or designee will not consider new evidence or information that is not a part of that record. The Senior Student Affairs Administrator or designee must render a decision within 10 calendar days of receipt of the appeal and may take any of the following actions:

1. Affirm the original decision regarding responsibility.
2. Affirm the original decision concerning the disciplinary sanction/s to be imposed.

3. Set aside the original decision regarding responsibility and impose a new decision.
 4. Set aside the original decision regarding responsibility and order that a new judicial conference be held before a new hearing panel.
 5. Set aside the original decision concerning the disciplinary sanction(s) to be imposed and impose a different sanction or set of sanctions.
- d. The Senior Student Affairs Administrator or his/her designee is required to notify the accused/respondent and the complainant, in writing, of his/her decision and will initiate the necessary procedures to effectuate the decision.
 - e. The decision of the Senior Student Affairs Administrator or his/her designee is final and there will be no further appeals.

Notice

To the extent possible, the complainant and the accused/respondent will be provided notice of the outcome of the judicial conference, in person, with an accompanying written notice provided. In addition, the parties shall be provided, to the extent possible, simultaneous written notice of the outcome of the judicial conference, the appeals process, and the appeal decision, if applicable. Written notice may be provided electronically through Indiana University email accounts. In the event the appeal decision changes the results of the outcome of the judicial conference, notice of such change shall be provided before those results are final, and include an explanation of when those results will become final.

NOTE

Just as Just as students with disabilities may be eligible for accommodations in their classes, accommodations may be available for these procedures as well. Students with disabilities requesting accommodations and services under these procedures will need to present a current accommodation verification letter from their campus disability services office before accommodations can be considered and provided.

The complete Indiana University Sexual Misconduct Policy for all students, all employees, volunteers, and visitors on IU property or involved in IU programs, may be found at: <http://policies.iu.edu/policies/categories/administration-operations/equal-opportunity/sexual-misconduct.shtml>

Updated 07/20/2015