

# Policy 923

# Grievance Process Training

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# Agenda

1. Brief History, Timeline, & Training Requirements
2. Definitions/Terminology
3. Formal Complaint & Investigation
4. Conflict of Interest/Bias
5. Hearing
6. Relevance
7. Credibility
8. Determination & Report Writing
9. Appeal



# Campus Roles

- Title IX Coordinator
- Investigator
- Title IX Hearing Panel Member (Decision Maker)
- Title IX Advisor
  
- Hearing Officer (Member of Panel)
- Alternative Resolution Facilitator
- Discrimination Appeal Committee Member

# Title IX

“No person in the United States shall, on the **basis of sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Title IX of the Higher Education Amendments of 1972

20 U.S.C. § 1681 & 34 C.F.R. Part 106

# Title IX Training Requirements

## Who must be trained?

- Title IX Coordinators
- Investigators
- Decision-makers
- Any person who facilitates an informal resolution process

## Training materials must:

- Not rely on sex stereotypes
- Promote impartial investigations and adjudications.

## What training is required?

- Title IX Sexual Harassment definition
- School's education program or activity
- How to conduct investigation & grievance process
- How to conduct hearings, appeals, and informal resolution processes
- How to serve impartially (avoiding prejudgment of the facts at issue & conflicts of interest)
- Technology to be used
- Issues of relevance (Investigator)
- How to create an investigative report that fairly summarizes relevant evidence (Investigator)

# Regulation & Policy Changes

November 16, 2018

Regulation formal notice and comment

May 6, 2020

New Regulations Issued

July 31, 2020

ISU Policies 922 and 923 Merged & Amended

August 14, 2020

New Regulations Effective

October 22, 2021

Policy 923 amended

Summer 2022

?



# Reporting Obligation

- Officials with Authority (OWA)
- Policy 923 - all employees are expected to report discrimination and harassment to Title IX Coordinator.
- Especially those in supervisory capacity or serve as faculty / staff advisors to student organizations.
- If involves minor, must report to law enforcement.
- Certain ISU employees are designated “confidential.”



# Reporting Options



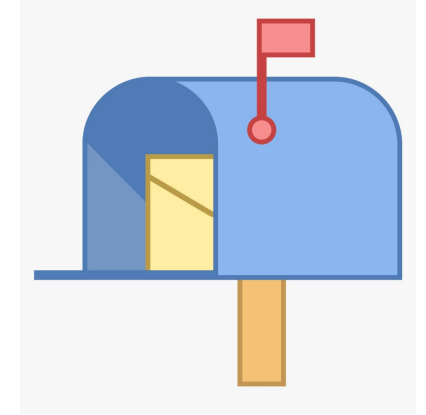
[https://cm.maxient.com/reportingform.php?IndianaStateUniv&layout\\_id=10](https://cm.maxient.com/reportingform.php?IndianaStateUniv&layout_id=10)



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# Confidential Campus Resources

**Victim Advocate**

**Faculty  
Ombudsperson**

**Student Counseling Center  
Root Counseling Center  
Grosjean Clinic**

**UAP Clinic/  
ISU Health Center**



# Not all reported behavior is discrimination.

Misconduct that is not discrimination or harassment may be referred by the Office of Equal Opportunity and Title IX to:

College Dean

Human  
Resource Office

Office of Student  
Conduct &  
Integrity



# What is Title IX Sexual Harassment?

1. *Quid Pro Quo*. Conditioning educational benefits on participation in unwelcome sexual conduct. (“something for something”)
2. **Unwelcome Conduct of Sexual Nature** that a reasonable person would determine is so severe, pervasive, **and** objectionably offensive (SPOO) that it effectively denies equal access to the educational program or activity.
3. **Sexual Assault, Dating Violence, Domestic Violence, or Stalking** to include rape, fondling, incest, and statutory rape.



# Education Program or Activity

“...in the school’s education program or activity, against a person in the United States.”

## Education Program or Activity

- Locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs.
- Specifically includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.



# Policy 923 Sexual Misconduct

Sexual assault, domestic violence, dating violence, or stalking that occurs off-campus, in a private setting, and/or outside the scope of the University's Education Programs or Activities.



# Examples of Education Programs or Activities

- Classrooms: Virtual & Face-to-Face
- Employment
- Internships/Clinicals
- Student Teaching
- Residence Halls
- Service learning trips in the U.S.
- Field Research
- Intercollegiate Competitions
- Registered Greek Life Events
- ISU Flight Academy
- ISU Baseball Field
- Community Garden
- Memorial Stadium
- Landsbaum Center
- Sycamore Outdoor Center



# Hostile Environment Analysis

- Is conduct sufficiently severe, persistent, or pervasive so as to interfere with or limit the ability of the individual to participate in or benefit from an educational program or activity? If yes:
- Evaluate context, nature, scope, frequency, duration, and location of incidents.
- Examine identity, number, and relationship of persons involved.
- Reasonable person standard and a review of totality of the circumstances.
- Must consist of more than casual or isolated discriminatory incidents. (Casual comments, accidental, or sporadic conversation may not trigger relief.)



# Sexual Assault

Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent, and includes the sex offenses of rape, attempted rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape.





# Sexual Assault

- The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, **without the consent of the victim** and regardless of the gender of the individuals.
- The touching of the private body parts of another person for the purpose of sexual gratification, **without the consent of the victim**, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
- Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Sexual intercourse with a person who is under the statutory age of consent.



# What is Consent?

- Knowing, voluntary and clear mutual agreement
- Freely and actively given
- Clearly communicated in mutually understandable words/actions
- May be withdrawn at any time
- Consent to some sexual activity may not be presumed as consent for other sexual activity
- Silence or absence of resistance is not the same as consent.



# Not Consent when...

- Person is incapable because of a mental, developmental, or physical disability.
- Force is used or threatened.
- Person is incapable of giving consent due to judgment inhibiting intoxication (alcohol, drugs, prescription medication).
- Person is not sufficiently conscious to give consent.
- Person is not old enough to legally give consent.



# Dating Violence

- Social relationship of a romantic or intimate nature\*
- Sexual or physical abuse
- Threats of sexual or physical abuse

\* Determined by considering:

- Reporting party's statement
- Length of relationship
- Type of relationship
- Frequency of interaction between the involved persons



# Domestic Violence

Felony or misdemeanor crime of violence committed against:

- Current/former spouse or intimate partner
- Person with whom a victim shares a child in common
- Cohabiting, or has cohabitated with, the victim as a spouse or intimate partner
- Person similarly situated to a spouse of the victim
- Any other person, adult or child, who is protected from the perpetrator's actions under Indiana domestic of family laws.



# Stalking

- Engaging in a course of conduct (2 or more acts) directed at a specific person that would cause a reasonable person (similar circumstances and identities to victim) to:
  1. Fear for their safety or the safety of others; or
  2. Suffer substantial emotional distress (significant mental suffering or anguish that may – but not required to – require treatment/counseling).
- May be direct, indirect, or through 3<sup>rd</sup> party.
- May be by any action, method, device, or means to follow, monitor, observe, surveil, threaten, or communicate to or about a person or interfere with their property.



# Formal Complaint

- Must have a Formal Complaint to begin investigative/resolution process
- Complainant or Title IX Coordinator can file Formal Complaint
- Complainants have a right to privacy and can request that no formal investigation or disciplinary action be taken
- BUT the University can decide to proceed and the Title IX Coordinator can file the Formal Complaint on a case-by-case basis
  - At that point the Complainant has no obligation to participate



# Formal Complaint

- Even if a Complainant does not want to participate in the Title IX process or a criminal process, ISU is still obligated to provide supportive services.
- If Respondent is not affiliated with ISU, ISU is still obligated to provide supportive services to Complainant.
- A Complainant can opt to participate in the Title IX process, a criminal process, or both - filing the criminal report does not obligate them to the Title IX process/filing Title IX Complainant does not obligate them to the criminal process.





# False Allegations

- Must be made in **bad faith** to be a violation.
- Absence of a finding of responsibility is not equivalent to finding that Complainant acted in bad faith.
- Student Code of Conduct 3.2.2 Prohibits providing false information to the University.



# Emergency Removal/ Administrative Leave

May remove Respondent from educational program or activity on emergency basis:

- Conduct individualized safety and risk analysis;
- Determine there is an immediate threat to the physical health or safety of any student or other individual that justifies removal; and
- Respondent must get notice and opportunity to appeal.
- Threat Assessment Committee:
  - Police Chief; Title IX Coordinator; General Counsel;  
Dean of Students/ Appropriate Dean; SCI Director/HR



# Investigation Participants

Role	Definition
<b>Investigator</b>	Tasked with creating an investigative report that fairly summarizes relevant evidence.
<b>Complainant</b>	Alleged victim of conduct that could constitute discrimination or harassment.
<b>Respondent</b>	Reported to be the perpetrator of conduct that could constitute discrimination or harassment
<b>Reporting Party</b>	Submits information to Title IX Coordinator of alleged discriminatory or harassing conduct (could also be a witness).
<b>Witness</b>	Has information relative to the allegation that may be relevant to the investigation.
<b>Support Person</b>	Provides comfort or support to one of the parties; is not permitted to speak on behalf of or advocate for party (may be Victim Advocate).
<b>Advisor</b>	Chosen by each party to accompany them to meetings or hearings; conducts cross examination at hearing on behalf of their party.



# Consolidation

When the allegations of sexual harassment arise out of the same facts or circumstances, ISU may consolidate the formal complaint:

- Against more than one Respondent;
- By more than one Complainant against one or more Respondents; or
- By one party against another party.



# Respondent Notice of Allegations

- Written notice
- Sufficient details of allegations (known at time)
- Sufficient time to prepare response before initial interview
- Actual allegations of facts that constitute sexual harassment (date & location)
- Presumption of not responsible until conclusion of grievance process
- Advisor of their choice
- Inspect and review evidence
- Notice of conduct code that prohibits providing false information



# Supportive Measures

- Non-disciplinary, non-punitive individualized services
- Counseling
- Extensions of deadlines or course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between parties
- Changes in work or housing locations
- Leaves of absence
- Increased security or monitoring of certain campus areas



# Due Process Guarantees

- Equal opportunity for parties to present witnesses
- Equal opportunity for parties to present inculpatory and exculpatory evidence
- Cannot restrict ability of either party to discuss allegations or to gather/present evidence
- Same opportunity to have others present during process (advisor)
- ISU must establish equal protocols on advisor participation
- Sufficient time to prepare to participate
- Equal opportunity to inspect and review evidence
- 10 days to review preliminary investigative report and submit written response
- Final investigative report provided at least 10 days prior to hearing.



# Retaliation Prohibited

- Intimidation, threats, coercion, or discrimination may constitute retaliation
- Protects against retaliation for reporting, participating in the investigation, or involvement in the determination.
- An allegation of retaliation is investigated as a separate offense under Policy 923.

