



## PROCEDURES

### **Interim Policy 923 Non-Discrimination and Anti-Harassment Complaint Resolution and Investigation Procedures**

**1. Applicability.** These Complaint Resolution and Investigation Procedures will be used to informally resolve and investigate complaints of allegations of discrimination and harassment, including Title IX Sexual Harassment, made against students, faculty, staff, or other individuals or groups affiliated with Indiana State University in violation of Policy 923 Non-Discrimination and Anti-Harassment.

**2. Guiding Principles of Investigation.** Policy 923 Non-Discrimination and Anti-Harassment contains the following set of Guiding Principles for all investigations:

- The Investigator will remain fair, objective, and impartial throughout the investigation process and will not have a conflict of interest or bias.
- ISU will ensure that the Title IX Coordinator, investigators, decision-makers, and any individual who facilitates informal resolution will receive appropriate training.
- The Investigator will provide sufficient notice to the Respondent and appropriate time to prepare a response before an interview, consistent with the Complaint Resolution and Investigation Procedures.
- The Director of Equal Opportunity/Title IX Coordinator, in consultation with appropriate university officials, may remove a student Respondent from an education program or activity, including student employment, on an emergency basis if ISU determines that an immediate threat to the physical health or safety of any student, faculty member, staff member or visitor exists arising from the allegations of sexual harassment. The Respondent will be given notice and an opportunity to challenge the decision immediately following removal.
- Non-student employees may be reassigned or removed consistent with [Policy 501 Principles of Conduct for Faculty and Staff, Section 501.2 Extraordinary Action](#).
- The Respondent will be presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the adjudication process.
- ISU, not the Complainant or Respondent, is responsible for gathering information sufficient to reach a determination that Respondent violated the policy.
- Complainants and Respondents will have an equal opportunity to have a support person or advisor present at interviews, consistent with the Complaint Resolution and Investigation Procedures.
- Complainants and Respondents will have an equal opportunity to present witnesses, including fact and expert witnesses, and other evidence, consistent with the Complaint Resolution and Investigation Procedures.

- Complainants and Respondents will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint, consistent with the Complaint Resolution and Investigation Procedures.
- The investigation and determination will be completed reasonably promptly.
- The Investigator will produce a report that will be available to both Complainant and Respondent in a manner consistent with the Complaint Resolution and Investigation Procedures.

### **3. Preliminary Matters.**

A. Advisor. The Complainant and Respondent may each choose and be accompanied to a meeting or hearing during the investigation by an advisor of their choosing. The advisor may be, but is not required to be, an attorney. The advisor is not permitted to participate during the investigation by answering or asking questions, making comments, or discussing the subject of the complaint, and advisors may only be present when the party whom they are advising is present. Investigators will communicate with the party and not with advisors during the investigation. Though Investigators will attempt to be accommodating, the Investigator may proceed with any meeting or interview, regardless of the availability of the party's selected advisor. In the event a party's advisor of choice engages in material violation of the parameters specified in these procedures, the University may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

B. Time Frame for Complaint Resolution. While there is no timeframe for reporting an allegation to ISU, the sooner ISU is made aware of an allegation, the sooner ISU is able to take steps to address or investigate the alleged discrimination. ISU will seek have a final determination of formal complaints of discrimination within sixty (60) days. This period does not include time for appeal. The ability to complete the investigation may vary depending on the complexity of a case, the availability of witnesses, and the existence of university breaks. The Investigator may extend the period of investigation and will provide written notice to the parties.

C. No Retaliation. The University expects that members of the University community will participate and cooperate fully in the investigation and adjudication of complaints of discrimination and harassment. The University prohibits Retaliation against any person for making a report, filing a formal complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under Policy 923. Consistent with Title IX and its implementing regulations, the University does not retaliate against individuals who refuse to participate. Retaliation includes intimidation, threats, coercion, or discrimination. Incidents of retaliation should be reported immediately to the Title IX Coordinator/Director of Equal Opportunity.

D. Treatment Records and other Privileged Information. During the investigation, the Investigator is not permitted to access, consider, disclose, permit questioning concerning, or otherwise use:

1. A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are

made and maintained in connection with the provision of treatment to the party; or

2. Information or records protected from disclosure by any other legally recognized privilege, such as the attorney client privilege;

unless the University has obtained the party's voluntary, written consent to do so for the purposes of the investigation.

Notwithstanding the foregoing, the Investigator may consider any such records or information otherwise covered by this Section if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense.

E. Sexual History. During the Investigation, questioning regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this Section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this Section.

F. Conflicts of Interest, Bias, and Procedural Complaints. The Investigator will be free of any material conflicts of interest or material bias. Any party who believes the Investigator has a material conflict of interest or material bias must raise the concern promptly so that the University may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal or otherwise.

G. Relationship with Criminal Process. These procedures set forth the University's processes for responding to reports and formal complaints of discrimination and harassment. The University's processes are separate, distinct, and independent of any criminal processes. While the University may temporarily delay its processes under this policy to avoid interfering with law enforcement efforts if requested by law enforcement, the University will otherwise apply this policy and its processes without regard to the status or outcome of any criminal process.

H. Bad Faith Complaints and False Information. It is a violation of University policy for any person to submit a report or formal complaint that the person knows, at the time the report or formal complaint is submitted, to be false or frivolous. It is also a violation of policy for any person to knowingly make a materially false statement during an investigation under these procedures. Such violations will be addressed under the Code of Student Conduct in the case of students and other University policies and standards, as applicable, for other persons.

#### **4. Supportive Measures.**

Upon receipt of a report of discrimination or harassment, the Director of Equal Opportunity/Title

IX Coordinator may provide Supportive Measures to either party, regardless of the existence of a formal complaint. If a supportive measure is requested but is not available or is unreasonable, the Title IX Coordinator/Director of Equal Opportunity will document the rationale for not providing the requested supportive measure.

Supportive Measures are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the University's programs or activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or the University's education environment, or to deter discrimination and harassment.

In the event an employee is the Respondent, the Director of Equal Opportunity/Title IX Coordinator will consult with the vice president of the area in which the Respondent is employed about Supportive Measures that may impact the Respondent.

Supportive Measures in the educational environment may include, but are not limited to: changing an academic schedule or course delivery method; providing an escort to ensure safe movement between classes, work sites, and other activities; allowing withdrawal from a class without penalty; extending deadlines for examinations or other assignments; or providing access to tutoring or other academic support. Supportive Measures in employment may include but are not limited to: referral to the ISU Employee Assistance Program (EAP) or other supportive services; or adjustment of a work schedule, assignment, or location. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

## **5. Investigation of a Complaint.**

A. Assignment of an Investigator. The Title IX Coordinator/Director will investigate or designate a trained Investigator to conduct a prompt, thorough, and fair investigation of the Formal Complaint.

B. Notice of Formal Complaint. Within five (5) calendar days of the receipt of a Formal Complaint or as soon as practicable thereafter, the Investigator will transmit a written notice to the Complainant and Respondent that includes:

- A physical copy of or hyperlink to Policy 923 and these procedures;
- A copy of the Formal Complaint;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice.
- Notifying the Complainant and Respondent of their right to inspect and review evidence as permitted in these procedures.
- Notifying the Complainant and Respondent of the University's prohibitions on retaliation and false statements specified in these procedures.
- Information about resources that are available on campus and in the community.

Should the University elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the University will provide a supplemental written notice describing the additional allegations to be investigated.

C. Information Gathering. After the written notice of Formal Complaint is transmitted to the parties, the Investigator will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the University and not with the parties. The investigation may involve meetings or interviews with the Complainant, Respondent, and witnesses, submission of written statements, and review of documentary, video, photographic, or other relevant evidence, depending on the nature of the allegation. Meetings may be conducted in person or remotely by use of video meeting technology. Investigation interviews will be audio-recorded by the Investigator and maintained in the investigation file. Parties will have sufficient notice and appropriate time to prepare for investigation meetings.

During the investigation, the Investigator will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence. Notwithstanding the foregoing, the Investigator retains discretion to limit the number of witness interviews the Investigator conducts if the Investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant. The Investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

D. Preliminary Investigation Report. At the conclusion of the information gathering, the Investigator will prepare a preliminary investigation report summarizing and analyzing the relevant facts determined through the investigation. The preliminary investigation report and all evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint will be sent both parties and to the advisor. Physical evidence that cannot be sent may be inspected upon reasonable request of the Investigator. The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not duplicate or disseminate the evidence to the public.

Each party will have ten (10) days to review the preliminary investigative report and evidence and submit a written response to the Investigator in the manner directed by the Investigator. Responses must be submitted by the party, not the advisor. The Investigator will review the responses to the preliminary investigativereport from the parties. The Investigator may, if determined appropriate, interview additional witnesses or consider additional information relevant to the investigation.

E. Final Report. The Investigator will produce a Final Report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. The Final Report will not include findings or determinations except as described below in Section 6. When the Final Report is issued, no additional evidence will be collected or reviewed by the Investigator unless, because of significant concerns about fundamental

fairness, the Title IX Coordinator/Director re-opens the investigation.

F. Extension of Time to Respond. A party should make every attempt to respond to the preliminary investigation report within the time allotted. A request for an extension of time to respond to the preliminary investigation report and the rationale should be directed to the Investigator, who use reasonable and equitable judgment in granting a request. Both parties will be notified if an extension is approved. If approved, the extension will apply to both parties.

## **6. Determination Process.**

- A. Title IX Sexual Harassment. When the Final Report is complete and the matter involves allegations of Title IX Sexual Harassment, the final investigation report will be electronically transmitted to the parties and advisors, if any. A hearing will be scheduled. (See *Hearing Procedures*).
- B. Prohibited Harassment or Sexual Misconduct Determinations (Students). When the Final Report is complete and the matter involves allegations of Prohibited Harassment (sexual) or Sexual Misconduct involving a student respondent, the final investigation report will be electronically transmitted to the parties and advisors, if any. A hearing will be scheduled. (See *Hearing Procedures*).
- C. All other Discrimination, Harassment, and Sexual Misconduct. In all investigations except those involving allegations of Title IX Sexual Harassment, Prohibited Harassment (sexual) with a student Respondent, or Sexual Misconduct with a student Respondent, the assigned Investigator will make a determination about whether or not it is more likely than not that discrimination or harassment prohibited by Policy 923 has occurred. The findings will be included in the Final Report. The Final Report may identify misconduct other than discriminatory misconduct. After review of the final investigation report, the Cabinet Member will notify Investigator when the report may be released to the parties. The Cabinet Member is responsible for determining disciplinary actions. The Cabinet Member may also refer the matter for further review or take disciplinary action based on the contents of the investigation report, consistent with ISU policy. The parties may appeal the findings pursuant to the Appeal provisions set forth in Policy 923.

## **7. Informal Resolution.**

If both the Complainant and Respondent agree, reports of discrimination or harassment may be referred to informal resolution. Investigators will not engage in or participate in informal resolution between the parties.

Prior to commencing the informal resolution process, the Director of Equal Opportunity/Title IX Coordinator will transmit a written notice to the parties that:

- Describes the parameters and requirements of the informal resolution process;
- Identifies the individual responsible for conducting the informal resolution;

- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the formal complaint; and
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

Even if informal resolution is pursued, the Director of Equal Opportunity/Title IX Coordinator may make the determination to continue an investigation if the conduct alleged is egregious or if the Director of Equal Opportunity/Title IX Coordinator, upon consultation with the appropriate Cabinet Member, believes there is a continued threat to the educational or workplace environment.

Informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Title IX Sexual Harassment against a student.