

## CIVIL RIGHTS AND SEXUAL MISCONDUCT POLICY

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### I. Policy Statement and Legal Basis

The University of Southern Indiana embraces and celebrates the many differences that exist among the members of a dynamic, intellectual, and inclusive community, and strives to maintain an environment that respects differences and provides a sense of belonging and inclusion for everyone. Any form of unlawful discrimination or harassment, including sexual harassment, sexual misconduct, dating violence, domestic violence, or stalking, will not be tolerated. The University is prepared to take prompt action to prevent and correct behavior that violates this policy and to remedy its effects.

The University prohibits all forms of sexual misconduct (regardless of the gender of those involved) as well as unlawful discrimination and harassment on the basis of race, color, religion, sex, pregnancy or marital status, national origin, age (any age as it relates to University programs and services, age 40 or older as it relates to employment), disability, genetic information, sexual orientation, gender identity, veteran status or any other category protected by law or identified by the University as a protected class. The University has jurisdiction over and complies with all applicable federal and state laws as amended, including but not limited to:

- Age Discrimination Act of 1975
- Age Discrimination in Employment Act of 1967
- Americans with Disabilities Act of 1990
- Genetic Information Nondiscrimination Act of 2008
- Indiana Civil Rights Law IC 22-9
- Pregnancy Discrimination Act of 1978
- Section 504 of the Rehabilitation Act of 1973
- Titles IV, VI, and VII of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act)
- Title IX of the Higher Education Amendments Act of 1972
- Violence Against Women Reauthorization Act of 2013 (VAWA)
- Campus Sexual Violence Elimination Act of 2013 (Campus SaVE Act)
- Any other applicable federal, state, or local laws not listed above that address nondiscrimination and/or equal employment opportunity

This policy applies to all members of the University community, including faculty, administrators, support staff, and students. The policy may also apply to conduct occurring off-campus if both parties are members of the University community and if the conduct represents a threat or other adverse consequence to the University community. For faculty, administrators, support staff (as defined in Appendix A of the Civil Rights and Sexual Misconduct Procedures), compliance with this policy is a term and condition of employment with the University. For students, compliance with this policy is a term and condition of enrollment at the University.

### II. Affirmative Action Officer and Title IX Coordinator

The Affirmative Action Officer and the Title IX Coordinator oversee the University's compliance with the applicable federal and state laws described above; including the review, investigation, and resolution of reports of discrimination, harassment, and sexual misconduct (as defined further on pp. 5-7 below) and the coordination of primary and ongoing prevention and awareness trainings and education efforts with

regard to these issues. The Affirmative Action Officer may designate other University personnel or external consultants to assist and support compliance efforts or to act as a designee in cases of conflict of interest or in other situations where a designee is deemed necessary to maintain the University's compliance under this policy.

Title IX Coordinator Ms. Carrie Lynn Civil Rights & Title IX Coordinator Wright Administration Building, Forum Wing, Room FA171 812-464-1703 cnlynn@usi.edu	Deputy Title IX Coordinator Dr. Michael Dixon Associate Provost for Academic Affairs Wright Administration Building, Room 103 812-465-1095 mdixon@usi.edu	Interim Deputy Title IX Coordinator Laurie Berry Assistant Dean of Students University Center East, Room 1229 812-464-1862 lberry@usi.edu
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### III. Definitions

#### A. Protected Class

A protected class is a group of people protected from discrimination and harassment by federal and state law or by University policy. Examples of protected classes under this policy include but are not limited to the following traits or characteristics of class members:

- Race, Color
- Religion
- Sex and sex-related characteristics
- Marital and Pregnancy status
- National Origin
- Age (any age as it relates to University programs and services, age 40 or older as it relates to employment)
- Disability
- Genetic Information
- Sexual Orientation
- Gender Identity
- Veteran Status

It is possible for an individual to be a member of more than one protected class (e.g., an Asian- American with a disability, a female member of the Jewish faith). Individuals who are not members of any protected class are also entitled to the protections of this policy if they experience discrimination or harassment because they are mistakenly perceived to be a member of a protected class, or if they are victims of sexual misconduct regardless of gender.

#### B. Discrimination and Harassment Based on Protected Class (General)

1. Discrimination occurs when an individual or individuals are treated unfavorably because of their actual or perceived identification with a particular protected class or classes. Discrimination can also occur when the victim and the person(s) who inflicted the discrimination share the same protected class or classes. Examples of discrimination include but are not limited to:

- a) failing to provide reasonable accommodations to students, staff, or visitors with disabilities

- b) making employment or academic decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals who are members of a protected class
  - c) denying employment or educational opportunities to a person based on the person's marriage to, or association with, an individual who is a member of a protected class
2. Harassment is a course of conduct that a reasonable person would find so severe or pervasive that it unreasonably interferes with an individual's work performance or educational program participation, or that creates a hostile environment. Such harassment can be physical, written, verbal, or visual and other nonverbal actions, and can be committed by employers, faculty, administrators, support staff, co-workers, students and third parties. Harassment, when based on the victim's actual or perceived identification with a particular protected class or classes, is a form of discrimination.

### C. Sexual Misconduct

Sexual Misconduct includes the following categories of behaviors/activities:

#### 1. Sexual Harassment

Sexual harassment is unwelcome verbal or physical conduct that is sufficiently severe, persistent or pervasive that it unreasonably interferes with or denies/limits someone's ability to participate in or benefit from the University's programs and/or services, and is based on power differentials (*quid pro quo*), the creation of a hostile environment, or retaliation. Examples include but are not limited to:

- a) attempting to coerce an unwilling person into a sexual or romantic relationship
- b) subjecting a person to unwelcome sexual attention
- c) punishing a refusal to comply with a sexual based request
- d) conditioning a benefit on submitting to sexual advances
- e) making "jokes" of a sexual nature against a specific individual, or making "jokes" that reference the victim's physical appearance or style of clothing
  - i. As stated in Section IX of this policy, such comments that are legitimately and reasonably related to the University's mission of education or are germane to a specific academic curriculum (e.g. a class discussion or exercise about examples of discriminatory slurs or jokes, reviews of "sexist" literature or videos, reviews of the history of gender discrimination or sexual abuse) will generally not be considered to be harassment under this policy
- f) using social media or other electronic communications to make non-consensual obscene comments of a sexual nature about or to an individual

#### 2. Gender-Based Harassment

Gender-based harassment is unwelcome conduct based on sex or gender (including harassing conduct based on one's failure to conform to sex stereotypes), that a reasonable person would find so severe or pervasive, that it unreasonably interferes with an individual's work performance or educational program participation, or that creates a hostile environment. Such harassment can be physical, written, verbal, or visual and other nonverbal actions, and can be committed by employers, faculty, administrators, support staff, co-workers, students and third parties. Gender-based harassment is prohibited regardless of the actual or perceived gender identity or sexual orientation of the individuals involved.

#### 3. Sexual Violence/Assault

Sexual violence/assault is prohibited. Any intentional touching or physical contact of a sexual nature, or attempt or threat of such touching that either places another person in fear of imminent bodily harm, or causes or could have caused physical injury to another person, including instances when

the victim is incapable of giving consent or is incapacitated, is a violation of this policy.

The absence of a physical injury does not eliminate or reduce the seriousness of this prohibited conduct.

- a) **Rape (or attempts to commit same)**  
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.
- b) **Sodomy (or attempts to commit same)**  
Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of the victim's age or because of temporary or permanent mental or physical incapacity.
- c) **Sexual Assault With an Object (or attempts to commit same)**  
The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of the victim's age or because of temporary or permanent mental or physical incapacity.
- d) **Fondling (or attempts to commit same)**  
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 the victim's age or because of temporary or permanent mental incapacity.
- e) **Incest (or attempts to commit same)**  
Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- f) **Statutory Rape (or attempts to commit same)**  
Non-forcible sexual intercourse with a person who is under the statutory age of consent.
- g) **Dating Violence**  
Physical or sexual violence, or the threat of such harm, perpetrated by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship will be determined by the victim with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. This type of violence can occur among heterosexual or same-sex couples and does not require sexual intimacy. Dating violence does not include acts covered by the definition of domestic violence found below in (h).
- h) **Domestic Violence**  
A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

#### 4. Sexual Exploitation

Sexual Exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses described in this policy. Examples of sexual exploitation include, but are not limited to:

- invading another's sexual privacy
- prostituting another individual
- making non-consensual videos, audio-tapes, or photographs of sexual activity
- going beyond the boundaries of consent (such as letting one's friends hide in the closet to watch consensual sex)

- engaging in voyeurism
- knowingly transmitting a Sexually Transmitted Infection (STI) or HIV to another individual
- exposing one's genitals in non-consensual circumstances or inducing another to expose one's genitals

## 5. Stalking

Stalking is generally defined as a course of conduct directed at a specific person or persons that would cause reasonable persons to feel fear for their safety, fear for the safety of others, or suffer substantial emotional distress.

- a) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property
- b) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling
- c) Reasonable person means a person under similar circumstances and with similar identities to the victim
- d) Examples of stalking may include, but not be limited to:
  1. initiating non-consensual communication such as face-to-face communication, telephone calls, voice messages, e-mails, text messages, letters, notes, gifts, or any other communications that are undesired and cause fear
  2. using online, electronic, or digital technologies to make unauthorized postings of pictures, messages, and/or information about the victim on social networking sites or other internet sites
  3. pursuing, following, waiting, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by the victim
  4. conducting surveillance or other types of observation, including staring or "peeping", or using Global Positioning Systems (GPS) to monitor a victim
  5. making verbal or physical threats

## D. Additional Definitions Applicable to Sexual Misconduct

### 1. Consent

Consent is a clear, knowing and voluntary agreement to participate in a given activity. Consent is active, not passive; silence, in and of itself, cannot be interpreted as consent. Consent can be given by words, conduct or actions, as long as those words, conduct or actions create mutually understandable, clear permission regarding willingness to engage in (and the conditions of) sexual activity.

- Consent to any one form of sexual activity does not automatically imply consent to engage in any other forms of sexual activity.
- Previous relationships or prior consent to engage in sexual activity with any individual does not automatically imply consent to engage in future sexual acts with the same or other individuals
- Consent can be revoked at any time
- In order to give effective consent, one must be of legal age

#### a) Incapacitation

Incapacitation is a state where one cannot make rational, reasonable decisions because one

lacks the capacity to give knowing consent (i.e., to understand the “who, what, when, where, why or how” of one’s sexual interaction). Sexual activity with someone whom one should know to be, or based on the circumstances should reasonably have known to be mentally or physically incapacitated (e.g., by alcohol or other drug use, by a state of unconsciousness or by an apparent or known mental or cognitive disability) constitutes a violation of this policy.

**b) Force**

Force is the use of physical violence and/or imposing one’s self on another physically to gain sexual access. Force also includes threats or implied threats, or other forms of intimidation that overcome resistance or produce consent.

**c) Coercion**

Coercion is unreasonable and continued pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure one uses to get consent from another. Pressure that continues beyond the following points can be considered coercive:

- when one makes it clear to another that one does not want sex
- when one makes it clear to another that one wishes to stop sexual behavior that has already begun
- when one makes it clear to another that one does not want to go past a certain point of sexual interaction

#### **IV. Consensual Relationships**

The University's educational mission is promoted by professionalism in the faculty-student and supervisor-employee relationships. This professionalism is fostered by an atmosphere of mutual trust and respect. Actions of faculty or supervisors that harm this atmosphere undermine professionalism and hinder fulfillment of the University's mission. Trust and respect are diminished when those in positions of authority abuse their power. Those who abuse, or appear to abuse, their power in such a context violate their duty to the entire University community.

##### **A. Faculty - Student Consensual Relationships**

The potential for a power differential exists in any relationship involving students and faculty. This may happen in the context of grades, praise, or criticism, evaluations, in making recommendations for future employment, or conferring other benefits. Given the fundamentally asymmetric nature of and the "power differential" inherent in such relationships, any appearance of voluntary consent on the part of the student is suspect. Moreover, other students and faculty members may be affected by such unprofessional behavior because it places the faculty member in a position to advance or favor one student's interests at the expense of others, and implicitly makes obtaining benefits contingent on sexual favors.

The University views it as unethical and a violation of this policy for faculty members to engage in amorous relationships with students who are enrolled in their classes or subject to their supervision, even when both parties appear to have consented to the relationship.

Amorous consensual relationships between students and faculty members occurring outside the instructional context are suspect by nature and may lead to difficulties. Particularly when the student and the faculty member are in the same academic unit or in units that are academically allied, relationships both parties view as consensual may appear to others to be exploitative. Further, in such situations (and in others that may occur in the future, which neither party can anticipate), the faculty member may face serious conflicts of interest. In certain instances, it may be necessary for a faculty

member to withdraw from participation in activities or decisions that tend to reward or penalize the student involved. A faculty member who fails to recognize such conflicts of interest and fails to withdraw accordingly risks rewarding or penalizing a student with whom the faculty member has had an amorous relationship. In such cases, a faculty member's ethical obligations to the student, to colleagues, and to the institution have been violated. Moreover, actions that occur after the breakup of such relationships may cause problems (e.g., the lack of favorable recommendation for the student from the faculty member) and therefore may be viewed as retaliation for "breaking up" and may be actionable.

## **B. Supervisor – Employee Consensual Relationships**

Supervisors exercise power over employees in all terms and conditions of employment, including the evaluation of performance or making recommendations for future employment. Amorous relationships between a supervisor and an employee reporting either directly or indirectly to the supervisor are obviously wrong as the supervisor has professional responsibility for and thus power over the employee. Such situations greatly increase the potential for abuse of this power and sexual exploitation of the employee.

Given the fundamentally asymmetric nature of and the "power differential" inherent in such relationships, any appearance of voluntary consent on the part of the employee is suspect. Moreover, other employees may be affected by such unprofessional behavior because it places the supervisor in a position to advance or favor one employee's interests at the expense of others, and implicitly makes obtaining employment or other terms and conditions of employment contingent on amorous or sexual favors.

Supervisors may not engage in amorous relationships with employees subject to their supervision, even when both parties appear to have consented to the relationship.

## **C. Other Consensual Relationships**

When administrators, support staff, or students assume instructor roles or other responsibilities that include the exercise of influence and/or power over other individuals, this behavior may be prohibited. Examples of these types of situations may include but are not limited to:

- a lab assistant or graduate assistant (GA) who assigns grades
- residential assistants (RAs) who report policy violations
- a student teacher or tutor
- an administrator who serves as an advisor to a student organization

## **V. Reporting Obligations**

### **A. General Reporting of Sexual Misconduct Violations**

In the interest of maintaining a safe and inclusive environment for all members of the University community, the University encourages all faculty, administrators, support staff, and students to promptly report known or suspected violations of any part of this policy to the Title IX Coordinator or designee.

### **B. Mandated Reporting of Sexual Misconduct**

As mandated by federal regulations, the University requires all faculty, all administrators, and certain designated support staff and student workers (collectively known as "Responsible Employees", as identified in Section III and Appendix A of the University's ["Civil Rights and Sexual Misconduct Procedures for Complaint Reporting and Resolution"](#)) to promptly report any known or suspected violations of the sexual misconduct portion of this policy to the Title IX Coordinator or designee. Failure to make such reports may itself be considered a violation of this policy, and could potentially result in disciplinary action against any individuals who are found to have failed to report knowledge of such

incidents.

### **C. Reporting Exceptions**

A University employee acting in an official capacity as a professional mental-health counselor (and those acting in that role under the supervision of a professional mental-health counselor) and a pastoral counselor who is recognized by a religious denomination as someone who provides confidential mental-health counseling to members of that denomination and whose official responsibilities include providing mental-health counseling to members of the University community are not required to report any information regarding an incident of alleged sexual misconduct to the Title IX Coordinator or other appropriate University designee, subject to certain limited exceptions under applicable law designed to protect a student or others from harm. University Health Center Employees are also exempt from reporting under this policy.

### **VI. Complaint Resolution**

The University has adopted complaint procedures to provide a prompt and equitable method for reporting, investigating, and resolving complaints of alleged violations of the University's Civil Rights and Sexual Misconduct Policy, including discrimination, harassment, and sexual misconduct when they involve University faculty, administrators, support staff, and students.

Complaint procedures involving the alleged violation of this policy by faculty, administrators, support staff, or students can be found online at <http://www.usi.edu/policies/handbook/civil-rights-sexual-misconduct>.

### **VII. Student-On-Student Sexual Misconduct**

It is the intent of the University to promptly respond to all allegations involving possible violations of any part of this policy. It is therefore required that all Responsible Employees (except as noted in (V)(C)), promptly report sexual misconduct among students which they know or should have known about, to the Title IX Coordinator or designee. Failure to make such reports may itself be considered a violation of this policy, and may result in disciplinary action against any Responsible Employee who is found to have failed to report knowledge of such incidents.

### **VIII. Third Party Violations of this Policy**

Violations of the University's Civil Rights and Sexual Misconduct Policy committed on University property against University faculty, administrators, support staff, or students by third-parties (e.g. vendors, contractors, campus visitors) are prohibited. The University will strive to do whatever it reasonably can to stop such behavior by persons outside of the University community and prevent its reoccurrence. Responsible Employees who are aware of third-party violations of this policy must promptly make the University aware of such behavior by contacting the Affirmative Action Officer, Title IX Coordinator, or designee.

### **IX. Academic Freedom**

This policy is intended to define and communicate the University's position on civil rights and sexual misconduct; the prohibitions against discrimination, harassment, and sexual misconduct do not extend to statements, discussions, or materials that are germane to the classroom or an academic course of study. Class materials or discussions that are legitimately and reasonably related to the University's mission of education (e.g. a class discussion or exercise about examples of discriminatory slurs or jokes, reviews of "sexist" literature or videos, reviews of the history of gender discrimination, harassment, or sexual abuse) will generally not be considered to be violations of this policy.

### **X. General Provisions**

#### **A. Amnesty for Victims of Sexual Misconduct and Witnesses**

Reporting sexual misconduct is important. The University recognizes that an individual who reports sexual misconduct may be engaged in under-age drinking or drug use or other prohibited conduct at or near the time of the incident reported. To encourage reporting under these circumstances, the University will not take disciplinary action against a student Reporter or against student witnesses for their personal use of alcohol or drugs or for other prohibited conduct at or near the time of the incident reported if such violations do not or did not subject other people to harm. Depending on the circumstances, similar consideration may be given to employee victims and employee witnesses.

## **B. Public Awareness Events**

Students may disclose their experiences with sexual misconduct at public awareness events about sexual misconduct like “Take Back the Night” without triggering a reportable event to the University. When such events occur on campus or in the context of a University sponsored or sanctioned off-campus program or activity, the University will provide information at such events, programs or activities on sexual misconduct and how to file a sexual misconduct complaint with the University or with area law enforcement agencies.

## **C. Bystander Assistance**

Bystander intervention is defined as safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of sexual misconduct, including dating violence, domestic violence, sexual assault or stalking. Bystander intervention includes:

- Recognizing situations of potential harm;
- Understanding institutional structures and cultural conditions that facilitate violence;
- Overcoming barriers to intervening;
- Identifying safe and effective intervention options;
- Taking action to intervene.

In such circumstances, the employee or student is encouraged to promptly call 911 or Public Safety at 7777 or 812-492-7777. Otherwise, the employee or student should carefully evaluate the situation and if safe to do so, lend assistance.

Bystander intervention can also include risk reduction. Risk reduction is defined as options designed to decrease perpetration and bystander inaction, increase empowerment for victims in order to promote safety, and help individuals and communities address conditions that facilitate violence.

## **XI. Retaliation Prohibited**

Any attempt by faculty, administrators, support staff, or students to penalize, intimidate, or to otherwise retaliate against an individual, who is participating in the University’s Complaint Procedures for alleged violations of this Civil Rights and Sexual Misconduct Policy, is prohibited and subjects the one who has retaliated to possible disciplinary action, up to and including termination or removal from the University. Any person who believes that someone has been subjected to retaliation for making a complaint or for cooperating in an investigation should promptly contact the Affirmative Action Officer, Title IX Coordinator, or designee.