

Sexual Misconduct

Introduction

The University is committed to fostering an atmosphere free from sexual harassment, sexual violence, gender-based harassment, and other sexual misconduct (all referred to in this policy as “sexual misconduct”) and to creating an inclusive campus for students regardless of their sex, sexual orientation, or gender identity. These commitments include identifying problems that may lead to sexual misconduct, creating an atmosphere in which the entire University community is sensitive to preventing sexual misconduct and effectively responding when a student, visitor, guest, or program participant believes they may have been the victim of sexual misconduct. An important part of fostering an atmosphere free from sexual misconduct is stating clearly that retaliating [getting back] against a person who reports sexual misconduct or who is involved in an investigation or proceeding concerning sexual misconduct is prohibited. The University strongly encourages any student, visitor, guest or program participant who feels he or she has been a victim of sexual misconduct to report the sexual misconduct. Included in this policy is specific information about reporting options.

The University strongly supports an individual’s desire for confidentiality in cases involving sexual misconduct. An individual has the option of requesting that a report of sexual misconduct be kept confidential, that his or her name not be disclosed to the other student, and that no investigation or disciplinary action be taken against the other student. In such cases, the University will make a careful assessment to determine if such requests can be honored while still providing a safe environment for all students and other members of the University community. Included in this policy is specific information about the levels of confidentiality provided by law.

Human sexuality involves our whole being as persons. It includes powerful emotions and extreme intimacy with profound psychological, physical, and spiritual implications. Ill-advised intimacy can leave one feeling guilty and lonely. In addition, sexually active individuals should be conscious of the threat of sexually transmitted diseases and should make themselves aware of the various ways to prevent transmission of sexually transmitted diseases.

It is the responsibility of all members of the University community to be familiar with this Sexual Misconduct Policy in order to determine appropriate or inappropriate sexual behavior and to engage in the appropriate processes for reporting and resolving a violation of this policy. This policy applies regardless of sexual orientation or gender identity. Questions about this policy may be directed to the Title IX Director, the Office of the Dean of Students or Office of Counseling Services.

Important Definitions

1. Consent: Definition of Consent

Consent is the basis for an appropriate sexual encounter. Consent must be present before an individual initiates a sexual encounter or moves on to a different kind of sexual activity during a sexual encounter. Individuals should speak openly and clearly to each other about their expectations and actions before engaging in sexual activity.

Consent is defined in this policy as the voluntary, unambiguous and affirmative agreement to engage in a specific sexual activity during a sexual encounter. An individual who is asleep, or mentally or physically incapacitated, either because of the effects of alcohol or drugs, or for any other reason, is unable to give consent. In addition, an individual who par-

ticipates in sexual activity because of force, the threat of force, duress, intimidation, or coercion is unable to give consent.

Consent may not be taken for granted because of the existence of a prior or current relationship or because of prior sexual activity.

Consent must take the form of clearly understandable words or actions. These words or actions must state the individual’s agreement to engage in a specific sexual activity. While an individual may consent to one level of sexual activity, like kissing – consent must also be present to take this sexual activity to a more intimate level – for example, the touching or stroking of a partner’s genitals.

Consent should not be implied because of the way a person dresses, because someone has agreed to go on a date or because of an invitation to return to a dorm or fraternity/sorority sleeping room.

Alcohol may impair an individual’s ability to make voluntary and clearly understood choices. It is very important that before engaging in any form of sexual activity a partner’s intoxication level be taken into account. It is always the responsibility of the person initiating the sexual activity to ensure consent has been effectively communicated and the participating individual retains the ability to provide consent before and during the sexual activity. Engaging in sexual activity while under the influence of alcohol or with a partner who is under the influence of alcohol may lead to bad things happening; things that may ruin your college experience or career plans.

2. Reporting Party: Definition of Reporting Party

A reporting party is a person who reports an incident of sexual misconduct to a responsible employee. A responsible employee who reports any incident of sexual misconduct is both a reporting party and a responsible employee. If the reporting party is the same person who reports they have been the victim of sexual misconduct they will then be referred to as the Complainant (see below).

3. Complainant: Definition of Complainant

The Complainant is defined as a student, visitor, guest or program participant who reports they have been the victim of sexual misconduct.

4. Respondent: Definition of Respondent

The Respondent is defined as a student who is alleged by the Complainant to have committed an act or acts of sexual misconduct.

5. Sex and Gender: Definitions of Sex and Gender

For the purpose of this policy, “sex,” when applied to an individual, refers to the biological and physiological characteristics that define men and women. Sex is assigned at birth and recorded on a birth certificate and can be re-assigned and recorded on an amended birth certificate. “Gender” is a more fluid concept. It includes the cultural roles, attitudes, and expectations that a society associates with the different sexes. It also includes an individual’s internal sense of how they identify within those roles and expectations and their individual decisions about how to express that identity. An individual’s gender identity may be the same or different from the same person’s sex assigned at birth.

6. Sexual Misconduct: Definition of Sexual Misconduct

Sexual misconduct is a broad term that includes sexual violence, sexual harassment, creating a hostile environment, sexual exploitation, domestic violence, dating violence, stalking, retaliation, and intimidation. Sexual misconduct is of a nonconsensual nature if the Complainant objected or clearly attempted to object to the conduct, or if his or her capacity to consent was substantially impaired by reason of physical force, threat or intimidation, lack of opportunity to object, physical or mental disability, drug or alcohol consumption, or other voluntary or involuntary cause..

7. Sexual Assault: Definition of Sexual Assault

Sexual assault refers to any actual, attempted, or threatened form of nonconsensual sexual intercourse or other sexual conduct of a forcible, threatening, or otherwise nonconsensual nature. This includes rape, attempted rape, deviant sexual conduct, sexual battery or forcible fondling, deviant sexual behavior, incest and statutory rape.

8. Sexual Harassment and Gender-based Harassment: Definitions of Sexual Harassment and Gender-based Harassment

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment creates a hostile, intimidating, or offensive environment. It can include, but is not limited to, unwelcome sexual advances, requesting, offering, or suggesting a trade of sex for a desired result. Sexual harassment also includes verbal, nonverbal, or physical conduct of a sexual nature if the conduct is sufficiently severe, persistent, or pervasive to interfere with or limit a student or a member of the University communities' ability to participate in or benefit from the academic, educational, extra-curricular, athletic, or other programs of the University. Gender-based harassment includes acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, gender, gender identity, or gender expression, whether or not the conduct is sexual in nature. Both sexual harassment and gender-based harassment can occur in any communication format, including, but not limited to face-to-face, telephone, written, and electronic interactions.

Some examples of sexual or gender-based harassment include:

- Sexually explicit profanity
- Sexual humor or sexually suggestive language
- Unnecessary remarks about parts of the body
- Obscene gestures
- Cyberbullying that is based on gender or sexual activity
- Unwelcome touching
- Sexual assault or violence
- Inappropriate remarks about a person's sex, gender identity or sexual orientation
- The display of sexual pictures or images
- Forced sexual activity
- The use of electronic media (like email or text messaging) to send sexually charged words, images, or messages

All forms of sexual misconduct identified in this policy are also prohibited forms of sexual harassment.

9. Sexual Exploitation: Definition of Sexual Exploitation

Sexual exploitation refers to any situation in which sexual advantage of another person is taken without that individual's consent. This includes voyeurism and recordings (photo, audio, or video) of sexual activity (sometime referred to as

"revenge porn"), administering alcohol or drugs without consent, exposure of one's genitals, buttocks, or breasts, and providing opportunities for others to view consensual sexual activity without the knowledge and consent of all parties to the consensual sexual activity.

10. Domestic Violence: Definition of Domestic Violence

Domestic violence is defined as student-on-student violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse, by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Indiana.

11. Dating Violence: Definition of Dating Violence

Dating violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship is determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence would include, but would not be limited to, sexual or physical abuse or the threat of such abuse.

12. Stalking: Definition of Stalking

Stalking is defined as a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the Complainant to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity.

13. Intimidation: Definition of Intimidation

Intimidation occurs when a person communicates in any manner a threat to another person with the intent that the other person engage in sexual conduct against the other person's will.

14. Retaliation: Definition of Retaliation

Retaliation occurs when an effort is made to get back at any person because he or she reports sexual misconduct or opposes sexual misconduct or who is involved in an investigation of reported sexual misconduct. Retaliation is also prohibited against any member of the investigative team, witnesses, or individuals involved with the investigation or adjudication of a report or complaint of sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against a person because of their complaint or involvement in the complaint process. The University will take prompt and appropriate action to investigate retaliation and it will take strong responsive action against anyone who engages in retaliation. This prohibition against retaliation covers a wide range of participants and interested parties including, but not limited to, the Complainant, Respondent and the family and friends of the Complainant and Respondent.

15. Title IX Director: Definition and Identity of the Title IX Director

Title IX of the 1972 Education Amendments forbids institutions receiving federal funds from discriminating against students on the basis of sex or gender identity. All forms of sexual misconduct described in this policy are prohibited by Title IX, and the University has the responsibility to investi-

gate all Title IX complaints. Tracey Folden, EdD, assistant vice president for academic affairs, is responsible for overseeing Title IX. Folden's office is located in Room 204 of Olmsted Hall. Her telephone number is 812-488-2509. Her email address is tf91@evansville.edu. It is the responsibility of the Title IX Director to ensure that the University's Policy is followed with respect to reporting, investigating, and responding to allegations of sexual misconduct. The Title IX Director will enlist the assistance of other University employees to facilitate the appropriate response to any allegation of sexual misconduct. Questions regarding Title IX should be directed to Folden. In addition, questions regarding Title IX may also be addressed to the Office of Civil Rights, United States Department of Education, at 500 W. Madison Street, Suite 1427, Chicago, Illinois 60661.

16. Definition of Responsible Employee

A "responsible employee" must report incidents of sexual misconduct to the Title IX Director or other appropriate school designee. This includes information about incidents a responsible employee knows or reasonably should have known about. For the purposes of this policy, a responsible employee is defined as a University employee who has the authority to redress sexual misconduct, who has the duty to report incidents of sexual misconduct or other student misconduct, or who a student could reasonably believe has this authority or duty. The following employees are considered responsible employees: **all full-time, part-time, visiting, and volunteer faculty, administrators, staff, coaches, and resident assistants.**

A responsible employee must report the incident, including all relevant details. This includes the names of the Respondent (if known), the name of the student, visitor, guest or program participant who experienced the sexual misconduct, other students involved in the alleged sexual misconduct, as well as relevant facts, including the date, time and location of the alleged misconduct to the Title IX Director, Tracey Folden, Assistant Vice President for Academic Affairs; the Human Resources Department; the Dean of Students office; the Office of Residence Life; or the Office of Safety and Security. To the extent practicable, information reported to a responsible employee will be shared only with the University officials responsible for responding to the report.

Scope of Policy

This policy applies to prohibited conduct both on campus and away from campus, regardless of where sexual misconduct takes place, if the conduct occurs in the context of a University sponsored or sanctioned education program or activity. This policy also applies if the conduct has continuing effects on campus or in an off-campus education program or activity. This policy applies to all students regardless of sexual orientation or gender identity. If the University believes there is reasonable cause that prohibited conduct has occurred; the University reserves the right to initiate an investigation regardless of whether or not the case is reported to law enforcement agencies. The University may impose sanctions if the prohibited conduct occurs on University owned or leased property, in other locations (such as off-campus houses), at University functions (including off-campus functions) or in connection with a University-sponsored organization, program, or activity if the conduct had continuing effects on campus or in an off campus education program or activity.

The University reserves the right to contact law enforcement authorities for action separate from or in addition to University disciplinary action.

Scope of Confidentiality When Reporting Sexual Misconduct

The University encourages all students who believe they have experienced some form of sexual misconduct [hereinafter called the "Complainant"] to talk to somebody about what happened - so they can get the support they need and the University can respond appropriately. Different employees on campus have different abilities to maintain a Complainant's confidentiality.

A student who believes they have experienced sexual misconduct (Complainant) has the following options to choose from when reporting sexual misconduct:

Reporting Option One:

Professional and Pastoral Counselors

The University's professional, licensed counselor(s) [including those who act in that role under the supervision of a licensed counselor] and pastoral counselors who provide mental-health counseling to members of the University community are not required to report *any* information about an incident to the Title IX Director without a Complainant's permission. The following is the contact information for these individuals:

1. Karen Stenstrom, LCSW, *director of counseling services*
University Counseling Center
Room 200, Ridgway University Center
812-488-2663, sb79@evansville.edu

Carissa Prince, MSW, *counselor*
University Counseling Center
Room 200, Ridgway University Center
812-488-2663, ks96@evansville.edu

Carissa Young, MSW, *counselor*
University Counseling Center
Room 200, Ridgway University Center
812-488-2663, em232@evansville.edu

Jennifer Hargus, LCSW, *counselor*
University Counseling Center
Room 200, Ridgway University Center
812-488-2663; jh693@evansville.edu
2. Reverend Tamara Gieselman, *University Chaplain*,
Neu Chapel
812-488-2240, tg85@evansville.edu

Keith Turner, Assistant Chaplain
Neu Chapel
812-488-2235; kt160@evansville.edu

While these professional counselors may maintain a Complainant's confidentiality as it relates to the University, they are required by Indiana law to report:

- a. If they believe there is imminent danger of self-harm.
- b. If there is reason to believe that child, elder, or dependent abuse has occurred.
- c. If you report being sexually assaulted and are under the age of 18.
- d. If you express threats of violence towards another person.
- e. If federal law enforcement officials request your information under the United States Patriot Act.
- f. Under court order, subpoena or as otherwise required by law.

Reporting Option Two:**Non-Professional Counselors and University Health Center Employees**

Individuals who work or volunteer in the University's health center, including non-professional unlicensed counselors, front desk employees and students who work in the health center, can generally talk to a Complainant without revealing to the University any personally identifying information about an incident. A Complainant can seek assistance and support from these individuals without triggering a University investigation that could reveal the Complainant's identity or that the Complainant has disclosed the incident.

However, while maintaining a Complainant's confidentiality, these individuals or their office will report the nature, date, time, and general location of an incident to the Title IX Director. This limited report – which includes no information that would directly or indirectly identify the Complainant – helps keep the Title IX Director informed of the general extent and nature of sexual violence on and off campus so the coordinator can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Before reporting any information to the Title IX Director, these individuals will consult with the Complainant to ensure that no personally identifying details are shared with the Title IX Director.

While these non-professional counselors, employees and volunteers may maintain a Complainant's confidentiality as it relates to the University, they are required by Indiana law to report:

- a. If they believe you are in imminent danger of self-harm.
- b. If there is reason to believe that child, elder, or dependent abuse has occurred.
- c. If you report being sexually assaulted and are under the age of 18.
- d. If you express threats of violence towards another person.
- e. If federal law enforcement officials request your information under the United States Patriot Act.
- f. Under court order, subpoena or as otherwise required by law.

Reporting Option Three:**Reporting to “Responsible Employees” at the University**

A responsible employee is a University employee who has the authority to redress sexual misconduct, who has the duty to report incidents of sexual misconduct or other student misconduct, or who a student could reasonably believe has this authority or duty.

When a Complainant tells a responsible employee about an incident of sexual misconduct, the University will take prompt and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

A responsible employee must report to the Title IX Director or his designee all relevant details about the alleged sexual misconduct that is provided by the Complainant – including the name of the Complainant and Respondent, any witnesses, and other relevant facts, including the date, time and specific location of the alleged misconduct. To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the University's response to a report of sexual misconduct.

The following employees (or categories of employees) are the University's responsible employees: **all full-time, part-time, visiting and volunteer faculty, administrators, staff, coaches, and resident assistants (“RAs”)**. Contact information for these employees is found at the following link: <https://acelink.evansville.edu/Directory>.

Before a Complainant reveals any information to a responsible employee, the employee will advise him or her of the employee's

reporting obligations – and, if the Complainant wants to maintain confidentiality, direct the Complainant to the confidential resources described in Reporting Option One above.

If the Complainant wants to tell the responsible employee what happened but also maintain confidentiality, the responsible employee will tell the Complainant that the University will consider the request, but cannot guarantee that the University will be able to honor it. In reporting the details of the incident to the Title IX Director, the responsible employee will also inform the Title IX Director of the Complainant's request for confidentiality.

Reporting Option Four:**Reporting to Law Enforcement**

The Complainant has the right to choose to report their complaint to law enforcement at any time throughout the sexual misconduct investigation or hearing process. The University disciplinary process is separate from the legal process.

If you wish to contact local law enforcement directly you may call the

Evansville Police Department
at **812-436-7896** or **911**.

The University will assist a Complainant in contacting law enforcement or the Complainant may contact law enforcement directly.

Reporting Option Five:**Reporting Anonymously to Local Law Enforcement**

The Complainant has the right to make an anonymous report to local law enforcement by contacting:

WE TIP Crime Hotline
1-800-78-CRIME
1-800-782-7463.

The University will assist a Complainant in contacting WE TIP or the Complainant may contact WE TIP directly.

Reporting Option Six:**Reporting to Local Community Support Organizations**

The Complainant may wish to report sexual misconduct to either of the following local community support organizations:

Albion Fellows Bacon Center
Domestic Violence Hotline: 812-422-5622
Sexual Assault Hotline: 812-424-7273

Holly's House
750 N. Park Drive
Evansville, Indiana 47710
812-437-7233

These organizations are not connected with or part of the University. The Complainant should be sure to ask each organization about its policy concerning confidentiality and the provision of personally identifying information to law enforcement and other authorities before providing personally identifying information.

How the University Will Evaluate a Request for Confidentiality

If a Complainant discloses an incident to a responsible employee but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the University must weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all students and member of the University community, including the Complainant. A Complainant should understand

that, if they want to maintain confidentiality, the University will be unable to conduct a meaningful investigation into the particular incident or pursue disciplinary action against the Respondent.

If the University honors the request for confidentiality, a Complainant must understand that the University's ability to meaningfully investigate the incident and pursue disciplinary action against the Respondent may be limited. Although perhaps rare, there are times when the University may not be able to honor a Complainant's request in order to provide a safe, non-discriminatory environment for all students and members of the University community.

The Title IX Director, the Executive Vice President of Academic Affairs, the Assistant Vice President of Students Affairs and the Director-Office of Safety and Security, will evaluate all requests for confidentiality once the Title IX Director's Office is put on notice of alleged sexual misconduct:

When weighing a Complainant's request for confidentiality or that no investigation or discipline be pursued, a range of factors will be considered, including the following:

- a. whether there have been other sexual misconduct complaints about the same Respondent;
- b. whether the Respondent has a history of arrests or records from a prior school indicating a history of sexual misconduct;
- c. whether the Respondent threatened further sexual misconduct against the Complainant or others;
- d. whether the sexual misconduct was committed by multiple Respondents;
- e. whether the sexual misconduct was perpetrated with a weapon;
- f. whether the Complainant is a minor;
- g. whether the University possesses other means to obtain relevant evidence of the sexual misconduct (e.g., security cameras or personnel, physical evidence);
- h. whether the Complainant's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors may impact the scope of the University's investigation as well as the University's determination concerning confidentiality. If none of these factors are present, the University will more likely be able to respect the Complainant's request for confidentiality.

If the University determines that it cannot maintain a Complainant's confidentiality, the University will inform the Complainant prior to identifying the Complainant's name to the Respondent and will, to the extent possible, only share information with people responsible for handling the University's response.

The University will also:

- a. assist the Complainant in accessing other available sexual misconduct victim advocacy organizations, academic support, counseling, health or mental health services, and legal assistance both on and off campus;
- b. consider other security and support, which may include issuing a no-contact order, helping arrange a change of living or working arrangements or class schedule (including for the Respondent pending the outcome of an investigation) or making adjustments for completing assignments or tests; and
- c. tell the Complainant about the right to report a crime to campus or local law enforcement agencies, and provide the Complainant with assistance if the he or she wishes to make such a report

General Provisions

Right to File Criminal Complaint. Students have the unrestricted right to file a criminal complaint against the Respondent. This may be done before, during or after the University's internal investigation. A criminal complaint made to area law enforcement and a Title IX complaint made to the University can be filed at the same time. The University is available to assist a student, visitor, guest or program participant who wishes to file a criminal complaint. In addition, the University will advise a student, visitor, guest or program participant about his or her right to ask a court to issue a no contact order.

Rights of Alleged Student Perpetrators (Respondent) under the Family Education Rights and Privacy Act. An alleged Respondent has a right under the Family Educational Rights and Privacy Act ("FERPA") to request to inspect and review information about the Complainant's allegations if the information directly relates to the Respondent and the information is maintained by the University as an education record. In such a case, the University must either redact the Complainant's name and all identifying information before allowing the Respondent to inspect and review the sections of the complaint that relate to him or her, or must inform the Respondent of the specific information in the complaint that is about him or her. The University will make students, visitors, guests and program participants who file complaints aware of this right and explain how it might affect the University's ability to maintain complete confidentiality.

Amnesty for Complainants and Witnesses of Sexual Misconduct. 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 complained of. To encourage reporting under these circumstances, the University will not take disciplinary action against a Complainant or against witnesses for their personal use of alcohol or drugs or for other prohibited conduct at or near the time of the incident complained of if such violations do not or did not subject other people to harm or result in destruction of property.

Public Awareness Events. Students may disclose their experiences with sexual misconduct at public awareness events like "Take Back the Night" without triggering a reportable event to the University. However, 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 event, programs or activities on Title IX and how to file a Title IX complaint with the University or with area law enforcement agencies.

When a Complainant confides in a Friend. Many times, a Complainant of sexual misconduct will confide in a friend that they believe they have been victimized. This is particularly true on a residential campus like the University of Evansville given the close-knit community of students. Students can provide direct support to a Complainant by assisting them through the various steps listed in the "**What to Do if You Have Been Sexually Assaulted**" section of this handbook. Direct support may also be provided to the friend of the Complainant from the University Counseling office.

Bystander Assistance. Sometime a student or other person (a "Bystander") may be in a situation, particularly a social situation, where they observe sexual misconduct either taking place or likely to take place. If a Bystander may do so safely and positively they may be in a position to prevent instances of sexual misconduct or likely sexual misconduct. In such circumstances, a Bystander should carefully evaluate the situation and if they feel it is safe to

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do so, lend assistance to the person who is or may be subjected to sexual misconduct. If a Bystander does not believe assistance may be safely rendered, the Bystander is strongly encouraged to contact the Office of Safety and Security (812) 488-6911 or (812) 488-2500 and/or local law enforcement at 911 as soon as possible. An anonymous report can also be made by calling the WeTip hotline at 1-800-78-CRIME (1-800-782-7463)

Title IX Statement. The University of Evansville has obligations under federal law to comply with Title IX of the Education Amendments of 1972, which prohibits discrimination (including sexual harassment and sexual violence) based on sex in the University's educational programs and activities. Title IX also prohibits retaliation for asserting or otherwise participating in claims of sex discrimination. The University has designated Title IX Directors to coordinate its compliance with and response to inquiries concerning Title IX. A person may also file a complaint with the Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by visiting www2.ed.gov/about/offices/list/ocr/complaintintro.html or calling 1-800-421-3481.

Clery Act Statement. The University of Evansville has obligations under federal law to provide the Department of Education with information about crimes that take place on University property and in federally defined zones not on University property. Under most circumstances, reports of sexual misconduct are covered by the University's Clery Act reporting obligations. If the University determines that a crime poses a serious and immediate threat to the University community, the Clery Act may require the Campus Security Department to issue a timely warning to the University community. Any such warning will not include personally identifiable information about the Complainant.

Violence Against Women Act Statement. The University of Evansville has obligations under the Violence Against Women Act ("VAWA"). VAWA seeks to reduce domestic violence and improve the treatment of rape victims. VAWA extends protection to Native American women and members of the LGBTQ community.

What to Do if You Have Been Sexually Assaulted

Seek Refuge. If you are assaulted, get to a safe place as soon as you can. The University has resources available to you for emotional and physical support. The Office of Safety and Security, 812-488-6911 or 812-488-2500, can provide assistance to you by telling you how you can reach a counselor, contact law enforcement authorities, obtain hospital transportation and the like. You may also contact the Evansville Police Department directly by dialing 911.

Right to File an Anonymous Crime Report. An anonymous report can also be made by calling the WeTip hotline at 1-800-78-CRIME (1-800-782-7463)

Preserve Evidence. Resist the urge to bathe, use the toilet, change clothing or apply soaps or lotions. If you must change clothes, put them in a paper bag or wrap them in a clean sheet. Do not place these items in a plastic bag as the bag may distort evidence. It is also important not to disturb any evidence that may be present in the location where the offense occurred or destroy or delete any correspondence relative to the offense.

Get medical attention as soon as possible. It is important to seek medical attention in the case of sexual assault in order to check for injuries, effectively preserve evidence, and test for sexually transmitted diseases. Medical attention can also be obtained directly from one of these locations:

Crayton E. and Ellen Mann Health Center	812-488-2033
St. Vincent's Hospital	812-485-4491
Deaconess Hospital	812-450-3405

Personal Support. A University counselor is available 24 hours a day to provide personal support and guidance after an assault. The office phone number is 812-488-2663. After normal business hours, you can reach the counselor on call by contacting the Office of Safety and Security (812) 488-2051 and requesting a counselor.

Rights of Students

When a student makes a complaint about sexual misconduct, or is accused of sexual misconduct, the following rights shall be respected as the University investigates and resolves the complaint:

1. The right to be informed of disciplinary procedures and the extent of all alleged violations that are noted in the investigative report.
2. Both parties may have an advisor of their choice present during their investigative interview. However, the advisor may not actively participate in the investigative or disciplinary process.
3. The right of the Respondent to receive written notice of the date, time and place of the hearing at least 48 hours before the Hearing Board meets.
4. The right to consult with the student ombudsman.
5. The right to request that any Sexual Misconduct Hearing Board (as described in section E. below) member be removed and replaced if there is evidence of a conflict of interest or demonstrated bias toward the Complainant or Respondent. The Title IX Director will consider the request and make any changes deemed necessary.
6. The right to be present, if desired, for all testimony given and evidence presented before the Hearing Board.
7. The right to make an impact statement at a disciplinary hearing and to have that statement considered by the Hearing Board making its determination.
8. The right to appeal the disciplinary hearing outcome
9. The right, subject to the law, not to have any personal information released by the University to the public without prior consent.

Intake of Report, Interim Measures and Investigation of Sexual Misconduct

When possible the University will strive to investigate a complaint about sexual misconduct, and if appropriate, hold a hearing before a Sexual Misconduct Hearing Board ("Hearing Board") and issue its post-hearing determination within a 60 calendar day period from the date of the complaint. This 60 day target does not include the time it takes to appeal an initial determination. However, depending upon the circumstances, including the complexity of the facts and the number and availability of witnesses, there may be occasions when the process will take more than 60 calendar days. In such instances, the Title IX Director will advise the Complainant and Respondent that additional time will be required.

Intake

Title IX Intake Process

Generally, the intake process is as follows: Once the Title IX Director's Office is put on notice of a complaint, the Title IX Director will email and/or call the Complainant to conduct a preliminary investigation. Absent unusual circumstances, a face to face meeting will be held. If the reporting party is the Com-

plainant, they will complete Sexual Misconduct Information Check List. The Complainant will also be made aware of on and off campus support resources. Interim measures may also be discussed if appropriate (see section B.). The Complainant will also be provided assistance if they wish to meet with a counselor, seek medical attention, or notify law enforcement.

After the Complainant meets with the Title IX Director, the Title IX Director will email and/or call the Respondent to conduct a preliminary investigation. Absent unusual circumstances, a face to face meeting will be held. The Respondent will also be made aware of on and off campus support resources. If appropriate, interim measures will be discussed.

Based on the information gathered during the preliminary investigation, the Title IX Director will determine the extent of the fact-finding investigation required.

If the Complainant chooses not to file a complaint, the information provided by the Complainant will remain on file in the Title IX Office. The Title IX Director will nonetheless determine to what extent a fact-finding investigation or other action is required. The University reserves the right to contact law enforcement authorities regardless of the Complainant's request if it believes there exists a threat to the health or safety of students and employees.

Interim Measures

Depending on the severity of the alleged sexual misconduct, the University reserves the right to take interim measures at any point throughout the process to protect the Complainant and the Respondent. Such interim measures may include, but are not limited to:

- a. A change in academic and extracurricular activity schedules so the Complainant and Respondent avoid contact.
- b. A change in living and dining arrangements.
- c. The offer of counseling to both the Complainant and Respondent.
- d. Alternative testing arrangements, seeking incompletes, alternatives for course completion and similar measures.
- e. Increased monitoring, supervision or security at locations or activities where the alleged misconduct occurred.
- f. The opportunity to obtain health, mental health, academic support and counseling services.

Pre-determination disciplinary or other action against a Respondent will only be taken where, because of the severity and extent of the alleged conduct, such extraordinary action is appropriate. The Dean of Students may suspend or expel a student and provide that student with notice as soon as practicable. A suspension or expulsion may be appealed in writing to the President from off campus. Such an appeal must be received in the President's office no later than five days after the day the notice of suspension is provided to the student by the University. The written request to appeal must identify with specificity the facts upon which the appeal is based and why the decision of the Dean of Student is clearly in error.

Investigation and Outcome of Investigation

Investigations of alleged sexual misconduct are the responsibility of the Title IX Director and investigators designated by the Title IX Director. An investigation will begin promptly and the University will not wait for the conclusion of a criminal investigation. The University prohibits retaliation against any party or participant in an investigation or hearing. During the investigation process, the complainant and respondent will have the opportunity to provide any evidence that may exist to the investigators including copies of text messages, photos, social media posts, etc.

After the investigation, the Title IX Director will determine whether the case will be presented to a Hearing Board. The Title IX Director will notify the Complainant and Respondent of the decision in writing.

If the Title IX Director determines that a case will be presented to a hearing board, the Title IX Director will request the Dean of Students to convene that board. The Title IX Director will provide the Dean of Students with the documents comprising the investigative file.

The Dean of Students will notify the Complainant and Respondent information about the hearing in writing. The Dean of Students will provide both parties with the evidence packet (all evidence collected during the investigation) and the evidence packet will be provided to the Sexual Misconduct Hearing Board as part of the hearing process. The complainant and respondent will have the opportunity to provide, in writing, any corrections or clarifications to the investigator's report regarding their individual testimony to the Title IX Director. Any such corrections or clarifications will be distributed to all parties as an addendum to the evidence packet.

Administrative Hearing before Dean of Students

An administrative hearing may be conducted by the Dean of Students or her appointee in her absence. An administrative hearing is appropriate under certain limited circumstances such as where the Respondent has accepted responsibility for both the misconduct and the proposed sanctions, cases involving the violation of the sexual misconduct policy by a student organization, or cases where the circumstances are extremely sensitive in nature and both the Complainant and Respondent voluntarily and without coercion, request the case not be heard by the sexual misconduct Hearing Board. Whether an administrative hearing is appropriate will be determined by the Title IX Director. Administrative action by the Dean of Students in an administrative hearing will conclude complaints of sexual misconduct without any further hearing(s).

Sexual Misconduct Hearing Board

If the Title IX Director determines that, based on the outcome of the investigation, a hearing on the allegations should be held, the hearing will be conducted by the Sexual Misconduct Hearing Board.

Twenty employees, comprised of faculty and administrators, will be appointed by the President to serve as a pool of members for the Sexual Misconduct Hearing Board. From the pool of members, the Dean of Students will select a total of three individuals from this pool to serve on the Sexual Misconduct Hearing Board ("Hearing Board"). The "Preponderance of Evidence" standard, (i.e. "more likely than not") will be used by the Hearing Board. The Title IX Director will appoint one of these individuals to be Presiding Hearing Board Member. The Dean of Students will serve as an advisor to the Hearing Board. The Presiding Hearing Board Member will, in consultation with the Dean of Students or her designee, determine the outcome of all procedural and evidentiary issues raised at the hearing.

No individual may attend the Hearing Board hearing unless they serve as an advisor to the Complainant or Respondent or are otherwise permitted to do so by the Presiding Hearing Board Member. All Hearing Board witnesses will be separated and no witnesses other than the Complainant and Respondent may be present in the hearing room during witness testimony.

Hearing Board members may meet prior to the hearing to discuss logistics and review evidence that has been provided to both the Complainant and Respondent. Prior to the hearing, the Hearing Board is empowered to request that additional information from the investigators be made available to it. Once the hearing is convened, the Hearing Board is also empowered to call witnesses

of its choosing. Witnesses are not required to participate but are encouraged to do so.

Hearing Procedures

1. The University will determine if the Complainant needs to be present for the entire Hearing Board hearing.
2. If the University allows one party to be present during the entire Hearing Board hearing, it will do so equally for both parties.
3. When requested, the University will make arrangements so that during the Hearing Board hearing the Complainant and the Respondent do not have to be present in the same room at the same time.
4. The University will not require the Complainant to be present at the Hearing Board hearing for the hearing to take place.
5. If the Respondent chooses not to participate in the hearing, it will nonetheless be held and the Hearing Board will render its decision based on the information that is presented to it.
6. The University will not permit the parties to cross-examine each other. However, each party may submit written questions to the Title IX Director for consideration, at least forty-eight hours before the time the hearing starts. Approved questions will be forwarded to the Hearing Board and the Hearing Board may, in its discretion ask these questions on behalf of the complainant and respondent without disclosing the author of the question.
7. Questions about the Complainant's sexual history with anyone other than the Respondent will not be permitted. The same restriction applies to the Respondent's sexual history with anyone other than the Complainant.
8. While they may not ask questions of each other, the Complainant and the Respondent will both be provided the opportunity to question all other witness directly. The Presiding Officer or the Dean of Students, acting as advisor to the hearing process, may not allow certain questions if the question is perceived as irrelevant to the case or inappropriate.
9. The University will allow both parties to be accompanied to any University disciplinary proceedings and any related meetings by the advisor of their choice. However, the advisor may not actively participate in the investigative or disciplinary process.

The order of a Hearing Board hearing will be as follows:

1. The person initiating the complaint (Complainant) will give his or her evidence of the sexual misconduct alleged. The Complainant may choose not to participate in the hearing but does so with the understanding that it may impact the Hearing Board's decision regarding whether or not sexual misconduct occurred and what the appropriate actions should be if it did occur. In place of the Complainant, this evidence may be provided by the party responsible for the investigation of the allegations.
2. The Respondent may give his or her evidence of the sexual misconduct alleged. If the respondent chooses not to participate in the hearing, the hearing will nonetheless be held and the hearing board will render its decision based on the information presented.
3. Any witnesses for either party may appear individually before the Hearing Board. The number of such witnesses will be pre-determined by the Dean of Students in consultation with the Title IX Director. Both parties will have the opportunity to present the same number of witnesses.

4. Both parties will have the opportunity to question each witness.
5. The Hearing Board may ask questions of the witnesses.
6. The Complainant and Respondent will not be permitted to question each other directly. Both may submit questions for the other party to the Title IX director, in writing, at least 48 hours prior to the hearing for consideration (see Hearing Procedures).
7. The Hearing Board may ask questions of the Complainant or the party responsible for the investigation.
8. The Hearing Board may ask questions of the Respondent.
9. The Complainant may make a closing statement, including an impact statement and a description of the desired outcome from the hearing.
10. The Respondent may make a closing statement, including an impact statement and a description of the desired outcome from the hearing.
11. The parties will leave the hearing at the same time in such a way to avoid contact with each other.

Notice of Outcome of Hearing Board Hearing

Both parties will be notified concurrently in writing [sent by email and first class mail] about the outcome of the complaint and appeal rights. In the notification to the Complainant, the University will provide: (i) a conclusion as to whether or not, based upon a preponderance of the evidence, the alleged conduct occurred; (ii) any individual remedies provided to the Complainant; (iii) any sanctions imposed on the Respondent that directly relate to the Complainant, and other steps the University took or will take to eliminate a hostile environment, if the University finds one to exist and the steps taken and/or to be taken to eliminate the hostile environment. Information regarding the appeal process will also be provided to both parties.

Determination and Possible Sanctions

At the conclusion of the hearing, the Hearing Board will adjourn to evaluate the record of the proceedings. Thereafter the Hearing Board will render its written decision on the Complainant's complaint. As a result, the Hearing Board may either dismiss the complaint without further action or recommend one or more of the following sanctions:

1. Warning. The Respondent is warned that his or her behavior is unacceptable to the University community. The Respondent may also be warned that further violations will result in more severe disciplinary action.
2. Restitution. The Respondent may be assessed charges for any damages or losses which may have resulted from the sexual misconduct.
3. Fines. The Respondent may be assessed fines as appropriate in addition to charges for restitution.
4. Disciplinary Probation. Disciplinary probation may be accompanied by additional sanctions or by special conditions including, but not limited to, required counseling.
5. Counseling. The Respondent may be required to attend counseling.
6. Restricted access on campus, at University events, University housing, etc.
7. Restricted communication with other party or witnesses associated with the case.

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8. Suspension. The Hearing Board will determine the appropriate length of time for the suspension.
9. Expulsion. Permanent separation of the Respondent from the University and the University community.

The Hearing Board's written decision will be sent by email and first class mail concurrently to the Complainant and the Respondent.

Appeals from Determination of Hearing Board

Following the determination of the Hearing Board, both parties have the right to appeal the determination but solely for the following reasons:

1. There is evidence that the hearing procedures outlined in the Sexual Misconduct Policy were not adequately followed.
2. There is new evidence that will materially impact the Hearing Board's decision and this evidence was not presented at the Hearing Board hearing for good cause shown as determined by the Title IX Director.
3. The sanctions imposed by the Hearing Board are believed to be either too severe or too lenient for the violation which the person was found to be responsible.

A request for an appeal must be made in writing and submitted by email to the Title IX Director [tf91@evansville.edu] within five (5) business days [Monday – Friday] after the date the Hearing Board's written decision is received by the appealing party. The Hearing Board's written decision will be sent to both parties by email and certified mail and the five day period will be counted using the date the first method of delivery was received by the appealing party. The Title IX Director, Executive Vice President and the Assistant Vice President for Student Affairs will determine if an appeal may be taken. If a decision is made to hear the appeal, the non-requesting party will receive a copy of the appeal letter and notification that the appeal has been granted.

For an appeal hearing, the following process will be followed:

The Sexual Misconduct Appeals Hearing Board will be comprised of a total of three faculty and administrators, selected by the Dean of Students from the pool of Hearing Board members. None of the Appeals Board members may have served on the original hearing board. The appeals board will make every effort to decide each appeal as quickly as possible, preferably within two weeks of the time the request for appeal was granted by the Title IX Director. The sanctions from the original hearing will be upheld, if applicable, until the appeal is heard.

The Appeals Board will be provided copies of all evidence received by the Hearing Board, including a transcript of the initial hearing. The Hearing Board will consider new evidence if permitted by the Title IX Director.

The Appeals Board will meet, with all members present to review the transcript of the Hearing Board hearing and all evidence submitted to and accepted by the Hearing Board. After considering this material, the Appeals Board may:

1. Affirm the findings and sanctions determined by the Hearing Board;
2. Affirm the findings but adjust the severity of the sanction to a greater or lesser degree;
3. Reverse the finding and as such make a determination that, based on the "preponderance of evidence" standard, there was insufficient evidence to find the Respondent committed the offense(s) complained of;
4. Reverse the Hearing Board's decision and order a new hearing. The Appeals Board's written decision will be sent by email and first class mail to both parties concurrently. Decision of the Appeals Hearing Board is final.

The University reserves the right to modify the hearing and appeal procedures to provide for what in its sole opinion, is equitable treatment of the Complainant and Respondent.

This policy was drafted upon review of published sexual misconduct policies and guidelines from DePauw University, Northwestern University, Texas Women's University, Washington University, Colorado State University Pueblo, Notalone.gov, ATIXA, Indiana Criminal Code, and the United States Department of Education.