

Ball State University
Interim Sexual Harassment and Misconduct Policy

This policy applies to all forms of sex and gender-based discrimination, sexual harassment, sexual violence, stalking, and intimate partner violence.

Revised 7/2014, 8/2015, 8/2016, 7/2017, 7/2019, 8/2020, 8/2022 [interim]

Table of Contents

Contents

1. Scope and Application	3
1.1 Scope.....	3
1.2 Application (On- and Off-Campus)	3
1.3 Anonymous Reports	3
1.4 Amnesty for Violations of Other Policies.....	3
2.1 Timeframe for Reporting	3
2.2 Complaints against Students	4
2.3 Complaints against Graduate Assistants	4
2.4 Complaints against Non-Affiliated Individuals	4
2.5 Complaints against Student Organizations	4
2.6 Complainant/Reported Victim is Not Affiliated with the University	4
2.7 Assessment of Policy Application	4
3. Complaint Resolution Options, Processes and Procedures.....	5
3.1 InTETg0 G[(3Sg6s)-6(s)-6(e)7(s)-6(s)-6(m)7(e)7(nt)7(of P)-6(ol)7(i)7(c)7(12 0 612 792 reW*nBT/F1	

5.2 Hearings	15
5.3 Notice of Outcome	16
5.4 Sanctions	16
5.5 Status of Supportive Measures and Other Accommodations Pending or Following Resolution	16
5.6 Appeals	16
Appendix 1 - Prohibited Conduct and Relevant Terms and Definitions	17
Prohibited Conduct	17
Aiding and Abetting.....	17
Harassment, Bullying, or Cyber-bullying.....	17
Harm, Threat, or Endangerment	18
Intimidation or Threats to Inhibit Reporting.....	18
Retaliation.....	18
Sexual Assault.....	18
Sexual Exploitation.....	19
Sexual Harassment.....	20
Stalking	22
Terms and Definitions	22
Coercion	22
Consent	23
Domestic violence.....	23
Dating violence	24
Force	24
Incapacitation	24
Appendix 2 - Communication with Parties, Records, Policy Modification	25
Maintenance of Records	25
Appendix 3 - Statements on Privacy and Confidentiality.....	26
Table 1—Campus Resources.....	27
Table 2—Community Resources.....	28

1. Scope and Application

1.1 Scope

This policy governs the University's response to complaints of sexual misconduct (which includes sexual harassment, sexual assault, other forms of sexual violence, dating violence, domestic violence, sexual exploitation, and stalking) involving any Ball State University student or student organization, when the Interim Title IX Policy is not applicable. Sexual misconduct complaints made against faculty, staff and other Parties are handled pursuant to the Interim Title IX Policy.

1.2 Application (On- and Off-Campus)

This policy and these procedures apply to students (including graduate students) and student organizations and pertain to behaviors prohibited in this Policy when:

1. The conduct occurs off-campus or outside of the context of a university education program or activity as determined by the Interim Title IX Policy.

2.2 Complaints against Students

Any student or university employee may pursue a complaint against another student under this policy when:

- a) the conduct occurred off-campus and/or,
- b) the unwelcome conduct of a sexual nature did not meet the criteria to be handled under the Interim Title IX Policy.

In matters where a student [Respondent] is an employee (any status) of the university, interim measures to end harassment, address its effects, and prevent its recurrence realm of employment and may take place concurrent with procedures outlined in this policy.

2.3 Complaints against Graduate Assistants

The university recognizes that graduate assistants occupy roles as students and as employees with teaching, administrative, and/or research functions. When a complaint is made against a graduate assistant that alleges sexual harassment or misconduct, the allegation will be carefully examined to determine how best to proceed.

2.4 Complaints against Non-Affiliated Individuals

Complaints of sexual harassment or misconduct against an individual who is not affiliated with the university (e.g., a guest of or visitor to the university) may be filed with the University Police Department located at 200 N. McKinley Avenue [(765) 285-1111] or the law enforcement agency with jurisdiction over the incident. Students bringing complaints of sexual harassment or misconduct against an individual who is not affiliated with the university may request support and assistance from campus resources (e.g., Office of Victim Services, Counseling Center) and may request assistance from the Title IX Coordinator or designee (Title IX Coordinator) to pursue possible academic accommodations and other appropriate interim measures.

2.5 Complaints against Student Organizations

Complaints asserting that a student organization has created a hostile environment related to an incident(s)

12. Provide the Complainant with an explanation of the procedural options to resolve the complaint, including remedies-based resolution and resolution through adjudication procedures; and discuss with the Complainant any concerns or barriers to participating in any university investigation and resolution under this Policy;
13. Inform the Complainant and, as appropriate, Respondent of the right to have an adviser or support person for all subsequent meetings and proceedings;
14. Assess for pattern evidence or other similar conduct by the Respondent;
15. Discuss the Complainant's expressed preference for manner of resolution, including a request that their name and other identifiable information not be shared, and any barriers to proceeding;
16. Explain the university's policy prohibiting retaliation; and
17. Assess Complainant's request not to proceed: The University will seek action consistent with the Complainant's request where possible. Where a Complainant makes a report but requests that no formal action be taken, the investigator will balance this request with the university's dual obli

1. Honoring the request of the Complainant that the matter not proceed, resulting in closure of the complaint;
2. Remedies-based actions that do or do not involve disciplinary action against a Respondent;
3. The initiation of an investigation to determine if adjudication is warranted; or
4. Dismissal of the complaint.

The investigator will communicate the decision, supported by a rationale, and possible next steps to the Complainant. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution.

When the university determines to pursue investigation on its own behalf, the investigator will

6. Providing information to Parties about visa and immigration assistance, and other available victim services; and

4. Investigation of Complaints

Ball State will resolve allegations of sexual harassment and misconduct in an impartial, prompt, and equitable manner.

4.1 Timeframe of Investigation

Ball State endeavors to issue a determination and, if applicable, any sanctions within a reasonable number of days of written notification to the Respondent that an investigation of an alleged violation of this policy has begun. All timeframes expressed in this policy and its procedures are meant to be guidelines and not rigid requirements.

Factors that may affect the length of time necessary to resolve completely an allegation of sexual harassment and misconduct include, but are not limited to:

1. The complexity of the allegations, including the number of witnesses and volume of information provided by the Parties;
2. The need to ensure the integrity and completeness of an investigation;
3. Availability of the Parties and evidence;
4. The need to delay temporarily an investigation to support law enforcement's need to gather evidence in a concurrent criminal investigation;
5. Intervening closures of Ball State;
6. Any other unforeseeable circumstances.

In the event a Ball State unit determines it requires additional time to fully and properly carry out its responsibilities under this policy or its procedures, it will provide simultaneous written notice to the Complainant, the Respondent, and as applicable, the Title IX Coordinator or designee, notifying them of the anticipated length of the delay and the nature of the circumstances causing the delay.

4.2 Investigation Procedures and Protocols

The Title IX Coordinator will initiate an investigation by designating one or more investigators who have specific training and experience investigating allegations of sexual harassment, sexual violence, stalking, and intimate partner violence. Any investigator chosen to conduct an investigation must be impartial and free of any actual conflict of interest.

During an investigation, both the Complainant and Respondent have an equal right to:

1. Prompt, impartial, and equitable investigation of the complaint;
2. Protection under applicable privacy laws (e.g., FERPA);
3. An advisor of their choice (this person may be a friend, instructor, parent, or attorney) to accompany and assist them during interviews, meetings or hearings. An advisor serves as a non-participant who is present to assist the Party or Parties by taking notes, providing emotional support and reassurance, organizing documentation, or consulting directly with the Party in a way that does not disrupt or delay the meeting. The advisor cannot be a fact Witness or provide any statements as part of any process under these procedures. The advisor is not allowed to provide testimony or statements on behalf of the individual they are assisting. Additionally, the university's representatives will communicate only with

which will usually be recorded by the investigator (no other Parties may record interviews or hearings) and may include follow-

or downloaded. The Parties will have ten (

5. Adjudication of Complaints

5.1 General Procedures

Where there is a determination that a policy violation occurred, and further adjudication is warranted, adjudication will be governed by the Ball State Code of Student Rights and Responsibilities and as modified below.

Following the determination, the Director will prepare a determination notice. The notice will include charged violations, rationale for charged violations, proposed sanctions and/or remedies, rationale for proposed sanctions, options for resolving the complaint, and a request for a meeting with the recipient. This notice will be sent to the Parties within ten (10) business days of the determination.

In cases where the charged violation involves non-consensual sexual intercourse, the Director is required to consider suspension or expulsion but may propose any lesser sanctions believed to be fair and proportionate to the violation and its impact on the Complainant.

Considerations for sanctioning include but are not limited to the following:

1. The nature and severity of the violation;
2. The violating student's prior conduct record (if applicable);
3. Precedent for sanctioning past, similar violations by other students;
4. Aggravating, mitigating, and/or compounding factors;
5. Remedying harm experienced by the Complainant;
6. Deterring the violating student from future, similar behavior; and
7. Remedying harm caused to the Ball State community, whether that harm be physical, emotional, operational, or reputational in nature.

The Director will request separate meetings with the Parties to review the determination and subsequent procedures including options for the Respondent to:

1. Accept responsibility for the charged violation and seek an informal resolution or
2. Contest the charged violation and request a hearing. As specified elsewhere, Parties may be accompanied at this meeting by an advisor of their choice.

If the Respondent accepts responsibility in writing and seeks an informal resolution, the Director may impose sanctions up to and including expulsion from the university;

If the Respondent requests a hearing, the Director will convene the Sexual Misconduct Board to conduct a hearing and determine if a violation has occurred. The determination in the hearing will be made using a preponderance of evidence standard.

14. May take the form of exclusion, separation, or otherwise differential treatment on the basis of sex, gender identity/expression, transgender status, or gender transition.

Sexually harassing behaviors differ in type and severity and can range from subtle verbal harassment to unwelcome physical contact. There is a wide range of behaviors that fall within the general definition of sexual harassment and many differing notions about what behaviors are and are not acceptable. Key determining factors are that the behavior is unwelcome, is based on sex or gender, and is reasonably perceived as offensive and objectionable under both a subjective and objective assessment of the conduct.

Stalking

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

Such actions could be either implicit or explicit threats against a specific person; an acquaintance, friend, family member, or pet of that person; or that person's property.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Examples of stalking include:

1. Unwelcome and repeated visual or physical proximity to a person;
2. Repeated oral or written threats;
3. Extortion of money or valuables;
4. Unwelcome/unsolicited written communication, including letters, cards, emails, instant messages, and messages on on-line bulletin boards;
5. Unwelcome/unsolicited communications about a person, their family, friends, or co-workers;
6. Sending/posting unwelcome and/or unsolicited messages with another username; or
7. Implicitly threatening physical conduct or any combination of these behaviors directed toward an individual person.

Terms and Definitions

For purposes of addressing complaints of sexual harassment and misconduct against or by students, the following concepts, terms, and definitions shall be used:

Coercion

Coercion is the use of unreasonable and persistent pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide

related to sex, sexual orientation, gender identity, or gender expression and (2) threatening to harm oneself if the other Party does not engage in the sexual activity. Coercing an individual into engaging in sexual activity violates this policy in the same way as physically forcing someone into engaging in sexual activity.

Consent

Consent is a knowing, voluntary, and clear mutual agreement to engage in sexual activity. Consent is effective when it is informed, freely and actively given, and communicated by clearly and mutually understandable words or actions to participate in each form of sexual activity. This includes the following concepts:

1. Consent cannot be given by someone who is incapacitated. Engaging in sexual activity with someone who one knows to be, or reasonably should know to be, incapacitated is a violation of this policy. [Incapacitation is addressed below.] Where alcohol or other drugs are involved, incapacitation is assessed with respect as to how the alcohol or other drugs consumed affects a person's ability to understand fully the "who, what, when, where, why, and/or how" of their sexual interaction with someone else. An individual accused of sexual harassment or misconduct is not excused if they were intoxicated and, therefore, did not realize the incapacity of the other person;
2. Indiana law provides that a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old is a crime, as well as violation of this policy, even if the minor wanted to engage in the act;
3. Consent cannot be inferred from silence, passivity, or lack of active resistance;
4. Consent to one form of sexual activity does not imply consent to other or additional forms of sexual activity;
5. Consent can be withdrawn at any time;
6. Consent does not exist when there is force, a threat of force, violence, or any other form of coercion or intimidation whether of a physical, psychological, or, financial nature. [See discussions on force and intimidation below.] A person who is the object of sexual aggression is not required to physically or otherwise resist the aggressor;
7. A current or previous dating or sexual relationship is not sufficient to constitute consent; past consent does not imply future consent; and
8. Consent to engage in sexual activity with one person does not imply or confer consent to engage in sexual activity with another person.

Domestic violence

Domestic violence includes felony or misdemeanor crimes 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 state of Indiana, 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 state of Indiana. A respondent accused of domestic violence, if charged with a violation, will be charged with the violation Harm, Threat, or Endangerment.

Dating violence

Dating violence means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship. A respondent accused of domestic violence, if charged with a violation, will be charged with the violation Harm, Threat, or Endangerment.

Force

Force is the use or threat of physical violence (including but not limited to strong-arming, physical action, trapping, isolating, or intimidation) to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. There is no requirement for a Party to resist physically or verbally the sexual advance or other behaviors, but resistance will be viewed as a clear demonstration of non-consent.

Incapacitation

Incapacitation is a state where someone cannot make informed, rational judgments and cannot

Preponderance of the Evidence is the standard of evidence to determine if a violation of this policy has occurred. This standard of proof means people in decision-making roles must be convinced by the totality of the available, relevant evidence presented

The provisions of this policy are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the University retains discretion to revise this policy at any time, and for any reason. The University may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

Appendix 3 - Statements on Privacy and Confidentiality

The university is committed to protecting the privacy of all individuals involved in a report of sexual harassment, sexual violence, stalking, or intimate partner violence. In any report made under this policy, every effort is made to protect the privacy interests of all individuals involved in a manner consistent with the need for a careful assessment of the allegation and any necessary steps to eliminate the harassment, prevent its recurrence, and address its effects.

The privacy of the Parties is respected and safeguarded at all times. Privacy and confidentiality have distinct meanings under this policy:

Privacy: Privacy generally means that information related to a report of misconduct is shared with a limited circle of individuals. The use of this information is limited to those university employees who “need to know” in order to assist in the active review, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process. Information is handled consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA).

Confidentiality: Confidentiality means that personally identifying information shared with designated campus or community professionals cannot be revealed to any other individual without express permission of the individual. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others, the conduct involves suspected abuse of a minor under the age of 18, or is otherwise required by law.

