Ivy Tech Sexual Misconduct Policy 2016

Policy Statement

Ivy Tech Community College prohibits discrimination on the basis of sex, gender, or gender identity. Discrimination on the basis of sex, gender, or gender identity is also prohibited by federal laws, including Title VII and Title IX. This policy governs the College’s response to discrimination based on sex, gender, or gender identity and all forms of sexual misconduct (which includes sexual harassment, sexual violence, dating violence, domestic violence, sexual exploitation and stalking (see definitions below). Such behaviors are against the law and are unacceptable behaviors under Ivy Tech Community College policy. These unacceptable behaviors are hereafter referred to as “sexual misconduct.” The College does not tolerate sexual misconduct and it will take action to prevent and address such misconduct. The College has jurisdiction over all Title IX and related complaints involving students, faculty, staff, college service providers, and college guests.

Individuals who have experienced sexual misconduct are strongly urged to promptly report such incidents. Ivy Tech Community College will respond promptly to all reports of sexual misconduct. According to the procedures below, the College will provide a fair and impartial investigation and resolution for complaints and, where appropriate, issue sanctions and remedial measures. The severity of the corrective action, up to and including termination or expulsion of the offender, will depend on the circumstances of the particular case. Any person who is a responsible employee (as defined below), at the College, such as administrators, supervisors, managers or faculty members, and who has received information or has knowledge of sexual misconduct, must make a report to designated College officials or be subject to disciplinary action (see section on Responsible Employees below). Retaliation against anyone who makes a report of sexual misconduct is prohibited by College policy as well as Title IX and other state and federal laws.

Procedures for reporting incidents of sexual misconduct, and investigating and adjudicating sexual misconduct complaints are part of this policy and are included or linked below.
Sexual Harassment

Sexual harassment is unwelcome conduct or behavior of a sexual nature. Sexual harassment includes sexual violence (see definition). Both violent and non-violent sexual harassment is prohibited. Sexual harassment can include unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal, written, electronic (e.g. by e-mail, text, social media, etc.), or physical conduct of a sexual nature. Sexual harassment occurs when:

1. submission to or rejection of such conduct is made either explicitly or implicitly a condition of an individual’s academic standing or is used as the basis for academic evaluation, grades, or advancement (quid pro quo), or when

2. such conduct is sufficiently severe, pervasive or persistent to limit or deny a person’s ability to participate in or benefit from the College’s educational programs, creating a hostile environment.

Sex/Gender-Based Discrimination

Sex/Gender-based discrimination is verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person’s ability to participate in or benefit from the College’s education or work programs or activities. For example, persistent disparagement of a person based on a perceived lack of stereotypical masculinity or femininity or exclusion from an activity based on sexual orientation or gender identity is prohibited under this policy.

On or Off Campus Behaviors

This policy applies to sexual misconduct that occurs on campus or in the context of any College program or activity, including off-campus conduct in the context of a College program or activity. This policy also applies to sexual misconduct that has a continuing adverse effect or creates a hostile environment on campus or in any College program or activity whether on or off campus. Therefore, sexual misconduct directed by one member of the College community or a college service provider, against another member of the College community occurring off campus and at a non-College related event or activity is prohibited by this policy, as it would cause a continuing adverse effect or hostile environment on campus. Prohibited conduct that takes place off campus includes, but is not limited to, sexual misconduct in connection with an academic course assignment, internship, practicum, field trip, study abroad program, student teaching, research, or other College activity; or sexual misconduct in connection with any activity sponsored, conducted, or authorized by the College or by a student organization; or
where the sexual misconduct undermines the security of the College community or the integrity of the educational process or poses a serious threat to self or others. Where a student organization has contributed to or created a hostile environment in connection with an incident of sexual misconduct, the student organization may also be subject to discipline and appropriate sanctions.

**Intellectual Inquiry and Debate**

In determining whether sexual misconduct has occurred and what type of remedy, if any, might be appropriate in a given case, the College will also consider the fact that free intellectual inquiry, debate, and constructive dialogue are vital to the College’s academic mission and must be protected even when the views expressed are unpopular or controversial. Accordingly, any form of speech or conduct that is protected by state or federal law, including the First Amendment, is not subject to this policy.

The definition of sexual harassment in this policy is meant neither to proscribe nor to inhibit discussions, in or out of the classroom, of complex, controversial, or sensitive matters, including matters involving sex, gender, sexuality, sexual orientation, sexual behavior, or gender identity or expression, when in the judgment of a reasonable person they arise for legitimate instructional purposes. This includes intellectual inquiry, debate, and dialogue on issues of sexual misconduct. The mere expression of views, words, symbols or thoughts that some people find offensive, does not create a hostile environment.

**Awareness, Education, Prevention and Training Programs**

Ivy Tech shall, consistent with appropriate local, state and federal rules, regulations and law, provide educational programming for students, employees and other members of the College community to promote awareness of the problems caused by sexual misconduct and to help prevent and attempt to reduce the risk of the occurrence of sexual misconduct. Educational programs will include information on how and where to report incidents of sexual misconduct, resources available, as well as safe and positive options for bystander intervention that may be carried out by individuals to prevent harm or intervene when there is a risk of sexual misconduct being inflicted on another person.

Employee training shall be provided to those involved in reporting, receiving reports, investigating, adjudicating and otherwise responding to charges of sexual misconduct at the College. Certain training may be mandated by applicable federal or state law. The appropriate training will be tailored to the audience, and include reporting and response obligations, available resources, as well as information about how to prevent and identify sexual misconduct. Individuals specifically involved in implementing the College’s sexual misconduct procedures will be trained on issues and applicable policies and procedures relating to sexual misconduct, as well as how to conduct the investigation and hearing process in a manner that protects the safety of all parties and promotes fairness and accountability.
Resource Information

The College will disseminate campus-specific information regarding available on and off campus resources and other relevant materials such as campus specific brochures. Resource information will include, but is not limited to:

- counseling resources;
- medical resources;
- How to report an incident of sexual misconduct to the College and local law enforcement;
- Available student advocates;
- Other community resources such as legal assistance and obtaining protective orders.

Duties of College Title IX Coordinator and Campus Title IX Coordinators

Ivy Tech Community College's Title IX Coordinator will be informed of all reports of sexual misconduct, and will oversee the College’s review, investigation, and resolution of those reports to ensure the College’s compliance with Title IX, and related laws, and the effective implementation of this policy. The Title IX Coordinator will have adequate training on what constitutes sexual harassment, including sexual violence.

The Title IX Coordinator is:

1. Responsible for oversight of the investigation and resolution of all reports of sexual harassment, sexual violence, stalking, and domestic and dating violence involving students, staff, and faculty;

2. Knowledgeable and trained in College policies and procedures and relevant state and federal laws;

3. Available to advise any individual, including a complainant, a respondent, or a third party, about the courses of action available at the College, both informally and formally, and in the community;

4. Available to provide assistance to any College employee regarding how to respond appropriately to a report of sexual misconduct;

5. Responsible for monitoring full compliance with all procedural requirements, record-keeping, and timeframes outlined in this policy;

6. Responsible for overseeing training, prevention, and education efforts, and any reviews of climate and culture; and
7. Responsible for providing the College aggregate, non-identifying information in regard to reports, investigations, resolutions, and sanctions.

Each campus of the College maintains a Campus Title IX Coordinator. These individuals are the Chief Student Affairs officer or designee. These individuals will be responsible for tracking and reporting to the College Title IX Coordinator all incidents of sexual misconduct in their respective regions. Campus Title IX Coordinators will work with the College Title IX Coordinator to ensure that the appropriate designated College officials are involved in investigating and adjudicating complaints according to this Sexual Misconduct Policy and other applicable College policies and procedures. Campus Title IX Coordinators will work with the College Title IX Coordinator to ensure that adequate education, training, sanctions, and appropriate resources are available and provided in their respective regions.

Reason for Policy

Ivy Tech Community College is committed to the safety and well-being of all members of the College community including students and employees. Ivy Tech Community College recognizes that sexual misconduct may result in grave and often long-lasting effects on those involved and is committed to timely investigation of allegations of sexual misconduct, use of interim measures when appropriate, and appropriate actions and consequences following investigations. Ivy Tech Community College is committed to compliance with state and federal laws regarding sexual misconduct, required reporting to state and federal agencies, and to working with law enforcement officials and agencies. The College is also committed to using its resources in research and education to improve preventative programs.

Procedures

Immediate Assistance

In an emergency or if you see a crime in progress, always call 911 immediately.

Each campus of the College shall provide, publicize and keep updated, information for immediate assistance, including contact information for emergency and medical assistance, counseling services, as well as local law enforcement. Information about ways to report anonymously will also be provided.

The College and each campus will provide written information to anyone who has experienced sexual misconduct, about:

- College procedures dealing with sexual misconduct, including to whom and how the alleged offense should be reported, as well as their rights and options;
- The importance of preserving evidence that may assist in proving the alleged criminal offense occurred, as well as how to preserve such evidence;
• Options about the involvement of law enforcement;
• Available campus and community resources.

**Reporting an Incident**

Anyone wishing to report an incident of sexual misconduct can do so using the following methods:

• Reporting directly to campus security or local law enforcement if the incident involves sexual violence;
• Reporting directly to the Chief Student Affairs Officer
• Reporting directly to the Campus Title IX Coordinator for the campus; or
• Reporting directly to the College Title IX Coordinator
• Reporting directly to the Campus Security Authority (CSA) as defined by each region.
• Reporting through the on-line incident report in MyIvy, which allows for self-identification or anonymous filing

All reports of sexual misconduct that are not initially reported to the Campus Title IX Coordinator for the respective region, will be shared with the Campus Title IX Coordinator as well as the College Title IX Coordinator in a timely manner. In addition, if a report of sexual misconduct is not made initially to the Ivy Tech Community College Security, and the information indicates it may be a crime reportable under the Clery Act, non-identifying information regarding the date, time, location and nature of the crime will be shared for purposes of complying with the Clery Act. If the College and/or Campus Title IX Coordinator(s) receive a report that indicates law enforcement should be informed and involved due to the potential threat to health and safety of an individual or the College community, they may also share the identifying information needed for appropriate response by law enforcement.

**Sexual Misconduct Involving a Child/Minor**

Sexual misconduct involving a child/minor (anyone under 18 years of age) must be reported. Indiana state law requires that any person who has reason to believe that a child/minor is a victim of child abuse or neglect (including sexual misconduct) has an affirmative duty to make an oral report to Child Protective Services (CPS) 1-800-800-5556 or to their local law enforcement agency. Incidents must also be reported to a CSA. Failure to report may result in criminal charges.

**Amnesty**
The College strongly encourages students to report instances of sexual misconduct. Therefore, students who report an incident of sexual misconduct will not be disciplined by the College for any violations of the Code of Students Rights and Responsibilities related to their drug and/or alcohol consumption in connection with the reported incident of sexual misconduct.

Students are also afforded immunity against certain charges for alcohol related crimes under Indiana’s Lifeline Law in connection with a report of a medical emergency, so long as they cooperate with law enforcement at the scene. (See IC 7.1-5-1-6.5)

**Retaliation**

Protections against retaliation are critical to reducing the prevalence of sexual misconduct within the College community. Retaliation against anyone who has reported an incident of sexual misconduct, provided information, or participated in procedures or an investigation into a report of sexual misconduct, is prohibited by the College and will not be tolerated. Acts of retaliation include intimidation, threats, and/or harassment, whether physical or communicated verbally or via written communication (including the use of e-mail, texts and social media), as well as adverse changes in work or academic environments or other adverse actions or threats. The College will take steps to prevent retaliation, and will impose sanctions on anyone or any group who is found to have engaged in retaliation in violation of this policy. Concerns about potential retaliation in connection with a report of sexual misconduct should be reported to a Campus Title IX Coordinator or the College Title IX Coordinator.

**The Role of a Responsible Employee to Report and Respond to Sexual Misconduct**

The College encourages anyone who has experienced sexual misconduct to talk to someone about what happened, to ensure they are informed of the available support, resources and applicable complaint processes and to allow the College to respond appropriately. The information below explains the obligations of certain employees to report information brought to their attention regarding incidents of sexual misconduct to the appropriate College officials.

*Responsible Employees*

Pursuant to Title IX, a “responsible employee” includes those College employees who have the authority to redress sexual misconduct, who have the duty to report incidents of sexual misconduct, or who a student could reasonably believe has this authority or duty.

When an individual tells a responsible employee about an incident of sexual misconduct, that individual has the right to expect the College to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. Therefore, Responsible Employees have an obligation to report the information as explained below, as well as assist the individual in seeking medical attention and emergency response where appropriate, in understanding available resources on and off campus and in understanding their options in
making a criminal complaint as well as a complaint through the College’s procedures set forth in this policy.

If the incident is an emergency or poses a serious and continuing threat, the responsible employee should first call 911. In all situations, a responsible employee must report to the Title IX Coordinator or the Campus Title IX Coordinator for their regions. The responsible employee must report all relevant details of the alleged sexual misconduct that are known or reasonably known to them, or that have been shared with them, that the College will need to be aware of to determine what happened. This includes the names of the individual(s) affected and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. A responsible employee should not discuss or share any information related to the incident, including the individual’s name, with anyone other than the Campus and College Title IX Coordinators, and those directly involved in handling the College’s response, unless they received the individual’s prior consent or in the event of an emergency or existing threat to anyone’s health and safety.

Responsible employees should make every effort to ensure that all individuals, including students, understand that the employee is legally obligated to make a report to the College Title IX Coordinator or a Campus Title IX Coordinator in the event they are made aware of an incident of sexual misconduct.

In some instances, an individual who has experienced sexual misconduct may express a desire that the College not investigate the incident and/or not inform the individual accused. In those situations, the responsible employee must still report the information known to them, as required, but should also explain to the individual that the College will strongly consider the request, and will generally honor the request except in limited circumstances where the safety and well-being of the individual or the community outweighs the reasons for the request. (See Requests for No-College Action below.) In reporting the details of the incident to the Title IX Coordinator, the responsible employee should ensure they inform the Coordinator of the individual’s request. Responsible employees who are also Campus Security Authorities (CSA) under the Clery Act, will satisfy their CSA reporting obligation by reporting incidents of sexual misconduct to the Campus Title IX Coordinator for their campus or the College Title IX Coordinator, who will ensure that the appropriate non-identifiable information is conveyed for Clery purposes.

If an individual has not yet shared information with a Responsible Employee regarding an incident of sexual misconduct, and the individual wishes to maintain anonymity, the Responsible Employee may refer them to an off-campus resource. However, once a Responsible Employee has knowledge of an incident of sexual misconduct, they must report according to this policy.

**Role of Law Enforcement**
Any individual who has experienced sexual violence is encouraged to contact local law enforcement.

Individuals with a possible criminal case who have not made their initial compliant via the police will be provided with information about how to file a complaint with law enforcement. Individuals may also request assistance from campus authorities in notifying law enforcement. Individuals may decide not to notify law enforcement authorities, and proceed with a College investigation.

A College investigation under the procedures outlined in this policy may be initiated and/or proceed simultaneously with a criminal case. The College will cooperate with law enforcement, and if requested by law enforcement, defer its fact gathering for a brief period during the evidence gathering stage of a criminal investigation. However, the College will not consider its investigation on hold pending a criminal prosecution or investigation and will continue to communicate with individuals and address the need for any interim measures regarding safety and well-being, and resume its own fact gathering as soon as permitted.

The determination by law enforcement whether or not to prosecute a respondent or the outcome of a criminal proceeding does not determine whether a violation of College policy has occurred. Records of College proceedings may be subpoenaed for a criminal prosecution.

**Confidentiality and Privacy**

The College is committed to safeguarding the confidentiality and privacy of the parties in a manner consistent with the objective to effectively investigate and prevent incidents of sexual misconduct. In all cases, the College will share the parties’ information and details of the allegation only with College officials, law enforcement personnel, and other individuals who have a legitimate administrative or legal reason to be so informed. Records will not be disclosed outside the College unless required by law or subpoena.

All individuals with knowledge of an alleged incident of sexual misconduct are expected to safeguard the privacy of those involved and should refrain from discussing the incident with anyone other than appropriate College officials and law enforcement.

*Requests for No-College Action*

If an individual discloses they have experienced an incident of sexual misconduct to a responsible employee, but requests that the College not investigate the particular incident, requests that no disciplinary action be taken, requests that the alleged perpetrator not be notified, or makes any similar request, the College will consider such request(s), and in general work to honor them. The responsible employee must still report the information to the designated officials, but also convey the individual’s desired request(s). The College will weigh such request against its obligation to provide a safe, non-discriminatory environment for all students, including the individual who experienced the sexual misconduct. If the College determines that it
is able to honor the individual’s request(s), the individual should understand that the College’s ability to meaningfully investigate the incident and/or respond appropriately may be limited.

The College has designated the following individual(s) to evaluate an individual’s request for no or limited action by the College in connection with a report of sexual misconduct: the Title IX and Campus Title IX Coordinator(s), in consultation with relevant administrators on each campus and College legal counsel, where appropriate.

**Investigation**

Upon receipt of a report of sexual misconduct, the College will respond promptly to investigate and provide interim measures where appropriate. Procedures after a report of sexual misconduct will follow the steps listed below depending on whether the respondent is a student or employee. Employees who are students may be subject to procedures for students or employees, or both, at the sole option of the College. Investigation of the alleged misconduct shall be conducted by the College Title IX Coordinator, a Campus Title IX Coordinator or another appropriate designee. Information for the investigation may be provided by the parties, witnesses identified by any party, or the College. The College may also consider information relating to prior complaints of misconduct known to the College. Information related to prior sexual history of the parties will be prohibited, except in very limited circumstances regarding prior sexual history between the parties where such information may be relevant to the issue of consent. However, consent will not be assumed based solely on evidence of any prior sexual history.

If the person identified as having engaged in sexual misconduct is not a student or employee of the College, the College shall take all appropriate measures to determine information regarding the individual, what occurred, whether another entity needs to be contacted to join in or assume an investigation (e.g. another institution of higher education), and to provide assistance in notifying the proper law enforcement authorities. The College will also provide interim and remedial measures, to the extent possible, to protect the reporting individual and eliminate any hostile environment. If upon investigation, it is determined that an individual is responsible for sexual misconduct and has a continuing relationship with the College, the College shall consider appropriate sanctions to prevent further harm and eliminate the hostile environment.

In addition, the College reserves the right to investigate circumstances that may involve sexual misconduct in situations where no complaint, formal or informal, has been filed.

**Interim and Remedial Measures**

Procedures for incidents involving students and employees will include providing appropriate and necessary interim measures pending the result of an investigation and remedial measures that will be long-term and continuous. Both interim and remedial measures are available to an individual who has experienced sexual misconduct, regardless of whether they move forward with their complaint. Interim and remedial measures may vary depending on the individual’s
campus, the individual’s needs and the specific circumstances. These measures could include no contact orders; assistance in changing academic class or scheduling situations, and; assistance in obtaining protective orders. Interim measures may also include suspension of the respondent pending completion of the investigation.

**Summary of Rights of the Complainant and Respondent in Sexual Misconduct Procedures**

The rights of the parties to a sexual misconduct proceeding include:

- To be fully informed of College policies and procedures as well as the nature and extent of all alleged violations contained within the allegation.
- To be treated with respect by College officials.
- To have an advisor present during a College sexual misconduct proceeding, investigation meeting, or related meeting. The role of the advisor will be limited to being present only; they will not be allowed to speak during any College sexual misconduct proceeding, investigation meeting, or related meeting.
- Adequate, reliable, and impartial investigation and appropriate resolution of all reports of sexual misconduct.
- To be informed by the College of options to notify proper law enforcement authorities, and the option to be assisted by campus authorities in notifying proper law enforcement, if the individual chooses.
- To be notified of available counseling, mental health, academic, legal and other support services in the community.
- To have allegations investigated by individuals who are properly trained to investigate and resolve allegations of sexual misconduct.
- Equitable participation in the investigation and disciplinary process, including the opportunity to identify witnesses and other appropriate evidence.
- To the use of the preponderance of the evidence standard (more likely than not) in determining responsibility.
- The right to appeal as set forth in these procedures.

**Definitions**

For purposes of addressing complaints of sexual misconduct against or by College students and employees, the following uniform definitions shall be used by the College:
Campus security authority (CSA) –

A term used in the Clery Act to describe someone who has significant responsibility for student and campus activities. The Clery Act (34 CFR 668.46) defines a CSA as:

- A campus police department or a campus security department of an institution.
- Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department such as an individual who is responsible for monitoring entrance into institutional property.
- Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.
- An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student discipline, and campus judicial proceedings.

Pastoral and professional counselors are not considered a campus security authority when acting in their roles as a pastoral or professional counselor.

Clery Act – refers to the The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, (20 U.S.C. section 1092(f)), a federal law that requires institutions to collect and publish statistics for certain crimes reported to have occurred associated with Ivy Tech. “Clery Geography” (i.e., occurring on campus, on public property within or immediately adjacent to campus, and on other non-campus Ivy Tech property), for the purpose of informing current and prospective students and employees. Ivy Tech publishes an Annual Security Report under the Clery Act, which contains these crime statistics as well as campus specific information on resources, campus emergency responses, safety and security policies, and disciplinary procedures. These crime statistics include, but are not limited to, domestic violence, dating violence, sexual assault, and stalking. Clery also requires “timely warnings” be issued to the campus community for crimes occurring on Clery Geography that are considered a serious or continuing threat to students or employees. Under Clery, any good-faith report of a crime occurring on Clery Geography must be included in the statistical data.

College - means Ivy Tech Community College.

Complainant - refers to a member of the College community who brings a complaint of sexual misconduct under this policy.
**Consent** – is expressed through affirmative, voluntary words or actions mutually understandable to all parties involved:

- Consent is given for a specific sexual act at a specific time and can be withdrawn at any time.
- Consent cannot be coerced or compelled by duress, threat, or force.
- Consent cannot be given by someone who, for any reason, cannot understand the facts, nature, extent, or implications of the sexual situation occurring, including, but not limited to, those who are under the legal age of consent, asleep, unconscious, mentally or physically impaired through the effects of drugs or alcohol, or mentally impaired due to an intellectual or other disability.
- Consent cannot be assumed based on silence, the absence of “no” or “stop”, the existence of a prior or current relationship, or prior sexual activity

**Dating violence** - violence committed by any person who is or has been in a relationship of a romantic or intimate nature. The existence of such a relationship will be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interactions between the persons involved in the relationship. (based on the Violence Against Women Act definition 42 U.S.C. 13925(a))

**Domestic violence** - includes conduct that is an element of an offense under Indiana Code IC 35-42 (which includes crimes against a person) or a threat to commit an act described in IC 35-42 by a person against a person who:

1. is or was a spouse of;
2. is or was living as if a spouse of;
3. has a child in common with;
4. is a minor subject to the control of; or
5. is an incapacitated individual under the guardianship or otherwise subject to the control of the other person regardless of whether the act or threat has been reported to a law enforcement agency or results in a criminal prosecution.(IC 5-26.5-1-3)

**Employee** – this term shall be synonymous with and include all employees working for Ivy Tech Community College – academic employees, including faculty, and staff, including full-time, part-time, and temporary (hourly) employees at any College campus or working on behalf of the College.
**Finding of responsibility** - means that it is more likely than not that the Respondent has committed one or more acts of sexual misconduct. A preponderance of the evidence standard must be used when determining responsibility for sexual misconduct.

**Force or threat of force** - (a) the use of physical force which overcomes the person’s resistance or (b) the threat of physical force, express or implied, against the person or a third party that places the person in fear of death or in fear of serious personal injury to the person or a third party where the person reasonably believes that the actor has the present or future ability to execute the threat.

**Hostile environment** - when conduct is sufficiently severe, pervasive or persistent to limit or deny a person’s ability to participate in or benefit from the College’s educational programs or affects employment.

**Ivy Tech Community College Property** – buildings, grounds, and land that are owned by Ivy Tech Community College or controlled by Ivy Tech Community College via leases or other formal contractual arrangements to house on-going College operations.

**Interim and Remedial Measures** - procedures for incidents involving students and employees will include providing appropriate and necessary interim measures pending the result of an investigation and remedial measures that will be long-term and continuous. Both interim and remedial measures are available to an individual who has experienced sexual misconduct, regardless of whether they move forward with their complaint. Interim and remedial measures may vary depending on the individual’s campus, the individual’s needs and the specific circumstances. These measures could include no contact orders, assistance in changing academic, living, transportation, and/or work situations; counseling services; victim advocacy services; and assistance in obtaining protective orders. Interim measures may also include suspension of the respondent pending completion of the investigation.

**Investigator** - a College official authorized to investigate reports of sexual misconduct under the procedures outlined in this policy.

**Judicial Conference** – a meeting conducted by the Chief Student Affairs Officer or designee, with the accused (respondent) student during which time the accused student is given an opportunity to respond to allegations against them, or to admit to the charges.

**Notice** - To the extent possible, the parties shall be provided simultaneous written notice of the outcome of the sexual misconduct proceeding, the appeals process, and the appeal decision, if applicable. Written notice may be provided electronically through Ivy Tech Community College email accounts.

**Member of the College community** - includes any individual who is a student, staff, faculty member, College official, or any other individual employed by, or acting on behalf of, the
College. An individual’s status in a particular situation shall be determined by the Investigator or Title IX Coordinator.

**Rape** - 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. (FBI definition.)

**Respondent** - is any member of the College community alleged to have engaged in sexual misconduct as defined in this policy.

**Responsible Employee** – Pursuant to Title IX, a “responsible employee” includes those College employees who have the authority to redress sexual misconduct, who have the duty to report incidents of sexual misconduct, or who a student could reasonably believe has this authority or duty.

The College’s responsible employees include, but are not limited to:

- All instructors, including full-time professors, adjuncts, and any others who offer instruction (whether in-person or online) or office hours to students;
- All advisors;
- All student affairs administrators;
- All employees who work in offices that interface with students; and
- All supervisors and College officials.

**Retaliation** – Retaliation, for the purpose of this policy, is defined as any act taken against a party in response to that party’s reporting or making a claim of sexual misconduct. Such acts are further understood to have been taken without the consent of the party and which can reasonably be interpreted as causing a negative impact on the party’s academic standing, eligibility or ability to enjoy the benefits offered by the College, the party’s reputation or any mental or physical pain or suffering. Acts of retaliation include intimidation, threats, and/or harassment, whether physical or communicated verbally or via written communication (including the use of e-mail, texts and social media), as well as adverse changes in work or academic environments or other adverse actions or threats. The College will take steps to prevent retaliation, and will impose sanctions on anyone or any group who is found to have engaged in retaliation in violation of this policy. Concerns about potential retaliation in connection with a report of sexual misconduct should be reported to a Campus Title IX Coordinator or the College Title IX Coordinator.

**Sexual assault** - is committed when an individual subjects another person to sexual penetration (see below) (i) without the consent of the person, (ii) when the individual knew or should have known that the other person was mentally or physically incapable of resisting or appreciating the
nature of the other person’s own conduct, (iii) or when the other person is less than sixteen years of age.

Sexual assault is also committed when an individual touches another person for the purpose of sexual arousal or gratification of either party (a) without consent of the person, or (b) when the actor knew or should have known that the person was physically or mentally incapable of resisting or appraising the nature of the person’s own conduct, (iii) or when the person is less than sixteen years of age.

**Sexual exploitation** - manner that extends the bounds of consensual sexual activity with or without the knowledge of the other individual for any purpose, including sexual gratification, financial gain, personal benefit, or any other non-legitimate purpose. Examples of sexual exploitation include but are not limited to:

- Non-consensual streaming, audio- or video-recording, photographing, or transmitting intimate or sexual utterances, sounds, or images without consent of all parties involved;
- Allowing others to view sexual acts (whether in person or via a video camera or other recording device) without the consent of all parties involved;
- Engaging in any form of voyeurism (e.g., “peeping”);
-Prostituting another individual;
- Compelling another individual to touch his or her own or another person’s (third party) intimate parts without consent;
- Knowingly exposing another individual to a sexually transmitted disease or virus without that individual’s knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

**Sexual harassment** - Sexual harassment is unwelcome conduct or behavior of a sexual nature. Sexual harassment includes sexual violence (see definition). Both violent and non-violent sexual harassment is prohibited. Sexual harassment can include unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal, written, electronic (e.g. by e-mail, text, social media, etc.), or physical conduct of a sexual nature. Sexual harassment occurs when:

1. submission to or rejection of such conduct is made either explicitly or implicitly a condition of an individual’s employment or academic standing or is used as the basis for employment decisions or for academic evaluation, grades, or advancement (quid pro quo), or when
2. such conduct is sufficiently severe, pervasive or persistent to limit or deny a person’s ability to participate in or benefit from the College’s educational programs or affects employment, creating a hostile environment.

**Sexual misconduct** - includes sexual harassment, sexual violence, dating violence, domestic violence, sexual exploitation and stalking. For purposes of this policy, sex or gender based discrimination is considered sexual misconduct.

**Sexual penetration** - means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse or any intrusion, however slight, of any part of the actor’s or person’s body or any object manipulated by the actor into the genital or anal openings of the person’s body which can be reasonably construed as being for nonmedical or non-health purposes. Sexual penetration does not require emission of semen.

**Sexual violence** - refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to use of drugs or alcohol, or due to an intellectual or other disability. Sexual violence includes rape and sexual assault.

**Stalking** - 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 victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity. (IC 35-45-10-1)

**Student** - includes all individuals taking courses at the College, whether full-time or part-time. Individuals who withdraw after having allegedly committed sexual misconduct, or who are not officially enrolled for a particular term, but who have an expected continued academic relationship with the College, may be considered “students.”

**Chief Student Affairs Officer** - individuals authorized by the College and the regional Chancellor or Provost to be responsible for the administration of the Student Code of Rights and Responsibilities on a campus, and in certain circumstances includes his or her designee.

**Title VII** - refers to Title VII of the Civil Rights Act of 1964 (42 U.S.C. section 2000e), which prohibits employment discrimination based on race, color, religion, sex and national origin.

**Title IX** - refers to the portion of the federal Education Amendments of 1972 (20 U.S.C. section 1681-1688), which provides in part that “no person in the United States shall, on the basis of gender, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance”.

**Title IX Coordinator** - the individual designated by the College to coordinate College’s compliance with Title IX and respond to allegations of sexual misconduct by members of the College community. In some circumstances this can include his or her designee.
Due Process

The College, while mindful of its obligations under Title IX and other local, state and federal rules, regulations and laws to prevent, investigate and when appropriate punish sexual misconduct, is also mindful of the right all students, especially those accused of wrongdoing, to due process. The following provisions detail the investigative process and the appeal process available for complaints involving sexual misconduct. The standard of proof for sexual misconduct cases is different from the standard used for non-sexual misconduct matters. The standard for sexual misconduct matters is the preponderance of evidence (more likely than not) standard. Absent special circumstances, the investigation and determination of responsibility in these matters will generally be concluded within 60 days of the report.

1. Investigation: Upon receipt of a report of sexual misconduct the College will take immediate and appropriate steps to investigate the incident. If the complainant requests confidentiality or asks that the complaint not be pursued, the College will take all reasonable steps to investigate and respond to the complaint consistent with those requests, keeping in mind that the College must weigh such requests against its obligation to provide a safe, non-discriminatory environment for all students, including the complainant.

An essential element of the investigatory process is the judicial conference. The accused student must meet with the Chief Student Affairs Officer or designee. During the meeting, the student may choose to accept responsibility and the sanction determined by the Chief Student Affairs Officer for violating the college’s policies regarding personal misconduct or deny responsibility. In the event the accused student accepts such responsibility, the student waives the right to appeal.

a. Failure to meet with the Chief Student Affairs Officer of designee within the requested time frame may be considered a violation of college policy regarding compliance with the directions of a college official. Additionally, the Chief Student Affairs Officer or designee may proceed in the student’s absence should he/she fail to attend or schedule an appointment during the timeframe specified. In the event a conference is held in absence of the student, following the student’s refusal to attend, he/she forfeits any rights to an appeal. The investigation may include, but is not limited to, interviews with the complainant, the respondent, and other witnesses identified as having information relevant to the allegations made, as well as the examination of written statements by the parties, relevant documents, and other relevant information. Information for the investigation may be provided by complainants, respondents, witnesses identified by any party, or the College. Any person believed to have
information relevant to an investigation may be contacted and requested to make an appointment to discuss the matter.

b. Failure to comply with a request to make and/or keep an appointment relevant to an investigation may result in a disciplinary hold being placed on a student’s account and/or the initiation of charges for student conduct failure to comply.

c. All members of the College are expected to cooperate with the investigative process. Failure to do so may result in disciplinary measures pursuant to applicable College policy and procedure.

d. Upon completion of the investigation, the College will provide notice of all relevant charges and notice of next steps of the sexual misconduct process.

2. Alternative Resolution Options:
   a. In appropriate cases, the College may pursue alternative resolution with the consent of all parties at any point in the investigation process. Alternative resolution options may include, but are not limited to, mediation, development action plans, voluntary resolutions, and/or appropriate sanctions.
   b. Under any alternative resolution, the complainant will not be required to resolve the problem directly with the respondent, unless desired by the complainant. All parties must be notified of the right to end the alternative resolution process at any time, and begin the formal process. Mediation may not be used in cases involving any sexual violence. The Investigator shall document the outcome of any alternative resolution and share with the parties.

3. Acceptance of Responsibility Option:
   a. In cases where facts are generally not in dispute, and the respondent expresses a willingness to accept responsibility for all charges in a case the respondent will be offered the opportunity to waive the right to a formal hearing and all related procedural guarantees, and agree to receive a sanction from a designated student affairs conduct officer by whom charges were brought. In such situations, the complainant will be informed of the proposed sanction and given an opportunity to submit a written statement to the conduct officer for consideration in determining appropriate sanctions.
   b. The conduct officer shall consider only the parties’ written statements regarding sanctions, the relevant facts from the investigation, and past conduct history of the respondent (if applicable). In such cases, the right to appeal will be limited to an appeal on the grounds that the sanction is grossly disproportionate to the violation(s) committed, in light of all relevant aggravating and mitigating factors, and in consideration of applicable College guidelines.
4. Denial of Responsibility:

In the event that the respondent denies responsibility or contests the allegations contained in the complaint, the conduct officer, or other party in charge of investigating and determining appropriate sanctions will, upon completion of the investigation and consistent with the preponderance of the evidence standard, and upon continuing consultation with the College’s Title IX Coordinator, make a determination of responsibility. If the facts determined in the investigation warrant a finding of responsibility on the part of the respondent, a sanction will be determined and issued, with a copy to the complainant. In the event that the investigation fails to find responsibility a finding of no responsibility will be issued.

5. Sanctions:

Upon a determination of responsibility any one or a combination of the following sanctions are available. Guidelines for the length of time records are maintained are indicated below. If a student has more than one incident on the file, the incident to be kept on file the longest will determine the length of time all records are kept.

a. **Reprimand and Warning.** A student may be given a reprimand accompanied by a written warning that the student may receive additional sanctions if the student engages in the same misconduct again or commits any other violation of this Code. A Reprimand and Warning will remain a part of a student’s disciplinary record at least until he/she graduates.

b. **Reflective Activity.** A student may be required to complete a reflective activity, such as writing a letter of apology or other written activity, which demonstrates the student’s learning and increased understanding of the college’s expectations regarding behavior.

c. **Administrative Withdrawal.** A student may be administratively withdrawn from any or all courses during the semester in which the violation of college policy occurred. An Administrative Withdrawal will remain a part of a student’s disciplinary record at least until he/she graduates.

d. **Disciplinary Probation.** A student may be placed on disciplinary probation for a specified period of time under conditions specified in writing with a warning that any violation of the conditions or any further acts of misconduct may result in additional disciplinary sanctions, including suspension or expulsion from the college. As a condition of probation, the student may be required to participate in a specific program, such as a counseling program, or to provide a specific service, such as the repair or restoration of any property damaged or taken by the student. A record of any disciplinary probation will remain a part of a student’s disciplinary record for five years after a student graduates.

e. **Restitution.** A student may be required to pay the cost for the replacement or repair of any property damaged by the student. If the student fails to pay the cost or make the repairs, the student may be subjected to additional sanctions,
including suspension or expulsion. A record of any restitution that a student is required to pay will remain a part of a student’s disciplinary record until he/she graduates.

f. Participation in a specific program. A student may be required to participate in a specific program, such as a counseling program, a program designed to stimulate good citizenship within the college community. If the student fails to participate in the program as directed, the student may be subjected to additional sanctions, including suspension or expulsion. The student must provide the college with verification of program completion and, if appropriate, evidence of personal well-being. Verification of program completion must be from a certified agency or appropriately certified health care provider or mental health counselor. A record of participation in any specific program that a student is required to complete will remain a part of a student’s disciplinary record until he/she graduates.

g. Provision of a specific service. A student may be required to provide a specific service, such as the repair or restoration of any property damaged or taken by the student. If the student fails to provide the service as directed, the student may be subjected to additional sanctions, including suspension or expulsion. Completion of a specific service that a student is required to complete will remain a part of a student’s disciplinary record until he/she graduates.

h. Suspension. A student may be prohibited from participating in all aspects of college life for a specified period of time (some portion of which may be deferred at the discretion of the Chief Student Affairs Officer or designee). When a student is suspended from the college, the suspension applies to all campuses of the college. Chief Student Affairs Officer or designee is required to notify the Office of the Vice President for Student Experience (Student Affairs). A record of the term of suspension will remain a permanent part of the student’s disciplinary record.

i. Expulsion. A student may be dismissed from the college permanently. When a student is expelled from the college, the expulsion applies to all campuses of the college. The Chief Student Affairs Officer or designee is required to notify the Office of the Vice President for Student Experience (Student Affairs). The student may not petition for readmission to the college. A record of expulsion will remain a permanent part of the student’s disciplinary record.

6. Appealing the Finding of Sexual Misconduct:

   a. The student may request an appeal of the finding with fourteen (14) calendar days of receiving the notice of a finding of personal misconduct.

   b. The appeal must be submitted in writing to the Chief Student Affairs Officer of designee.
If an appeal is filed, the Vice Chancellor for Student Affairs or designee convenes an Appeals Board. The Appeals Board is composed of two faculty members, two staff, and two students appointed by the Chief Student Affairs Officers or designee. If an appeal is filed the College Grievance Coordinator convenes the Appeal Board.

d. The board holds a hearing on the issue(s) raised by the student. The appealing student will then be given an opportunity to directly confront the witnesses against him, present any pertinent evidence, although evidence of past sexual practices of, or past sexual relations with the complainant will be limited as noted above. Each part, as noted above, will also be entitled to have an advisor present whose participation is limited as noted above. If the appealing student appealed the finding that sexual misconduct occurred, the board determines whether a preponderance of the evidence supports the finding of misconduct. If the board concludes that the evidence does not support a finding of misconduct, the board shall recommend to the Chancellor that the sanctions be lifted and that the student’s records be expunged. If the board finds that sexual misconduct occurred, and the student has appealed the sanction imposed, and not the finding of responsibility, the board shall recommend to the Chancellor to uphold or reduce that sanction.

e. The board issues a written decision within fourteen (14) calendar days after the appeals hearing ends. The decision sets out the board’s recommendations to the Chancellor and the findings of fact and reasoning supporting those conclusions. The Chancellor’s decisions are final and any college sanction becomes effective when the Chancellor issues his/her decision. The presiding officer of the Appeals Board sends notice of the Chancellor’s decision to the complainant and respondent students, the College’s Title IX coordinator and the Chief Student Affairs Officer of designee.

7. Limited Procedural Appeal to the Vice President for Student Experience (Student Affairs):

   a. A student may not appeal the Appeal Boards factual conclusions as to whether misconduct occurred, or the propriety of the sanction imposed. If, however, the student believes that a procedural error occurred at the Appeal Board hearing that was serious enough to prevent the board’s full and fair consideration of a misconduct finding or sanction, then he/she may file a written request for review with the Office of the Vice President for Student Experience (Student Affairs). The student has fourteen (14) calendar days from the date he/she receives the recommendation of the Appeal Board to file the request for review.
b. The Vice President for Student Experience (Student Affairs) reviews the record. If the record indicates that a serious procedural error occurred earlier in the proceedings that prevented the appeal board’s full and fair consideration of a misconduct finding or sanction, the Vice President for Student Experience (Student Affairs) will send the matter back to the Appeals Board for further proceedings to correct the error. The Vice President for Student Experience (Student Affairs) may appoint an advisor to assist the Appeals Board.

c. If the Vice President for Student Experience (Student Affairs) concludes that no serious procedural error occurred within the appeals proceedings that prevented the appeal board’s full and fair consideration of the misconduct finding or sanction, the Vice President for Student Experience (Student Affairs) denies the request for review. The finding of misconduct and sanction imposed then take effect.