

SEXUAL MISCONDUCT POLICY

Section 1: Statement of Purpose

Illinois Wesleyan University (“University” or “IWU”) is committed to creating, fostering, and maintaining an educational, employment, business, and campus environment that is free of discrimination based on sex, gender, and all forms of Sexual Misconduct (as defined in Appendix A along with all other capitalized terms). This document sets forth Illinois Wesleyan University’s policy regarding Sexual Misconduct (the “Policy”) in compliance with the provisions of Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the 2013 Clery Amendments, the Illinois Human Rights Act, and the Illinois Preventing Sexual Violence in Higher Education Act.

Section 2: Prohibition of Sexual Misconduct

IWU prohibits all acts of Sexual Misconduct and IWU does not tolerate discrimination on the basis of sex or gender in its educational programs and activities, including employment and admission. IWU is dedicated to prohibiting such conduct in all aspects of university life consistent with the University’s Mission Statement, Vision Statement and Strategic Plan, as well as all applicable State and Federal laws. Complaints of Sexual Misconduct will be handled under this Policy.

Section 3: Title IX Coordinator / Deputy Coordinators

The Title IX Coordinator and Deputy Coordinators are:

Cynthia Lotz Director of HR & Title IX Coordinator Email: clotz@iwu.edu 309-556-3536 Holmes Hall 206	Rebecca Roesner Associate Provost and Deputy Coordinator Email: roesner@iwu.edu 309-556-3667 Holmes Hall 211A
Kevin Carey Dean of Students for Campus Life Email: kcarey@iwu.edu 309-556-3179 Holmes Hall 103A	

Questions, concerns, or complaints about the Title IX Coordinator may be made to the President of IWU at president@iwu.edu.

Section 4: Reporting Sexual Misconduct

- A. Counseling Centered Support: Students may seek counseling or confidential support from IWU counselors, medical staff at Arnold Health Services, or from the University Chaplain (“Privileged Reportees”). Privileged Reportees will not report complaints to IWU, as these communications are viewed as counseling, not reporting. Students may connect both with Privileged Reportees and still make a report or a Formal Title IX complaint through appropriate reporting structures.
- B. Report of Sexual Misconduct. A report of Sexual Misconduct may be made by the Complainant either verbally or in writing to the Title IX Coordinator or to one of the Title IX Deputy Coordinators. All employees, except those identified in Section 4(A), are required to report Sexual Misconduct as defined and prohibited by this Policy to the Title IX Coordinator or appropriate Title IX Deputy Coordinator, consistent with the requests for confidentiality of the Complainant (See Sections 4(A) and 4(D)). Complainants may request Supportive Measures, make a report only, and/or file a Formal Title IX Complaint.
- C. Filing a Formal Title IX Complaint. A Formal Title IX Complaint may be filed with the Title IX Coordinator or Title IX Deputy Coordinators in person, by mail, or by electronic mail, by using the contact information listed in Section 1. A “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by IWU) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Title IX Complaint. Where the Title IX Coordinator signs a Formal Title IX Complaint, the Title IX Coordinator is not a Complainant or otherwise a party. A Formal Title IX Complaint shall trigger an investigation except as specified herein below. The Formal Title IX Complaint should include the date(s) of the alleged incident(s), the name of the Respondent, and should describe the circumstances of the incident(s), where known.
- D. Confidentiality. IWU shall keep confidential the identity of:
- (i) any individual who has made a report or Formal Title IX Complaint of Sexual Misconduct;
 - (ii) any Complainant;
 - (iii) any individual who has been reported to be the perpetrator of Sexual Misconduct;
 - (iv) any Respondent; and
 - (v) any witness, except as may be permitted by the FERPA statute (20 U.S.C. 1232g), or FERPA regulations (34 C.F.R. part 99), or as required by law, or to carry out the purposes

of the applicable Title IX regulations (34 C.F.R. part 106) and this Policy, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

- E. Response to a Report. With or without a Formal Title IX Complaint, upon a non-privileged report of Sexual Misconduct, either the Title IX Coordinator or Deputy Coordinator(s) will promptly contact the Complainant to discuss the availability of Supportive Measures and the process for filing a Formal Title IX Complaint.
- F. Information Packet. Upon receipt of a non-privileged report of Sexual Misconduct or a Formal Title IX Complaint, IWU shall provide an informational pamphlet to the Complainant. IWU's informational packet is located [here](#) or available from the Title IX Coordinator or Deputy Title IX Coordinators.
- G. Implementation of Supportive Measures. IWU shall treat parties equitably by offering Supportive Measures to the Complainant and by following a grievance process that complies with this Policy before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures as against the Respondent. IWU will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of IWU to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.
- H. Emergency Removal/Interim Suspension: Nothing in this part precludes IWU from removing a student Respondent from IWU's education program or activity (including student employment) on an emergency temporary basis, provided that IWU undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any individual arising from the allegations of Sexual Misconduct justifies emergency temporary removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the emergency temporary removal.
- I. Administrative Leave. IWU reserves the right to place an employee Respondent on paid administrative leave during the pendency of a grievance process.
- J. Amnesty. With respect to any instances of Sexual Misconduct that involve the use of drugs or alcohol, it is the University's position that the use of drugs or alcohol never makes a victim at fault for such Sexual Misconduct. A primary concern of the University is each individual's safety, and as such the University shall grant immunity to any student-victim or student-third party bystander who reports, in good faith, an alleged violation of this Sexual Misconduct Policy, so that the reporting student will not receive a disciplinary sanction by the University for a student conduct violation, such as underage drinking, that is revealed in the course of such a report, unless the University determines that the violation was egregious, including without limitation an action that places the health or safety of any other person at risk.

Section 5: Procedures for Resolving Complaints of Sexual Misconduct

- A. Informal Resolution. Consistent with the requirements of this section, at any time prior to reaching a determination regarding responsibility, IWU may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that IWU:
- i. Provides to the parties a written notice disclosing: (a) the allegations; (b) the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Title IX Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Title IX Complaint; and (c) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
 - ii. Obtains the parties' voluntary, written consent to the informal resolution process; and
 - iii. Does not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in Sexual Misconduct against a student.

Informal resolution shall be available to the parties until the time that the hearing on the Formal Title IX Complaint is scheduled.

IWU does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Title IX Complaints under this Policy. IWU shall not require the parties to participate in an informal resolution process and will not offer an informal resolution process unless a Formal Title IX Complaint is filed.

B. Dismissal of a Formal Title IX Complaint.

- i. *Mandatory Dismissal*. IWU shall dismiss the Formal Title IX Complaint if the conduct alleged in the Formal Title IX Complaint: (a) would not constitute Sexual Misconduct as defined by this Policy, even if proved; (b) did not occur in an IWU education program or activity; or (c) did not occur against a person in the United States.
- ii. *Discretionary Dismissal*. IWU may dismiss the Formal Title IX Complaint or any allegations therein if at any time during the investigation or hearing: (a) a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Title IX Complaint or any allegations therein; (b) the Respondent is no longer enrolled or employed by IWU; or (c) specific circumstances prevent IWU from gathering evidence sufficient to reach a determination as to the Formal Title IX Complaint or allegations therein.

- iii. *Notice of Dismissal.* IWU may dismiss a Formal Title IX Complaint at any time in the process if it becomes known that one of the foregoing reasons for dismissal applies. Upon a dismissal required or permitted under this Section, the Title IX Coordinator will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties. Such a dismissal of a Formal Title IX Complaint does not preclude action under another policy or procedure of IWU.
- C. Consolidation of Formal Title IX Complaints. IWU may consolidate Formal Title IX Complaints as to allegations of Sexual Misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party where the allegations of Sexual Misconduct arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.
- D. Initial Notice of Charge. Upon receipt of a Formal Title IX Complaint, prior to commencing the investigation, IWU shall provide written notice to the parties consistent with the requirements of 34 C.F.R. 106.45 (b)(2).
- E. Amended Notice of Charges. If, in the course of an investigation, IWU decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice of charge, IWU must provide notice of the additional allegations to the parties whose identities are known.
- F. Principles for the Grievance Process. Under this grievance process, IWU shall:
- i. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on IWU and not on the parties, provided that IWU cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless IWU obtains that party’s voluntary, written consent to do so for a grievance process under this Section (if a party is not an “eligible student,” as defined in 34 C.F.R. 99.3, then IWU must obtain the voluntary, written consent of a “parent,” as defined in 34 C.F.R. 99.3).
 - ii. Provide an equal opportunity for the parties to present witnesses, including fact, expert, and character witnesses, and other inculpatory and exculpatory evidence.
 - iii. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

- iv. Provide the parties with the same opportunity to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and to not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding except as set forth below. For purposes of this Policy, the role of the advisor is limited to the following: (a) the advisor may attend any interview or meeting connected with the grievance process that is attended by the Complainant or Respondent the advisor is advising, but said advisor may not actively participate in interviews nor provide testimony or argue on behalf of the party; (b) the advisor may attend the live hearing and may conduct cross-examination of the other party and any witness at the hearing; otherwise the advisor may not actively participate in the hearing; (c) the advisor may not be a fact, expert, or character witness for either the Complainant or Respondent; (d) the advisor may not be the Title IX Coordinator, the Title IX Deputy Coordinator, nor any individual involved with the administration of the grievance process. IWU may establish other restrictions regarding the extent to which an advisor may participate in the grievance process and hearing so long as said additional restrictions apply equally to both Complainant and Respondent.
- v. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with sufficient and mutually agreeable time for the party to prepare and participate.
- vi. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person’s status as a Complainant, Respondent, or witness.
- vii. Require that any individual designated as a Title IX Coordinator/Deputy Coordinator, investigator, decisionmaker, or any person to facilitate an informal resolution process not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. IWU may use internal personnel or external parties in the informal resolution process, the investigative process, or the grievance process, provided that they meet this requirement.
- viii. Include presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- ix. Require the use of the “preponderance of the evidence” standard.
- x. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

xi. Ensure that any individual designated as a Title IX Coordinator/Deputy Coordinator, investigator, or decision-maker(s) understands that IWU is committed to the principles of academic freedom. Vigorous discussion and debate are fundamental to the University, and this Policy is not intended to stifle teaching methods or infringe upon academic freedom. The protections of academic freedom must be carefully considered in all reports of Sexual Misconduct involving faculty. The fact that speech or a particular expression is offensive is not, standing alone, a legally sufficient basis to establish a violation of this Policy. The academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material.

G. Extensions of Time. The Title IX Coordinator may grant or deny requests from either party to temporarily delay the grievance process or may issue the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

H. Investigation of Formal Title IX Complaints. The Title IX Coordinator will either serve as or appoint an investigator, who may be an employee or official of IWU or may be an external investigator with appropriate experience or expertise. The parties will be provided with notice of the identity of the appointed investigator. Any objections to the service of the appointed investigator on grounds of conflict of interest or a lack of impartiality should be submitted in writing to the Title IX Coordinator within three days of notice of the appointment, or within three days of a party determining there is a bias. The Title IX Coordinator will decide promptly whether the appointed investigator will or will not continue to conduct the investigation. The University shall complete its investigation of a Formal Title IX Complaint within 60 days of receiving the Formal Title IX complaint, unless unusual or complex circumstances exist. The formal investigation will:

- i. Engage in fact-gathering of all relevant facts. Credibility resolutions and fact-finding shall be conducted in the live hearing phase of the grievance process.
- ii. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Title IX Complaint, including the evidence upon which IWU does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- iii. IWU will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

- iv. Make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- v. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, the Title IX Coordinator shall send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. Upon finalization of the investigative report, the Title IX Coordinator shall provide it to the decision-maker(s).

Section 6: Live Hearings under the Grievance Process

A. Decision-Maker(s).

- i. *Faculty member Respondent.* The grievance procedures for faculty members (including Adjunct Professors) can be found in the Faculty Handbook, Chapter VI (<http://www.iwu.edu/provost/faculty-handbook.pdf>).
- ii. *Staff member Respondent.* The grievance procedures for non-exempt staff members can be found in the [Non-Exempt Staff Handbook](#). The grievance procedures for exempt staff members can be found in the [Exempt Staff Handbook](#).
- iii. *Student Respondent.* The grievance procedures for students can be found in the Student Handbook (<http://www.iwu.edu/judicial/handbook/>); and (<http://www.iwu.edu/judicial/SexualOffenses.html>).
- iv. The decision-maker(s) cannot be the Title IX Coordinator, Title IX Deputy Coordinators, or the investigator(s). All decision-makers will receive the training required by the Title IX regulations.
- v. Notwithstanding any other University policies applicable to the decision-maker(s) (i.e., Faculty Handbook) the provisions of this Policy will control the Grievance Process.

B. Requirement of a Live Hearing.

- i. Following the investigation, within 30 days of sending the final investigative report to the parties, unless unusual or complex circumstances exist, IWU shall conduct a live hearing in front of the decision-maker(s) for the purposes of determining responsibility for allegations of Sexual Misconduct in the Formal Title IX Complaint.
- ii. The live hearing will be closed. The only individuals permitted to participate in the hearing are as follows: the Complainant, the Respondent, the decision-maker(s), the advisor for each party, witnesses (only while being questioned), and any individual providing authorized accommodations or assistive services.

- iii. If a party does not have an advisor present at the live hearing IWU shall provide, without fee or charge to that party, an advisor of IWU's choice who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. To ensure timely proceedings, a party shall alert the Title IX Coordinator as soon as practical if the party will need an advisor.
- iv. Live hearings may be conducted with all parties physically present in the same geographic location or, at IWU's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- v. At the request of either party, IWU shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
- vi. IWU shall create an audio or audiovisual recording, or transcript, of the live hearing and make it available to the parties for inspection and review. This record will be maintained by the Title IX Coordinator. Any other recording of the live hearing is prohibited. Violations may result in disciplinary action.
- vii. The parties shall separately participate in a pre-hearing meeting with the Title IX Coordinator (or designee) to go over the process and administration of the live hearing. Prior to or during this meeting, the Title IX Coordinator (or designee) will set deadlines for submitting and exchanging the names of witnesses, evidence, and pre-hearing questions (the parties will also be permitted to submit questions during the live hearing). Participation in the pre-hearing meeting is required in order to facilitate the efficient and fair administration of the live hearing process.

C. Questioning at the Live Hearing.

- i. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. The decision-maker(s) may request or require questions from the parties in advance of the live hearing.
- ii. Only relevant cross-examination and other questions may be asked of a party or witness.
- iii. The decision-maker(s) may also question a party or witness.
- iv. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding IWU's ability to otherwise restrict the extent to which advisors may participate in the proceedings.

- v. Before the Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.
 - vi. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- D. Use of Witness Statements. The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- E. Written Determination. The decision-maker(s) shall issue a written determination regarding responsibility, based on a majority agreement. To reach this determination, the decision-maker(s) will apply a "preponderance of the evidence" standard.

Section 7: Appeals

- A. Grounds. Within 5 business days of receiving the written determination, either party may appeal a determination regarding responsibility or IWU's dismissal of a Formal Title IX Complaint or any allegations therein on the following bases:
- i. Procedural irregularity that affects the outcome of the matter;
 - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
 - iii. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or
 - iv. Sanctions disproportionate with the offense.

Appeals must be sent in writing to both the Title IX Coordinator and Vice President for Student Affairs in writing.

- B. Response to Appeals. As to all appeals, IWU shall:
- i. Notify the other party in writing immediately when an appeal is filed and implement appeal procedures equally for both parties;

- ii. Ensure that the decision-maker(s) for the appeal is not the same person(s) as the decision-maker(s) that reach the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator / Deputy Coordinators;
- iii. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this Policy;
- iv. Give the non-appealing party an opportunity to submit a written statement in response to the appeal within 5 days of receiving the appeal;
- v. Issue a written decision describing the result of the appeal and the rationale for the result; and
- vi. Provide the written decision on the appeal simultaneously to both parties.

Section 8: Remedies and Sanctions

If the University has determined that Sexual Misconduct has occurred, the University shall take prompt and effective steps reasonably calculated to end the Sexual Misconduct, prevent its recurrence, and, as appropriate, remedy its effects. Remedial action may include disciplinary action against the Respondent, providing counseling for the Respondent, remedies for the reporting party and others, as well as changes to the University's overall services or policies. Disciplinary action against a Respondent can include without limitation: modification of academic, living, dining, transportation, and working situations; no-contact orders from the University; temporary suspension; and/or removal or dismissal from the University. When allowed for by applicable State and Federal law, the University shall also notify the reporting party of any sanction(s) imposed upon the Respondent.

Section 9: Malicious and False Accusations

It is a violation of this Policy to make a report of Sexual Misconduct that is known to be false. Such conduct is in violation of this Policy and will be investigated and adjudicated accordingly.

Section 10: Retaliation

Neither the University nor any other person may retaliate against any individual who has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in any investigation, proceeding, or hearing under this Policy. Retaliation includes intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve Sexual Misconduct but that arise out of the same facts or circumstances as a report or Formal Title IX Complaint of Sexual Misconduct, for the purpose of interfering with any right or privilege secured by Title IX or this Policy,. The exercise of rights protected under the First Amendment does not constitute retaliation. Charging an individual

with a code of conduct violation for making a materially false statement in bad faith in the course of a Grievance Process under this Policy does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Section 11: Effective Date

This Policy shall be effective as of August 1, 2022

APPENDIX A (DEFINITIONS)

1. **Sexual Misconduct**: Sexual Misconduct encompasses many types of prohibited conduct, including, but not limited to: sexual harassment, sexual violence (including domestic and dating violence), gender-based harassment, sexual orientation harassment and sexual exploitation.
 - A. **Sexual Harassment**: Sexual harassment means conduct on the basis of sex that satisfies one or more of the following: (i) an employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct; or (ii) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or (iii) Sexual/Relationship Violence (as defined below). All such acts of sexual harassment are forms of Sexual Misconduct. Use of the term "Sexual Misconduct" throughout this Policy includes sexual harassment.
 - B. **Sexual/Relationship Violence**: Sexual violence refers to physical sexual acts perpetrated against an individual's will or where an individual is incapable of giving consent. A number of different acts fall into the category of sexual violence, including: rape, sexual assault, sexual battery, sexual abuse, sexual coercion, fondling, non-forcible sexual activity with a person who is under the statutory age of consent, domestic violence, dating violence, and stalking. All such acts of sexual violence are forms of Sexual Misconduct. Use of the term "Sexual Misconduct" throughout this Policy includes sexual violence.
 - C. **Gender-Based Harassment**: Gender-based harassment includes verbal, non-verbal and physical acts of aggression, intimidation, or hostility based on an individual's gender identity or gender expression, even if those acts do not involve conduct of a sexual nature. Gender identity is a person's internal, deeply felt sense of being either agender, woman, man, transgender or something else on or beyond the gender spectrum. Gender expression is an individual's characteristics and behaviors such as appearance, dress, mannerisms, speech patterns, and social interactions that are perceived as masculine or feminine. Gender-based harassment will exist if an individual is harassed either for conforming or failing to conform to stereotypical notions of their perceived gender. All such acts of gender-based harassment are forms of Sexual Misconduct. Use of the term "Sexual Misconduct" throughout this Policy includes gender-based harassment.
 - D. **Sexual Orientation Harassment**: Sexual orientation harassment includes verbal, non-verbal and physical acts of aggression, intimidation, or hostility based on an individual's actual or perceived sexuality, including but not limited to: asexuality, bisexuality, homosexuality, heterosexuality or something else on or beyond the sexuality spectrum. All such acts of sexual orientation harassment are forms of Sexual Misconduct. Use of the term "Sexual Misconduct" throughout this Policy includes sexual orientation harassment.

E. **Sexual Exploitation**: Sexual exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that the behavior does not otherwise constitute sexual harassment, sexual violence, gender-based harassment or sexual orientation harassment. Examples of sexual exploitation include, but are not limited to:

- i. Invasion of sexual privacy.
- ii. Prostituting another student.
- iii. Non-consensual video or audio-recording of sexual activity.
- iv. Non-consensual distribution, showing, display, or dissemination of video and/or audio recorded sexual activity (i.e. “revenge porn”).
- v. Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual or non-consensual sex).
- vi. Engaging in voyeurism.
- vii. Knowingly transmitting an STD or HIV to another individual.
- viii. Exposing one’s genitals in non-consensual circumstances.

All such acts of sexual exploitation are forms of Sexual Misconduct. Use of the term “Sexual Misconduct” throughout this Policy includes sexual exploitation

2. **Consent**: Consent is informed, freely and actively given, mutually understandable words or actions which indicate a willingness to participate in mutually agreed upon sexual activity. The following factors should be considered by a person in determining whether another person has given consent:

- A. consent is a freely given agreement to sexual activity,
- B. a person's lack of verbal or physical resistance or submission resulting from the use or threat of force does not constitute consent,
- C. a person's manner of dress does not constitute consent,
- D. a person's consent to past sexual activity does not constitute consent to future sexual activity,
- E. a person's consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another,
- F. a person can withdraw consent at any time, and
- G. a person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation the following:
 - i. the person is incapacitated due to the use or influence of alcohol or drugs;
 - ii. the person is asleep or unconscious;
 - iii. the person is under the statutory age of consent; or
 - iv. the person is incapacitated due to a mental disability.

3. **Complainant**: Complainant means an individual who is alleged to be the victim of conduct that could constitute Sexual Misconduct under this Policy.

4. **Respondent**: Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct under this Policy.
5. **Formal Title IX Complaint**: Formal Title IX Complaint means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Misconduct against a Respondent and requesting that IWU investigate the allegation(s) of Sexual Misconduct. At the time of filing a Formal Title IX Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of IWU with which the Formal Title IX Complaint is filed.
6. **Grievance Process**: Grievance Process means the fact-finding process from the time of the filing of a report of Sexual Misconduct or a Formal Title IX Complaint through the final determination of responsibility (including an appeal).
7. **Supportive Measures**: Supportive Measures mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Title IX Complaint or where no Formal Title IX Complaint has been filed. Such measures are designed to restore or preserve equal access to IWU's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or IWU's educational environment, or deter Sexual Misconduct. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus safe escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures may also include written notification about available services both within the institution and the community and options for available assistance as required by the Clery Act. Supportive measures are not disciplinary measures.