

**Institute of American Indian Arts**  
**Sex/Gender-Based Harassment, Discrimination, and Sexual**  
**Misconduct Policy**

**DRAFT**

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## **Institute of American Indian Arts**

### **Sex/Gender-Based Harassment, Discrimination, and Sexual Misconduct Policy**

#### **INTRODUCTION**

Members of the Institute of American Indian Arts (IAIA) community, guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. IAIA believes in zero tolerance for sex/gender-based misconduct. Zero tolerance means that when an allegation of misconduct is brought to an IAIA Mandatory Reporter or the IAIA Title IX Coordinator's attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a responding party is found to have violated this policy. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations using the ATIXA's model procedures, to establish a mechanism for determining when those expectations have been violated.

The IAIA sex/gender harassment, discrimination and misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom. Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern.

IAIA uses the preponderance of the evidence (also known as "more likely than not") as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like "guilt, "innocence" and "burdens of proof" are not applicable, but IAIA never assumes a responding party is in violation of university policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

## TITLE IX COORDINATOR

The IAIA Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Title IX Coordinator reports to the President of IAIA. Questions about this policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the university Title IX Coordinator:

**Laurie Logan Brayshaw, Interim Title IX Coordinator**

LKN Welcome Center  
Room 201B  
505-424-2305  
Llogan@iaia.edu

Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at <https://iaia.edu/student-life/title-ix-campus-safety/>, or the reporting hotline at **505-424-5790**. Note that these anonymous reports may prompt a need for the institution to investigate.

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities: The OCR office for New Mexico is located at:

Office for Civil Rights  
U.S. Department of Education  
Cesar E. Chavez Memorial Building  
1244 Speer Boulevard, Suite 310  
Denver, CO 80204-3582  
Telephone: 303-844-5695  
FAX: 303-844-4303; TDD: 800-877-8339  
Email: OCR.Denver@ed.gov

Or contact:

U.S. Department of Justice Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Educational Opportunities Section, PHB  
Washington, D.C. 20530  
By e-mail to [education@usdoj.gov](mailto:education@usdoj.gov)  
By telephone at (202) 514-4092 or 1-877-292-3804 (toll-free)  
By facsimile at (202) 514-8337

In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to Todd Spilman, IAIA HR Director at 505-424-2317.

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## DEFINITIONS

### **Blackout**

Blackout, as it is used in scholarly literature, refers to a period where memory formation is blocked. A period of consistent memory loss is termed a blackout, whereas periods where memory is both lost and formed intermittently can be referred to in the literature as a brownout. Neither state of blackout nor brownout automatically indicates incapacitation, but factual context can establish that a blackout or a brownout is occurring in an individual who is incapacitated (where incapacity is defined as an inability to make rational, reasonable decisions or judgments). It is a mistake to automatically associate memory loss with incapacitation; they are often coupled, but not always. (see e.g.: Mundt & Wetherill – 2012; NIH 2004)

### **Coercion or Seduction**

An unwelcome advance that results in a welcome encounter is seduction. An unwelcome advance that results in an unwelcome encounter is coercive. Often, the question revolves around how to determine after the fact if the encounter was unwelcome, and that will largely depend on what the contextual evidence shows. Society defines seduction as reasonable, and coercion as unreasonable. Both involve convincing someone to do something you want them to do, so how do they truly differ? The distinction is in whether the person who is the object of the pressure wants or does not want to be convinced or is okay with the convincing once it happens. In seduction, the sexual advances are ultimately welcome. You want to do some convincing, and the person who is the object of your sexual attention wants to be convinced. Twist my arm, I'll go along. Two people are playing the same game. Coercion is different because you want to convince someone, but they make it clear that they do not want to be convinced. They do not want to play along. They do not want to have their arm twisted. You are able to change your mind, both toward consent and away from it. The evaluation of coercion, however, has to focus on the actions of the person applying the pressure, as well as how that pressure is received.

Must consider the totality of the circumstances of the alleged coercion (consider all four factors together):

- *Frequency*: Asking to have sex 3 times in 30 minutes vs. 30 times in 30 minutes. The frequency of coercion can be enhanced easily via technology.

- *Intensity*: A person talking themselves up (“I’m the best there ever was”) is obnoxious, not coercive. When the person turns on you and starts to attack your character, values and morals, there is a difference in intensity (“Do you want to be the last virgin on earth? No one will find out, I won’t tell anyone...”).
- *Isolation*: Making advances at a crowded bar is going to be less coercive than when the advances occur when two people are alone in someone’s living room.
- *Duration*: Making advances for 30 minutes vs. making advances for 3 hours.

### **State of New Mexico and Consent**

New Mexico does not specifically define “consent.” However, New Mexico defines “force or coercion” as:

- (1) the use of physical force or physical violence;
- (2) the use of threats to use physical violence or physical force against the victim or another when the victim believes that there is a present ability to execute the threats;
- (3) the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;
- (4) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or
- (5) the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy.

Physical or verbal resistance of the victim is not an element of force or coercion. New Mexico Statutes §30-9-10.

According to New Mexico Statutes §30-9-11, a person is able to give consent at the age of 17.

Courtesy of the Rape, Abuse, and Incest National Network

## **Hostile Environment**

Sex-based harassment creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program.

## **Incapacitation**

Incapacitation is the physical and/or mental inability to make informed, rational judgments and decisions. Someone is incapacitated if they are asleep or unconscious. Someone can also be incapacitated by alcohol or other substances.

Because the impact of alcohol and other drugs varies from person to person, one should be cautious before engaging in sexual contact or intercourse when either person has been drinking alcohol or using other drugs. The use of alcohol or other drugs may create ambiguity about consent. If there is any doubt about either party's level of intoxication, the safe thing to do is to forgo all sexual activity.

Where alcohol or other substances are involved, incapacitation is determined by how the substance impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. Incapacitation is a state beyond drunkenness or intoxication, and a person is not incapacitated merely because they have been drinking or using drugs.

Incapacitation is not determined by technical or medical definitions. The question is whether a person has the physical and/or mental ability to make informed, rational judgments and decisions.

Although each individual is different, there are some common and observable signs that someone is incapacitated or approaching incapacitation, including slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may not be able to understand or answer coherently some or all of the following questions:

- Do you know where you are?
- Do you know how you got here?
- Do you know what is happening?
- Do you know who you are with?

## **Reporting Party or a Responding Party**

In this process, the person alleging a violation of policy is referred to as the Reporting Party. The Reporting Party may also be referred to as the Complainant.

The person who is alleged to have violated campus policy is referred to as the Responding Party. The Responding Party may also be referred to as the Respondent.

## **Report or a Complaint**

Reporting may sound intimidating, but it is just a conversation that allows you to discuss your options and informs you of the resources available to you. Whether you have experienced or witnessed an incident or behavior, there are multiple venues through which you can make a report to IAIA. Reports may be made by phone (505-424-5790), by email ([titleIX@iaia.edu](mailto:titleIX@iaia.edu)), anonymously online (<https://iaia.edu/about/title-ix/>), or by visiting the Title IX Coordinator:

### **Laurie Logan Brayshaw, Interim Title IX Coordinator**

LKN Welcome Center  
Room 201B  
505-424-2305  
[Llogan@iaia.edu](mailto:Llogan@iaia.edu)

The Informal and Formal reporting options are not mutually exclusive: you can pursue any or all of them as you wish. Unless there is an immediate or ongoing threat to individual or community safety, the choices are left up to you. Formal resolution of a complaint involves an investigation, a hearing, and possible disciplinary sanctions. See the IAIA Sex/Gender-Based Harassment, Discrimination, and Sexual Misconduct Procedures for more information.



## OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing (or affirmative, conscious, and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity -- without actions demonstrating permission -- cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing, voluntary, and freely given consent to any sexual activity is equivalent to a "no."

## OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks. The university does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the university. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student, supervisor-supervisee, supervisor-work study student, supervisor-Intern/Apprentice) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes Resident Assistants (RAs), Orientation Leaders, and Associated Student Government (ASG) Officers and the students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

## PREVENTION AND PROTECTION

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you make better decisions.

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. Your partner's consent should be affirmative and continuous. **If there are any questions or ambiguity then you DO NOT have consent.**
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances. In an altered state, a person cannot give consent.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence.

Types of Power include:

- Physical
- Mental
- Social Status
- Tribal Affiliation
- Race
- Abilities
- Social Privilege
- Gender
- Economic Status
- Access to food or transportation

Don't abuse that power.

- It is a crime to share intimate content, pictures, images and videos that are shared with you without the consent of the individual(s) in the pictures, images and videos.

- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.
- Reaffirm consent

Only those who commit sexual violence are responsible for those actions. We offer the advice below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act.

- If you have limits, make them known as early as possible.
- Say “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Give thought to sharing your intimate content, pictures, images and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared or disseminated.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

## SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

1. **Sexual Harassment**
2. **Non-Consensual Sexual Contact (or attempts to commit same)**
3. **Non-Consensual Sexual Intercourse (or attempts to commit same)**
4. **Sexual Exploitation**

### **SEXUAL HARASSMENT**

Sexual harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any IAIA program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
  - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the university's educational [and/or employment], social and/or residential program.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature

- By a person having power or authority over another constitutes sexual harassment when
- Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

### ***NON-CONSENSUAL SEXUAL CONTACT***

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

## ***NON-CONSENSUAL SEXUAL INTERCOURSE***

Non-Consensual Sexual Intercourse is:

- any sexual intercourse
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

## ***SEXUAL EXPLOITATION***

Occurs when one person 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 behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD or HIV to another person;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

## **ADDITIONAL APPLICABLE DEFINITIONS:**

- Consent:
  - Consent is
    - clear, and
    - knowing, and
    - voluntary [or affirmative, conscious and voluntary],
    - words or actions,
    - that give permission for specific sexual activity.
  - Consent is active, not passive.
  - Silence, in and of itself, cannot be interpreted as consent.
  - Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
  - Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
  - Previous relationships or prior consent cannot imply consent to future sexual acts.
  - Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
  - In order to give consent, one must be of legal age.
  - Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
    - Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.
    - The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
    - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
    - This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs. [Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is



a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>.

- Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).
  - Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
  - NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
- Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
- This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.

## OTHER MISCONDUCT OFFENSES (WILL FALL UNDER TITLE IX WHEN SEX OR GENDER-BASED)

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as
  - a. Repeated and/or severe
  - b. Aggressive behavior
  - c. Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
  - d. That is not speech or conduct otherwise protected by the 1<sup>st</sup> Amendment.
6. Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other; (Include the State of New Mexico Definition)
  - a. A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
  - b. An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
  - c. A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
  - d. Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.
7. Stalking
  - e. Stalking 1:
    - i. A course of conduct

- ii. Directed at a specific person
  - iii. On the basis of actual or perceived membership in a protected class
  - iv. That is unwelcome, AND
  - v. Would cause a reasonable person to feel fear
- f. Stalking 2:
- i. Repetitive and Menacing
  - ii. Pursuit, following, harassing and/or interfering with the peace and/or safety of another
- g. Examples of Stalking:
- i. A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together. Stalking 1.
  - ii. A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate the gift deliveries to stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together." Stalking 2.

8. Any other IAIA policy may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

## RETALIATION

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity [subject to limitations imposed by the 1<sup>st</sup> Amendment and/or Academic Freedom]. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of IAIA policy.

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## SANCTIONS

The following sanctions may be imposed upon any member of the community found to have violated the Sex/Gender Harassment, Discrimination and Misconduct Policy. Factors considered in sanctioning are defined in the IAIA Student Handbook, Faculty Handbook, and Employee Handbook. The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

### **Student Sanctions (listed below and defined in [Student Handbook])**

- Warning
- Probation
- Suspension
- Expulsion
- Organizational Sanctions
- Other Actions

### **Employee Sanctions (listed below and defined in [Employee Handbook])**

- Warning – Written or Verbal
- Required Counseling
- Required Training or Education
- Suspension without Pay
- Suspension with Pay
- Termination

### **Sanctioning for Sexual Misconduct**

- Any person found responsible for violating the Non-Consensual Sexual Contact policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*
- Any person found responsible for violating the Non-Consensual Sexual Intercourse policy will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).\*
- Any person found responsible for violating the Sexual Exploitation or Sexual Harassment policies will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*

\*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the

initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

Please see the IAIA Sex/Gender-Based Harassment, Discrimination, and Sexual Misconduct Procedures Manual for additional information.

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## CONFIDENTIALITY AND REPORTING OF OFFENSES UNDER THIS POLICY

All IAIA employees (faculty, staff, administrators) are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate IAIA officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at IAIA:

### **Confidential Reporting**

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- On-campus licensed professional counselors and staff
- On-campus Victim Advocates
- Off-campus:
  - Licensed professional counselors
  - Local rape crisis counselors
  - Domestic violence resources,
  - Local or state assistance agencies,
  - Clergy/Chaplains

All of the above employees will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors and/or the Employee Assistance Program are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client, patient or parishioner.

### **Formal Reporting Options**

All IAIA employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy Coordinators. Employees must share all details of the reports they

receive. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees. Remedial actions may result without formal IAIA action.

If a victim does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator or Deputy Coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, IAIA will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow IAIA to honor that request, IAIA will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by IAIA when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: the President, Campus Security, Student Life, and Human Resources. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. **Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at <https://iaia.edu/student-life/title-ix-campus-safety/>, or the reporting hotline at 505-424-5790.** Note that these anonymous reports may prompt a need for the institution to investigate.

Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

**Laurie Logan Brayshaw, Interim Title IX Coordinator**

LKN Welcome Center

Room 201B

505-424-2305

Llogan@iaia.edu

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of university policy and can be subject to disciplinary action for failure to comply with university policies.



## ADDITIONAL REPORTING

### **FEDERAL STATISTICAL REPORTING OBLIGATIONS**

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student life staff, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, student success staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

### **FEDERAL TIMELY WARNING REPORTING OBLIGATIONS**

Victims of sexual misconduct should also be aware that IAIA administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. IAIA will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

### **ADDITIONAL POLICY PROVISIONS**

#### a. Attempted violations

In most circumstances, IAIA will treat attempts to commit any of the violations listed in the *Gender-Misconduct Policy* as if those attempts had been completed.

#### b. False Reports

IAIA will not tolerate intentional false reporting of incidents. It is a violation of the Student Code of Conduct and the Human Resources Manual to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

#### c. Amnesty for Victims and Witnesses

The IAIA community encourages the reporting of misconduct and crimes by victims and witnesses. Sometimes, victims or witnesses are hesitant to report to IAIA officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims as possible choose to report to IAIA officials, and that witnesses come forward to share what they know.

To encourage reporting, IAIA pursues a policy of offering victims of misconduct and witnesses amnesty from minor policy violations related to the incident.

Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to the Police). IAIA pursues a policy of amnesty for students who offer help to others in need. [While policy violations cannot be overlooked, IAIA will provide educational options, rather than punishment, to those who offer their assistance to others in need.

d. Parental Notification

IAIA reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. IAIA may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, IAIA will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The university also reserves the right to designate which university officials have a need to know about individual conduct reports pursuant to the Family Educational Rights and Privacy Act.

## QUESTIONS AND ANSWERS

Here are some commonly asked questions regarding IAIA's sexual misconduct policy and procedures.

### ***DOES INFORMATION ABOUT A REPORT REMAIN PRIVATE?***

The privacy of all parties to a report of sexual misconduct must be respected, except insofar as it interferes with IAIA's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. IAIA will not disseminate information and/or written materials to persons not involved in the resolution process without the consent of both parties. Witnesses are also required to maintain the privacy of information shared with them during interviews and/or hearings. Violations of the privacy of the reporting party or the responding party may lead to conduct action by IAIA, though both parties are allowed to share their perspectives and experiences. All parties, including witnesses, involved in an allegation are strongly encouraged to maintain the privacy of information and/or written materials.

In all resolutions of sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the alleged victim. Certain IAIA administrators are informed of the outcome within the bounds of student privacy (e.g., the IAIA President, Dean of Students, Head of Security).

If there is a report of an act of alleged sexual misconduct, and there is evidence that a felony has occurred, IAIA will report to the local police if the victim asks us to report. This does not mean charges will be automatically filed or that a victim must speak with the police. IAIA also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an "Annual Security Report" of campus crime statistics. This statistical report does not include personally identifiable information.

*Will my parents be told?*

No, not unless you tell them. Whether you are the reporting party or the responding party, IAIA's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. IAIA officials will directly inform parents when requested to do so by a student, in a life-threatening situation, or if an individual has signed the permission form at registration which allows such communication.

*Will the responding party know my identity?*

Yes, if IAIA determines there is reasonable cause to believe a violation has occurred and investigates the matter. The responding party has the right to know the identity of the reporting party. If there is a hearing, IAIA does provide options for questioning without confrontation, including Skype/Zoom, using a room divider, or using separate hearing rooms.

*Do I have to name the responding party?*

Yes, if you want formal disciplinary action to be taken against the responding party. You can report the incident without the identity of the responding party, but doing so may limit IAIA's ability to respond comprehensively.

*What do I do if I am accused of sexual misconduct?*

DO NOT contact the reporting party. You may immediately want to contact someone who can act as your advisor or advocate; anyone may serve as your advisor or advocate. You may also contact the office of the Title IX Coordinator, which can explain IAIA's procedures for addressing sexual misconduct reports. You may also want to talk to a confidential counselor at the counseling center or seek other community assistance. See below regarding legal representation.

*Will I (as a victim) have to pay for counseling/or medical care?*

Not typically, if IAIA provides these services already. If a victim is accessing community and non-institutional services, payment for these will be subject to state/local laws, insurance requirements, etc.

*What about legal advice?*

Victims of criminal sexual assault need not retain a private attorney to pursue criminal prosecution because representation will be handled by the District Attorney's [Prosecutor's] office. You may want to retain an attorney if you are considering filing a civil action or are the responding party. The responding party may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct proceeding. Both the responding party and the reporting party may also use an attorney as their advisor or advocate during the campus' resolution process. Attorneys are subject to the same restrictions as other advisors [or advocates] in the process as described here.

For legal assistance please refer to the IAIA Crisis Treatment Resources document.

*How is a report of sexual misconduct decided?*

IAIA investigates allegations of sex/gender based harassment, discrimination or misconduct to determine whether there is evidence to indicate a policy violation is "more likely than not." This standard, called the preponderance of the evidence, corresponds to an amount of evidence indicating a policy violation is more than 50% likely.

*What about changing residence hall rooms?*

You may request a room change if you want to move. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you prefer that the responding party be moved to another residence hall, that request

will be evaluated by the Title IX Coordinator or deputy to determine if it can be honored. Other assistance and modifications available to you might include:

- Assistance from IAIA support staff in completing a room relocation;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Help with finding an off-campus residential alternative;
- Assistance with or rescheduling an academic assignment (paper, exams, etc.) or otherwise implementing academic assistance;
- Taking an incomplete in a class;
- Assistance with transferring class sections;
- Temporary withdrawal;
- Assistance with alternative course completion options;
- Escorts to and from campus locations;
- On or off-campus counseling assistance;
- Transportation assistance or support;
- Other accommodations for safety as necessary.

*What should I do about preserving evidence of a sexual assault?*

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to the Hospital Emergency Room, before washing yourself or your clothing. The Sexual Assault Nurse Examiner (a specially trained nurse) at the hospital is usually on call 24 hours a day, 7 days a week (call the Emergency Room if you first want to speak to the nurse; ER will refer you).

The local SANE program is:

**Christus St. Vincent Regional Medical Center SANE Program**

Colleen Dearmin

6601 Valentine Way

Santa Fe, NM 87507

Santa Fe County

*Acute exams all ages and deferred exams for child sexual abuse*

505-913-4999 phone  
505-982-4917 fax  
505-989-5952 SANE dispatch  
[colleen.dearmin@stvin.org](mailto:colleen.dearmin@stvin.org)

If a victim goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligation him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

For the Victim: the hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

*Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?*

No. The seriousness of sexual misconduct is a major concern and the university does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct. IAIA provides amnesty from any consequences for minor policy violations that occur during or come to light as the result of a victim's report of sexual misconduct.

*Will the use of drugs or alcohol affect the outcome of a sexual misconduct conduct resolution?*

The use of alcohol and/or drugs by either party will not diminish the responding party's responsibility. On the other hand, alcohol and/or drug use is likely to affect the reporting party's memory and, therefore, may affect the resolution of the reported misconduct. A reporting party must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove that policy was violated. If the reporting party does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the responding party without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by a responding party.

*Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?*

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present matter.

*What should I do if I am uncertain about what happened?*

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of IAIA's sexual misconduct policy, you should contact the IAIA Title IX Coordinator (not confidential) or counseling center [victim advocate's office] (confidential). IAIA also provides process advisors [or advocates] who can help you to define and clarify the event(s), and advise you of your options.

Used with permission from the NCHERM Group/ATIXA. ATIXA Sex/Gender-Based Harassment, Discrimination and Sexual Misconduct Model Policy, 2019



## EXAMPLES OF SEXUAL MISCONDUCT

The following are examples of behavior and/or conduct that would fall within the definition of sexual misconduct:

### **Intimate Partner Violence**

K hit her girlfriend and roommate S three separate times in the past week, took S's phone, and threatened S because she believes S is cheating on her. K has violated Title IX and this Policy by committing intimate partner violence. Intimate partner violence is prohibited under the IAIA Sexual Misconduct Policy. Intimate partner violence can include emotional/psychological, physical and/or sexual abuse, harassment, threats, and intimidation.

### **Sexual Assault**

R, a student, is sexually assaulted off-campus by D, a student, while volunteering with an IAIA student organization. She is protected under Title IX and this Policy. Sexual assault includes any form of non-consensual sexual activity and unwanted sexual acts ranging from fondling to attempted rape or rape.

### **Sexual Harassment - Student on Student**

J, an IAIA student, is sexually assaulted at an off campus event. She is then taunted, harassed and verbally abused, in one of the campus dining facilities by the perpetrators friends. Both the harassers and the perpetrator have violated this Policy. Extreme verbal abuse can constitute Sexual Harassment, which is one form of sexual misconduct prohibited by the IAIA Sexual Misconduct Policy. The actions of the perpetrators friends limit Jasmine's use or enjoyment of IAIA Services (the cafeteria).

### **Sexual Harassment - Hostile Environment**

A began making advances towards L shortly after starting his new job. After rejecting A's actions and requests for a date, L started receiving suggestive email messages at her IAIA email. A few weeks later, A started leaving notes on her desk and a few weeks later, on her car. As a result L has requested a work re-assignment and has been arriving at the office one hour earlier to avoid coming in with A. Because A's persistent behavior is creating an intimidating, threatening and hostile environment for L, it violates Title IX.

## **Sexual Harassment - Quid Pro Quo**

D, a freshman, is failing an advanced class. She asks her professor for help understanding the material in the hope of passing the final exam. Professor M advises her to go to the library and study harder, then makes a show of telling her he can fit her in for one-on-one tutoring that evening. When D arrives and pulls out her study materials, M begins making sexual advances. D's quick rejection makes the professor angry, and he tells her to leave. This example of quid pro quo sexual harassment violates Title IX because the professor based his willingness to tutor D on her willingness to engage in sexual acts.

## **Gender-Based Harassment**

Over the last few months C has been repeatedly posting derogatory comments on Twitter about his co-worker, T's non-stereotypical voice and mannerisms. As a result, T no longer feels comfortable and safe working in the same building. This behavior violates Title IX because it is unwelcome conduct based on actual or perceived nonconformity with sex stereotypes.

## **Consent**

Students C and R went to a party and both consumed numerous alcoholic drinks. C observed R slurring her words and vomiting. C has sex with R immediately after seeing this behavior. C violated Title IX and this Policy because he reasonably should have known that R was incapable of giving knowing consent.

## **Stalking**

After J, a student, rejected H's request for a date, H began sending J hundreds of emails threatening to hurt J. J has asked H repeatedly to stop contacting him but H refuses. J is now constantly anxious and fears that H will hurt him. H, knowingly committed actions that could reasonably put J in fear of bodily harm. H persisted in these actions despite J asking him to stop. H, therefore, violated the Policy's prohibition of stalking.

Courtesy of the University of Illinois

## Sexual Misconduct Scenarios

1. R and C are dating. C is uncertain about whether they should have sex, but R is persuasive and finally obtains C's voluntary agreement. As they engage in sex, C says "wait – stop – that hurts." R nonetheless continues for several more minutes, restraining C. Afterwards, C is upset. R apologizes, but says they were past the point of interruption. *While there was initial consent, that consent was withdrawn.*

2. J and V have been flirting all semester, and agree to meet at a party. After dancing closely together for a while, V proposes going to one of their rooms and J agrees. On the walk to J's room, they send a few texts, letting V's friends know not to worry and asking J's roommate to please sleep somewhere else. Once in the room, they begin touching. Each is interested in hearing what the other wants, and each is paying attention to the other's signals. They reach and sustain clear agreement upon mutually desired sexual activities. *This is consensual sex: V and J reached positive, voluntary, unambiguous agreement to engage in sexual conduct together.*

3. S and H are dating. On several occasions they are physically intimate, but within limits set by S, who is opposed to having sex at this stage of their relationship. One night, when they are being intimate within their mutually agreed upon boundaries, H begins to cross them. S expresses concern, but H is encouraging, saying "it will be okay just this once." S replies "we shouldn't do this," but continues to touch H in an intimate way. As H initiates sex, S says "this is a bad idea" and begins to cry, but embraces H and the two proceed to have sex. *Initial consent was followed by ambiguity. S's acquiescence to sex was accompanied by too much dismay to constitute unambiguous agreement, especially given S's longstanding prior refusal to engage in sex.*

4. J and C are at a party. It is crowded on the dance floor and they are briefly pressed together. Later, J encounters C in the hallway and smiles. C, who is now very drunk, follows J into the bathroom and forces J to have sex. *There was no consent to have sex.*

5. D and A are engaging in a consensual sexual encounter, which D begins to intensify. A responds by pulling away slightly, moving D's hands and saying "not so fast; I'm not sure." D cooperates briefly but then intensifies the contact once more. A inches backwards and then becomes still. Nonetheless, D has sex with A. *While the initial sexual activity was consensual, that consent was not sustained.*

6. A and R are studying together in R's room. During a break in their studying, they rub each other's shoulders. A then introduces some intimate touching. R moves closer and says "Okay, but I don't want to go too far – we still have a lot of work to do." A continues to touch R in an intimate way. R willingly agrees to some contact, but mostly sets boundaries. A jokes that they deserve to have sex as a reward for their hard work studying; R laughs. After their studying is done, A suggests again that they should have sex. R responds they should probably get some sleep but continues to touch A. After a few more minutes, A asks once more. R pauses, then says okay and pulls A closer. They have sex. *This is consensual sex. Despite initial hesitation, the ultimate agreement to have sex was voluntary and unambiguous. There is no violation of the sexual misconduct policy.*

7. M and K are friends who begin dancing and kissing at a party. They are both drunk, although not to the point of incapacitation. Together they decide to go to K's room. They undress each other and begin touching each other. M moves as if to engage in oral sex and looks up at K questioningly. K nods in agreement and M proceeds. Subsequently, without pausing to check for further agreement, K begins to perform oral sex on M. M lies still for a few minutes, then moves away, saying it is late and they should sleep. *There was initial agreement, but the bounds of that agreement were not clear. K may have thought that M had consented to reciprocal oral sex, but took no steps to obtain unambiguous agreement.*

8. T and J are both drinking heavily at an off-campus event. T becomes extremely drunk. J offers to take T home. On the way, T has trouble walking, and makes several wrong turns. Once in T's room, J initiates sexual activity. T looks confused and tries to go to sleep. J has sex with T. *There was no consent to have sex. A person who is incapacitated—lacking the ability to make or act on considered decisions to engage in sexual activity—cannot give consent.*

Courtesy Yale University