

## SEXUAL MISCONDUCT POLICY

### **I. Policy Statement**

The Illustration Academy (the “TIA”) is committed to providing a learning environment that promotes personal integrity, civility, and mutual respect in an environment free of discrimination on the basis of sex. TIA considers sex discrimination in all of its forms to be a serious offense. Sex discrimination constitutes a violation of this policy, is unacceptable, and will not be tolerated. Sex discrimination includes discrimination on the basis of pregnancy, gender identity, and failure to conform to stereotypical notions of femininity and masculinity.

Sexual harassment, whether verbal, physical, or visual, is a form of prohibited sex discrimination, and sexual violence is a particularly severe form of sexual harassment. The specific definitions of sexual harassment and sexual violence, including examples of such conduct, are set forth below.

### **II. SCOPE**

This policy applies to administrators, faculty and other “TIA” employees; students; applicants for employment; customers; third party contractors; and all other persons that participate in the “TIA’s” educational programs and activities, including third-party visitors on campus (the “TIA Community”). This policy prohibits sex discrimination, sexual harassment, and sexual violence even when the complainant and alleged perpetrator are members of the same sex, and it applies regardless of national origin, immigration status, or citizenship status. TIA’s prohibition on sex discrimination, sexual harassment, and sexual violence extends to all aspects of its educational programs and activities, including, but not limited to, admissions, employment, academics, housing, and student services.

TIA has jurisdiction over complaints alleging sex discrimination, sexual harassment, and sexual violence when the conduct occurs on campus or any other property owned by the TIA, during or at an official TIA program or activity (regardless of location), or off campus when the conduct creates a hostile environment on campus. The TIA will investigate all complaints made under this policy and, if necessary, take action to prevent the recurrence of sex discrimination and remedy its effects.

### **III. SEXUAL HARASSMENT**

#### **A. Definition of Sexual Harassment**

Sexual advances, requests for sexual favors, and other verbal, physical, or visual conduct of a sexual nature constitute sexual harassment when:

- Submission to such conduct is made or threatened to be made, either explicitly or implicitly, a term or condition of an individual’s employment or education

- Submission to or rejection of such conduct by an individual is used or threatened to be used as the basis for academic or employment decisions affecting that individual, or
- Such conduct has the purpose or effect of substantially interfering with an individual's performance at work, or in academic, or other extra-curricular activities, or creating what a reasonable person would perceive as an intimidating, hostile, or offensive employment, education, or living environment.

## **B. Examples of Sexual Harassment**

Some examples of sexual harassment include:

- Pressure for a dating, romantic or intimate relationship
- Unwelcome touching, kissing, hugging, rubbing, or massaging
- Pressure for sexual activity
- Unnecessary references to parts of the body
- Sexual innuendos, jokes, or humor
- Making sexual gestures
- Displaying sexual graffiti, pictures, videos or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail and Internet use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails or text messages
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as flowers, chocolates, or lingerie that suggest the desire for a romantic relationship
- Commenting on a person's body, gender, sexual relationships, or sexual activities
- Requesting sexual favors in return for employment, athletic, or other rewards, or threats if sexual favors are not provided
- Sexual violence (as defined below)

## **C. Sexual Violence**

### **1. The Definition of Sexual Violence**

Sexual violence is a form of prohibited sexual harassment. Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable or giving consent because of his or her temporary or permanent mental or physical incapacity, because of his or her youth, or because of his or her incapacitation due to the use of drugs and/or alcohol.

## 2. Examples of Sexual Violence

Some examples of sexual violence include:

- Rape or sexual assault: sexual intercourse (anal, oral or vaginal) by a man or woman upon a man or woman without consent
- Unwilling sexual penetration (anal, vaginal, oral) with any object or body part that is committed by force, threat, or intimidation
- Sexual touching with an object or body part, by a man or woman upon a man or woman, without consent
- Sexual touching with an object or body part, by a man or woman upon a man or woman, committed by force, threat or intimidation
- The use of force or coercion to effect sexual intercourse or some other form of sexual contact with a person who has not given consent
- Having sexual intercourse with a person who is unconscious because of drug or alcohol use
- Hazing that involves penetrating a person's vagina or anus with an object
- Use of the "date rape drug" to effect sexual intercourse or some other form of sexual contact with a person
- One partner in a romantic relationship forcing the other to have sexual intercourse without the partner's consent
- Exceeding the scope of consent by engaging in a different form of sexual activity than a person has consented to
- Knowingly transmitting a sexually transmitted disease such as HIV to another person through sexual activity
- Coercing someone into having sexual intercourse by threatening to expose their secrets
- Secretly videotaping sexual activity where the other party has not consented
- Prostituting another person

### **D. Sexual Misconduct**

Collectively, sex discrimination, sexual harassment and sexual violence will be referred to as "sexual misconduct" through the remainder of this policy and the complaint resolution procedures.

### **E. Definition of Consent**

Lack of consent is a critical factor in determining whether sexual violence has occurred. Consent is informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. Consent is not passive.

- If coercion, intimidation, threats, and/or physical force are used, there is no consent.

- If a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent.
  - Warning signs of when a person may be incapacitated due to drug and/or alcohol use include: slurred speech, falling down, passing out, and vomiting.
- If a person is asleep or unconscious, there is no consent.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Consent can be withdrawn. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent.
- Effective consent may not exist when there is a disparity in power between the parties (e.g., faculty/student, and supervisor/employee).

**F. Domestic Violence, Dating Violence and Stalking**

The crimes of domestic violence, dating violence and stalking can also constitute sexual misconduct when motivated by a person’s sex. These crimes, no matter the motivation behind them, are a violation of this policy.

1. Domestic Violence

“Domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of a victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse or the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or by any other person against an adults or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

2. Dating Violence

“Dating violence” means violence committed by a person:

- (A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - a. The length of the relationship.
  - b. The type of relationship.
  - c. The frequency of interaction between the persons involved in the relationship.

### 3. Stalking

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (A) Fear for his or her safety or the safety of others; or
- (B) Suffer substantial emotional distress

## IV. ROLES AND RESPONSIBILITIES

### A. Administrators and Other Managers

It is the responsibility of administrators and other managers (i.e., those that formally supervise other employees) to:

- Inform employees under their direction or supervision of this policy
- Implement any corrective actions that are imposed as a result of findings of a violation of this policy

### B. All Instructors and Employees

It is the responsibility of all instructors and employees to review this policy and comply with it.

### C. Students

It is the responsibility of all students to review this policy and comply with it.

### D. The Illustration Academy

When The Illustration Academy is aware that a member may have been subjected to or affected by conduct that violates this policy, TIA will take prompt action, including a review of the matter and, if necessary, an investigation and appropriate steps to stop and remedy the sexual misconduct. TIA will act in accordance with its Complaint Resolution Procedures.

## V. COMPLAINTS

### A. Making a Complaint

#### 1. Instructors and Employees

All TIA instructors and employees have a duty to report sexual misconduct to the TIA administrator when they receive a report of such conduct or witness such conduct. This does not apply to the employees who may maintain confidentiality as described in Section V.A.3. of this policy.

TIA instructors and employees are also encouraged to file a complaint of sexual misconduct when they are the victim of such conduct.

#### 2. Students and Other Persons

Students are encourage to report sexual misconduct and if doing so should file a complaint with the TIA Administrator. Students should be aware that all instructors and employees at the TIA, except those who may maintain confidentiality as described in Section V.A.3 of this policy, have an obligation to report sexual misconduct that they have become aware of or witness.

### 3. Confidential Discussions

If a victim desires to talk confidentially about his or her situation, Shawn Nicholas, Vice President, 816-276-5145, or Stephanie Rogge, Director of Human Resources, 816-276-5154 can be contacted. They are available to assist you and will not report your circumstances to TIA without your permission, unless otherwise required by law (such as when the victim is a minor). Notwithstanding, a non-identifying report may be made to the TIA Administrator so that TIA can identify any patterns of sexual misconduct on campus.

### 4. Content of the Complaint

So that TIA has sufficient information to investigate a complaint, the complaint should include: (1) the date(s) and time(s) of the alleged conduct; (2) the names of all person(s) involved in the alleged conduct, including possible witnesses; (3) all details outlining what happened; and (4) contact information for the complainant so that TIA may follow up appropriately.

### 5. Conduct that Constitutes a Crime

Any person who wishes to make a complaint of sexual misconduct that also constitutes a crime-including sexual violence, domestic violence, dating violence, or stalking is encouraged to make a complaint to local law enforcement. If requested, TIA will assist the complainant in notifying the appropriate law enforcement authorities. In the event of an emergency, please contact 911. A victim may decline to notify such authorities.

### 6. Special Guidance Concerning Complaints of Sexual Violence, Domestic Violence, Dating Violence or Stalking

If you are the victim of sexual violence, domestic violence, dating violence, or stalking, do not blame yourself. These crimes are never the victim's fault. When physical violence of a sexual nature has been perpetrated against you, TIA recommends that you immediately go to the emergency room of a local hospital and contact law enforcement, in addition to making a prompt complaint under this policy.

If you are the victim of sexual violence, domestic violence, or dating violence, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. Victims of sexual violence, domestic violence, or dating violence, should not bathe, urinate, douche, brush teeth, or drink liquids until after they are examined and, if necessary, a rape examination is completed. Clothes should not be changed. When necessary, seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after a medical examination.

It is also important to take steps to preserve evidence in cases of stalking, to the extent such evidence exists. In cases of stalking, evidence is more likely to be in the form of letters, emails, text messages, etc. rather than evidence of physical contact and violence.

Once a complaint of sexual violence, domestic violence, dating violence, or stalking is made, the complainant has several options such as, but not limited to:

- Contacting parents or a relative
- Seeking legal advice
- Seeking personal counseling (always recommended)
- Pursuing legal action against the perpetrator
- Pursuing disciplinary action
- Requesting that no further action be taken

#### 7. Vendors, Contractors and Third-Parties

This policy applies to the conduct of vendors, contractors, and third parties. Persons who believe they have been subject to sexual misconduct in violation of this policy should make a complaint in the manner set forth above.

#### 8. Retaliation

It is a violation of this policy to retaliate against any member of TIA who reports or assists in making a complaint of sexual misconduct or who participates in the investigation of a complaint in any way. Persons who believe they have been retaliated against in violation of this policy should make a complaint in the manner set forth in this section.

#### 9. Protecting the Complainant

Pending final outcome of an investigation in accordance with the Complaint Resolution Procedures, TIA will take steps to protect the complainant from further discrimination or harassment. This may include assisting and allowing the complainant to change his or her academic, transportation, work or living situation if options to do so are reasonably available and upon request of the complainant. Such changes may be available regardless of whether the victim chooses to report the crime to campus police or local law enforcement. Requests to change an academic, transportation, work, or living situation, or a request for TIA to take any other protective measure, should be made to the TIA Administrator.

If a complainant has obtained a temporary restraining order or other no contact order against the alleged perpetrator from a criminal, civil, or tribal court, the complainant should provide such information to the TIA Administrator. TIA will take all reasonable and legal action to implement the order.

#### **B. Timing of Complaints**

TIA encourages persons to make complaints of sexual misconduct as soon as possible because late reporting may limit TIA's ability to investigate and respond to the conduct complained of.

**C. Investigation and Confidentiality**

All complaints of sexual misconduct will be promptly and thoroughly investigated in accordance with the Complaint Resolution Procedures, and TIA will take disciplinary action where appropriate. TIA will make reasonable and appropriate efforts to preserve and individual's privacy and protect the confidentiality of information when investigating and resolving a complaint. However, because of laws relating to reporting and other state and federal laws, TIA cannot guarantee confidentiality to those who make complaints.

In the event a complainant requests confidentiality or asks that a complaint not be investigated, TIA will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name not be disclosed to the alleged perpetrator, TIA's ability to respond may be limited. TIA reserves the right to initiate an investigation despite a complainant's request for confidentiality in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the TIA community.

**D. Resolution**

If a complaint of sexual misconduct is found to be substantiated, TIA will take appropriate corrective and remedial action to prevent the recurrence of the conduct and correct its discriminatory effects. Students, instructors, and employees found to be in violation of this policy will be subject to disciplinary action up to and including written reprimand, suspension, demotion, termination or expulsion. Affiliates and program participants may be removed from TIA programs and/or prevented from returning to campus. Remedial steps may also include counseling for the complainant, academic, transportation, work or living accommodations for the complainant, separation of the parties, and training for the respondent and other persons.

**E. Bad Faith Complaints**

While TIA encourages all good faith complaints of sexual misconduct, TIA has the responsibility to balance the rights of all parties. Therefore, TIA's investigation reveals that complaint was knowingly false, the complaint will be dismissed and the person who filed the knowingly false complaint may be subject to discipline.

**VI. ACADEMIC FREEDOM**

While TIA is committed to the principles of free inquiry and free expression, sexual misconduct is neither legally protected expression nor the proper exercise of academic freedom.



## **SEXUAL MISCONDUCT COMPLAINT RESOLUTION PROCEDURES**

### **I. GENERAL PRINCIPLES**

#### **A. Applicability**

These Complaint Resolution Procedures apply to the resolution of all reports under the Sexual Misconduct Policy. They apply to the resolution of complaints against students, instructors, administrators, staff and third parties, and they are the exclusive means of resolving complaints of sexual misconduct.

#### **B. Administration**

For purposes of these complaint resolution procedures, “Investigating Officer” means the TIA Administrator and/or their designee(s). The Investigating Officer shall have responsibility for administering these complaint resolution procedures.

#### **C. Promptness, Fairness and Impartiality**

These procedures provide for prompt, fair, and impartial investigations and resolutions. The Investigating Officer shall discharge his or her obligations under these complaint resolution procedures fairly and impartially. If the Investigating Officer determines that he or she cannot apply these procedures fairly and impartially because of the identity of a complainant, respondent, or witness, or due to any other conflict of interest, the Investigating Office shall designate another appropriate individual to administer these procedures.

#### **D. Training**

These procedures will be implemented by officials who receive annual training on the issues related to sexual misconduct, domestic violence, dating violence and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

### **II. INVESTIGATION AND RESOLUTION OF THE COMPLAINT**

#### **A. Preliminary Matters**

##### **1. Timing of the Investigation**

TIA will endeavor to conclude its investigation and resolution of the complaint within sixty (60) calendar days of receiving it. Both the complainant and the respondent will be given periodic updates regarding the status of the investigation. If either the complainant or respondent needs additional time to prepare or to gather their witnesses or information, they shall notify the Investigating Officer in writing explaining how much additional time is needed and why it is needed. The Investigating Officer shall respond to any such requests within three (3) days.

##### **2. Informal Resolution**

Informal means of resolution, such as mediation, may be used in lieu of the formal investigation and determination procedure. However, informal means may only be used with the complainant’s

voluntary cooperation and the involvement of the TIA Administrator. The complainant, however, will not be required to work out the problems directly with the respondent. Moreover, the complainant may terminate any informal means being utilized at any time and invoke the formal investigation procedure. In any event, informal means, even on a voluntary basis, will not be used to resolve complaints alleging any form of sexual violence.

### 3. Interim Measures

At any time during the investigation, the Investigating Officer may determine that interim remedies or protections for the parties involved or witnesses are appropriate. These interim remedies may include separating the parties, placing limitations on contact between the parties, suspension, or making alternative class-placement or workplace arrangements. Failure to comply with the terms of these interim remedies or protections may constitute a separate violation of the Sexual Misconduct Policy.

### 4. Support Person/Advisor

During the investigation process, both a complainant and a respondent may ask a support person/advisor to accompany him or her at all stages of the process. In cases involving multiple complainants or respondents, the support person/advisor cannot be another complainant or respondent. The support person/advisor does not serve as an advocate on behalf of the complainant or respondent, may not be actively involved in any proceedings, and he or she must agree to maintain the confidentiality of the process. The TIA reserves the right to remove or dismiss a support/person advisor who becomes disruptive of who does not abide by the limitations noted in the previous sentence.

### 5. Pending Criminal Investigation

Some instances of sexual misconduct may also constitute criminal conduct. In such instances, the complainant is also encouraged to file a report with the appropriate law enforcement authorities and, if requested, TIA will assist the complainant in doing so. Therefore, to the extent doing so does not interfere with any criminal investigation, TIA will proceed with its own investigation and resolution of the complaint.

### 6. Rights of the Parties

During the investigation and resolution of a complaint, the complainant and respondent shall have equal rights. They include:

- Equal opportunity to identify and have considered witnesses and other relevant evidence.
- Similar and timely access to all information considered by the Investigating Officer.
- Equal opportunity to review and comment upon any information independently developed by the Investigating Officer.

## **B. Commencement of the Investigation**

Once a complaint is made, the Investigating Officer will commence an investigation of it as soon as practicable, but not later than seven (7) days after the complaint is made. The purpose of the investigation is to determine whether it is more likely than not that the

alleged behavior occurred and, if so, whether it constitutes sexual misconduct. During the course of the investigating, the Investigating Officer may receive counsel from TIA administrators, TIA attorneys, or other parties as needed.

In certain narrow circumstances, the Investigating Officer may commence an investigation even if the complainant requests that the matter not be pursued. In such a circumstance, the Investigating Officer will take all reasonable steps to investigate and responds to the matter in a manner that is informed by the complainant's articulated concerns.

**C. Content of the Investigation**

During the investigation, the complainant will have the opportunity to describe his or her allegations and present supporting witnesses or other evidence. The respondent will have the opportunity to respond to the allegations and present supporting witnesses or other evidence. The Investigating Officer will review the statements and evidence presented and may, depending on the circumstances, interview others with relevant knowledge, review documentary materials, and take any other appropriate action to gather and consider information relevant to their complaint. All parties and witnesses involved in the investigation are expected to cooperate and provide complete and truthful information.

**D. Resolution**

At the conclusion of the investigation, the Investigating Officer will prepare a written report. The written report will explain the scope of the investigation, identify findings of fact, and state whether any allegations in the complaint were found to be substantiated by a preponderance of the evidence.

If the written report determines that sexual misconduct occurred the Investigating Officer shall set forth in an addendum to the written report those steps necessary to maintain an environment free from discrimination and harassment and to protect the safety and well-being of the complainant and other members of the TPA Community. Such actions will also include reasonable steps to correct the effects of such conduct on the complainant and others and to prevent the recurrence of discrimination, harassment, and retaliation. Examples, of such action include: no-contact orders, classroom reassignment, the provision of counseling or other support services, training, and discipline for the perpetrator, including up to termination, expulsion, or other appropriate institutional sanctions.

The complainant and the respondent will receive a copy of the written report and any addendum within three (3) days of its completion. If necessary, the version of the addendum provided to the complainant and/or respondent will be redacted to ensure that information concerning any remedial and/or disciplinary measures is disclosed in a manner consistent with the Family Educational Rights and Privacy Act ("FERPA"), and the Clery Act, explained by the April 4, 2011 Dear Colleague Letter issued by the U.S. Department of Education, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201101.pdf>.

The written report of the Investigating Officer shall be final subject only to the right of appeal set forth in Section III below.

**E. Special Procedure Concerning Complaints Against the TIA Administrators**

If a complaint involves alleged conduct on the part of the TIA's Administrators, TIA's Board of Directors will designate the Investigating Officer. Based on the information gathered by the investigation, the Board of Directors will prepare and issue the written report determining the complaint. The determination of the Board of Directors is final and not subject to appeal.

**III. APPEALS**

**A. Grounds of Appeal**

The complainant or respondent may appeal the determination of a complaint only on the following grounds:

- There is substantial likelihood that newly discovered information not available at the time evidence was presented to the Investigating Officer, would result in a different decision;
- There was a procedural error significant enough to call the outcome into question;
- There was a clear error in factual findings;
- Bias or prejudice on the part of the Investigating Officer; or
- The punishment or the corrective action imposed is disproportionate to the offense.

**B. Method of Appeal**

Appeals must be filed with the TIA Board within ten (10) days of receipt of the written report determining the outcome of the complaint. The appeal must be in writing and contain the following:

- Name of the complainant;
- Name of the respondent;
- A statement of the determination of the complaint, including corrective action if any;
- A detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of it and
- Requested action, if any.

The appellant may request a meeting with the TIA Board, but the decision to grant a meeting is within the TIA Board's discretion. However, if a meeting is granted, then the other party will be granted a similar opportunity.

**C. Resolution of the Appeal**

The TIA Board will resolve the appeal within fifteen (15) days of receiving it and may take any and all actions that he/she determines to be in the interested of a fair and just decision. The decision of the TIA Board is final. The TIA Board shall issue a short and plain, written statement of the resolution of the appeal, including any changes made to the Investigating Officer's previous written determination. The written statement shall be provided to the complainant and respondent within three (3) days of the resolution.

#### **IV. DOCUMENTATION**

Throughout all stages of the investigation, resolution, and appeal, the Investigating Officer, the TIA Administrator, and the TIA Board as the case may be, are responsible for maintaining documentation of the investigation and appeal, including documentation of all proceedings conducted under these complaint resolutions procedures, which may include written findings of fact, transcripts, and audio recordings.