



## MEMORANDUM

Re: Sexual Misconduct/TITLE IX POLICY

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### **.Introduction**

Fisher College is committed to fostering a community that is free from sexual misconduct, in order to create a successful learning and working environment for all of its members. Sexual misconduct, in any form, is a violation of an individual's dignity, integrity, and rights. In order to create an environment that promotes respect for all members of its community, Fisher College expects all members of the College community to take action to prevent acts of sexual misconduct.

State and federal law, including Title IX of the Education Amendments of 1972, prohibits discrimination on the bases of sex or gender. The College takes all allegations of sexual misconduct seriously. In accordance with the requirements of Title IX, Fisher College has appointed Ellen Lyons, Director of Human Resources, as the Title IX Coordinator. The Title IX Coordinator oversees compliance with Title IX regulations and:

- Is a resource for students regarding their rights under Title IX, filing a complaint within the College, and their rights to file a criminal complaint;
- Conducts investigations on all reports of sexual misconduct. The Title IX Coordinator does not play a role in the student conduct process. The Student Conduct Coordinator will oversee the student conduct process component of Title IX complaints. (See "Structure of the Student Conduct Process" for information on the Conduct Process);
- Makes recommendations for the implementation of any interim measures or accommodations that are necessary to ensure a victim's wellbeing/safety; and
- Develops and/or provides training, programs, and education to students regarding sexual misconduct and harassment:

Ellen Lyons's office is located on the 1<sup>st</sup> floor of Building 116, 617-236-8812, [elyons@fisher.edu](mailto:elyons@fisher.edu).

The dedicated Fisher College Title IX Hotline is 617-236-5409. This line is checked daily, Monday through Friday.

### **Non-Discrimination**

Fisher College does not discriminate on the basis of race, sex, age, disability, national or ethnic origin, creed, sexual orientation, veteran status, marital status or religion in the recruitment, admission, access to, or treatment of students, the recruitment, hiring or treatment of faculty and staff, or the operation of its activities and programs, as specified by state and federal laws, including Title IX of the 1972 Educational Amendments to the Higher Education Act, Executive Order 11246, as amended, and Section 503/504 of

the Rehabilitation Act of 1973. Any inquiries regarding this policy should be directed to the Human Resources Department, Fisher College, 118 Beacon Street, Boston, MA 02116. Questions regarding Title IX please contact Ellen Lyons, Title IX Coordinator at 617-236-8812 or the U.S. Department of Education, Office for Civil Rights, Lyndon Baines Johnson Department of Education, Bldg 400 Maryland Avenue, SW, Washington, DC 20202, at 800-421-3481 or via email OCR@ed.gov.

If you believe you have been discriminated against as a student on the grounds of race, sex, disability, national or ethnic origin, creed, sexual orientation or religion, you may file a complaint by contacting the Title IX Coordinator. Employees may contact the Title IX Coordinator or the Human Resources Department.

### **Jurisdiction**

This policy applies to all members of the College community, including students, faculty members, College officials, any person employed by the College, and third parties (visitors and independent contractors), regardless of where the alleged sexual misconduct occurred. Therefore, this policy applies to both on-campus and off campus conduct.

### **Sexual Misconduct**

Fisher College takes all allegations of sexual misconduct seriously. Fisher College will always respond to allegations, information, or claims of sexual misconduct and will conduct an adequate, reliable, and impartial investigation.

Sexual misconduct includes but is not limited to the following:

Rape: Defined as the oral, anal, or vaginal penetration, by a person upon another person, however slight with a body part or inanimate object without consent.

Sexual Assault: Defined as the intentional and unwanted sexual touching, however small in nature, of an intimate body part (breasts, genitals, groins, buttocks, or mouth, or the material covering them) by an individual upon another individual. This includes the unwanted touching of a body part not usually considered intimate in nature (a massage) and the removal of clothing or exposure of genitals by an individual towards another without consent.

Sexual Exploitation: Defined as when an individual takes non-consensual or abusive sexual advantage of another individual for their own benefit, or the benefit or pleasure of any other individual other than the individual being exploited. This includes prostitution, the audio or video recording of and/or the photographing or transmitting sexual or other private activities of another person (including but not limited to genitals, groin, buttocks, and breasts), allowing third party individuals to watch and/or observe sexual activity, engaging in voyeurism, and/or knowingly exposing/transmitting an STI (sexually transmitted infection) or HIV to another individual.

Sexual and/or Gender based Harassment: Defined as the unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made wither explicitly or implicitly as a term or condition of an individuals' academic performance and/or employment, (2) submission to or rejection of such conduct by an individual is used as the basis for academic and/or employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's academic and/or work performance or creating an intimidating, hostile, or offensive working environment.

Examples of sexual/gender based harassment include but are not limited to:

- Unwelcomed or wanted contact – hugging, rubbing, touching, brushing

- Sexual jokes
- Sexual propositions or advances
- Behavior and/or statements that are considered sexist
- Use of slurs, derogatory statements, or sexual pet names/nicknames
  - Screaming or yelling at an individual or population based on sex/gender that creates a hostile or intimidating environment.
- Comments regarding sexual experiences and sexual activity
- Comments/statements or other hostility towards someone's gender, gender identity, or gender expression.
- Intrusive sexually explicit questions
- Letters, emails, text messages, or other forms of communications that are sexual in nature and unwelcomed/unwanted
- Unacceptable displayed sexually explicit or graphic in nature pictures, calendars, cartoons, etc
- Sexual suggestive sounds, gestures, and name calling (whistling, winking, pelvic thrusts)

### **Sex/Gender based Discrimination**

In accordance with Fisher College's Non-Discrimination policy, Fisher College does not tolerate sex/gender based discrimination on any level. Sex/gender based discrimination is defined as conduct that treats a specific individual or group of individuals unfavorably based on their sex, sexual orientation and gender expression, even when the conduct is not sexual in nature. For additional information please see the Non-Discrimination policy.

### **Relationship Violence (including dating/domestic violence)**

Fisher College recognizes that relationship violence is a serious crime against individuals and society. For the purpose of this policy, relationship violence includes domestic and dating violence.

42 USC § 13925 states that 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 of the victim under the domestic or family laws of the jurisdiction in which the crime of violence occurred, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

42 USC § 13925 defines dating violence as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

### **Stalking**

By its nature stalking is not a one-time incident but a pattern of behavior taking place on more than one occasion. 42 USC § 13925 defines stalking as engaging in a course of conduct directed at a specific

person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

Examples of stalking include, but are not limited to: unwelcome communication (including telephone calls, emails, text messages, face to face communications, unwelcome gifts, etc.), trespassing, surveillance, making threats, visiting outside of a residence or classroom, following or pursuit.

Cyber-stalking will be considered the same as physical stalking as defined above where the use of an electronic device is used to cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

### **Retaliation**

Fisher College will not tolerate retaliation against any person who reports a claim of harassment or sexual misconduct, or assists in the investigation. Any person found in violation of this policy will be subject to sanctions accordingly. Any person who files a false report of sexual misconduct will be in violation of this policy and will also be subject to appropriate sanctions.

### **Additional Definitions:**

Consent: Is defined, for the terms of this policy, as the mutual agreement between individuals, clearly through the use of words or actions, to participate in a sexual activity no matter how slight the interaction may be. Consent cannot be given by a minor, a mentally disabled individual, an individual under the influence of any substance (alcohol/drugs/or any other disabling substance), intoxicated, incapacitated, or by an individual who is unconscious. In addition, Fisher College will not accept the consent of an individual if that individual gave consent as the result of coercion, verbal/physical threats, or by the threat of force or future harm.

Incapacitation: Incapacitation is the inability to make a rational, informed, or reasonable decision or judgment. Incapacitation can result from alcohol or drug use, "date-rape" drug, physical restraint, disability, sleep, or anything else that effects the individual's ability to make a rational, informed, or reasonable decision.

### **Reporting Sexual Misconduct**

Fisher College understands that incidents of sexual misconduct are sensitive in nature and can be emotional for all parties involved. Therefore, all reports will be handled with the utmost care and sensitivity. While we encourage victims of sexual misconduct to file a complaint and seek immediate medical treatment if needed, it is at the sole decision of the victim if and when they choose to do so. Staff members are available 24/7 for victims who wish to have immediate support.

There is no time limit for submitting a report of sexual misconduct, however the College encourages victims and witnesses to report as soon as possible. The College's ability to investigate may be reduced with the passing of time.

**Please be advised that all employees of Fisher College who are made aware of an incident of sexual misconduct are required by federal law to file a report regarding the incident and individuals involved with the Title IX Coordinator. These reports will include the names of the victim and the alleged assailant, along with all relevant facts regarding the incident. All employees and College officials must report knowledge of sexual misconduct, including student workers. If a victim wishes to speak to someone in confidence and not file a report please see the section on Confidential Reporting, below.**

The Title IX Coordinator is required by federal law to provide an unidentifiable statistical report regarding sexual misconduct to the Department of Public Safety. This is in accordance with the Clery Act. The only information shared is that an incident of sexual misconduct has taken place, the type of sexual misconduct, and the general location of the incident (*i.e.*, on or off campus).

To file a report of sexual misconduct, contact any of the following departments:

- Title IX Coordinator- Ellen Lyons, Office located on the 1st floor of Building 116, 617-236-8812, [elyons@fisher.edu](mailto:elyons@fisher.edu).
- Department of Public Safety- Located in the Mall of Fisher College, can be contacted 24/7 at 617-236-8880.
- Human Resources Department, Ellen Lyons, Office located on the 1st floor of Building 116, 617-236-8812, [elyons@fisher.edu](mailto:elyons@fisher.edu).
- Office of the Dean of Students – Office located in the Mall of Fisher College, open from 8am-4pm Monday through Friday, 617-670-4421.
- Office of Housing and Residential Life- Located in the Mall of Fisher College, open from 8am -4pm Monday through Friday, 617-670-8828.

### **Confidential Reporting**

Victims or witnesses who wish to speak to someone in confidence prior to filing a formal report may contact the below listed departments. Information shared with these departments will not require a report to be filed. The only information that will be shared is that an incident has taken place, the type of incident, and where the incident occurred. Speaking to any of the departments below will not initiate an investigation until the victim chooses to have their information released and formal proceedings begin.

- Counseling Services- Located in the lower level of 108, 617-236-8894 or via email at [counselingservices@fisher.edu](mailto:counselingservices@fisher.edu).
- Health Services- Located in the lower level of 104, open from 8am-4pm Monday through Friday and can be reached at 617-236-8860.

## Directory of Resources

ON CAMPUS	OFF CAMPUS
Department of Public Safety 617-236-8880	Emergency 911
Dean of Students Office 617-670-4421	Massachusetts General Hospital 617-726-2000
Title IX Coordinator 617-236-8814	Boston Area Rape Crisis Center 800-841-8371
Health Services (Confidential) 617-236-8860	National Sexual Assault Hotline 800-656-4673
Counseling Services (Confidential) 617-236-8894	

## College Response

Upon receiving a report of sexual misconduct the College will:

- Inform the victim of their options for reporting an incident to campus and/or local law enforcement;
- Inform the victim of support services available both on and off campus;
- Encourage victims, if applicable, to seek immediate medical treatment at a local hospital and encourage the preservation of evidence by not showering, brushing of teeth, changing clothing prior to medical treatment;
- Provide prompt notification and explanation of the allegations to the alleged assailant;
- Inform the victim and alleged assailant that they may choose an advisor to accompany them during the process. The advisor will be arranged by the Student(s) themselves. Please see the definition of advisor for guidelines regarding sexual misconduct advisors.
- For students and student-workers, provide the option of changing housing accommodations after an alleged sexual misconduct incident has taken place, if housing changes are reasonably available;
- Provide the opportunity to issue an Administrative Stay Away Order;
- Conduct an expeditious, fair and open minded investigation of the claim; • Progress into Student Conduct Process, in a timely manner, if the investigation concludes there is a preponderance of evidence;
- Inform both victim and alleged assailant of the decision and sanctioning regarding sexual misconduct violations; and
- Inform both victim and alleged assailant of the appeal process at the time notification of a decision is made.

Interim Remedies: Reports of sexual misconduct may require interim remedies and support services as appropriate. These interim remedies are for the protection, well-being, and safety of the individuals involved and for the Fisher College community, pending the outcome of the investigation. Interim remedies include, but are not limited to counseling services, administrative stay-away order, no trespassing order, relocation of on campus housing, academic accommodations, and schedule changes.

Fisher College will make every effort to make reasonable requests for interim remedies available in a timely fashion. In addition, the Department of Public Safety can assist a victim with reporting an incident of sexual misconduct to local law enforcement.

In instances where the alleged assailant is considered to be a threat the College may decide to: remove the alleged assailant from campus housing, restrict campus access, or administer an interim suspension.

### **Confidentiality**

Fisher College recognizes that confidentiality is important to all individuals involved in all matters of a sexual misconduct investigation. The College will make every effort to protect the privacy of the individuals involved in a report and investigation of sexual misconduct, to the extent reasonably possible, while conducting a thorough investigation and thereafter. The College will only share information related to a report and investigation with those College Employees who “need to know.” Students should be made aware that if an individual involved in an alleged violation of sexual misconduct is enrolled at another institution, the College may be required to notify the other institution of a pending investigation.

All individuals involved in an investigation of sexual misconduct are expected to keep any information gained during any process of the investigation, decision, or appeal process confidential. This does not prohibit individuals from discussing information with individuals who need to know in order to provide support and assistance to the individual, or disclosing information to an individual who needs to know in order to participate in an investigation. These restrictions are put into place in order to protect all individuals involved in an investigation and the integrity of the investigation. Individuals found in violation of this may be subject to sanctions.

Unless the student or employee is under the age of 18, guardians and/or parents will not be notified when a student is involved in a claim of sexual misconduct. Students are encouraged to speak with their guardian and/or parent when they are involved in a matter of sexual misconduct. Should a guardian or parent wish to speak with the Title IX Coordinator or any other employee regarding a matter of sexual misconduct, a FERPA waiver is required prior to any conversation. Students have the right to execute or withdraw a FERPA waiver at any time. FERPA waivers are found in the Registrar’s Office. Should a student be found responsible for violation of this policy and is separated from the college, college housing, suspended, or expelled guardians and/or parents are generally notified at that time.

### **Amnesty**

Fisher College understands that a student victim or witness may be hesitant to make a report of sexual misconduct if the victim or witness was under the influence of alcohol/drugs at the time of the incident(s), for fear of being found in violation of the Student Code of Conduct or other Fisher College policy. If while conducting an investigation other violations of the College’s policies have been made in connection to the incident, specifically student alcohol/drug policies, the College will generally not pursue disciplinary actions against the victim or witness.

### **Investigation Process**

Upon receiving a report of sexual misconduct, the Title IX Coordinator will review the report, determine if a report falls under this policy, and will begin an investigation. The investigation and decision process will generally be completed within 60 days from the date the report was filed. This time frame may be extended due to extenuating circumstances, including but not limited to: the complexity of the situation reported and school closures. Should an investigation extend the time frame, all parties will be made aware of the need to additional time and all efforts will be made to complete the investigation in a timely manner.

Failure from either the victim or alleged assailant to participate in the investigation process will not inhibit an investigation from going forth or a decision being made.

Fisher College will attempt to respect the preferences of the victim throughout the process, including keeping information confidential, not conducting an investigation, or moving forward with sanctioning. Please be advised that the College may have a legal responsibility to investigate and report a claim of sexual misconduct even without the victim's participation. The Title IX Coordinator will advise a victim of the College's legal responsibilities on a case by case basis.

Upon commencement of the investigation process the Title IX Coordinator will advise both the victim and the alleged assailant, in writing, of the investigation, option to have an advisor of their choice present during the investigation, need for confidentiality, and non-retaliation policy. Both parties will be given a date for an initial meeting with the Title IX coordinator. A date will be selected with reasonable time for each party to identify an advisor they wish to have present during the investigation and all documentation they wish to present. Generally, meetings will not be rescheduled due to a conflict an advisor may have. It is at the discretion of the Title IX Coordinator should a meeting be rescheduled.

The Title IX Coordinator will meet with both the victim and alleged assailant separately in order to ascertain all facts in relation to the alleged incident. During the initial meeting both the victim and alleged assailant will be provided with the opportunity to provide the Title IX Coordinator with any evidence, information, and witnesses they wish to present. The Title IX Coordinator will inform the alleged assailant of all of the charges being made against them and inquire as to the reason for the behavior. Should at any time during the investigation process the alleged assailant take responsibility for the alleged incident, the Title IX Coordinator may end the formal investigation process and file a findings report with the Student Conduct Coordinator and/or Human Resources Director, as appropriate.

The Title IX Coordinator may interview the victim and alleged assailant more than once, as necessary. During any additional meetings, the Title IX coordinator will share with the respected parties current information gathered, addresses additional questions or concerns, and provided either party with the opportunity to voice any concerns or information that should be identified.

The victim may not be present during any meeting with the alleged assailant and the alleged assailant may not be present during any meeting with the victim. Mediation will not be used as a means to resolve complaints of sexual misconduct. In addition, the victim and alleged assailant may not be present during any meeting with witnesses. Advisors are only permitted to attend their respective parties' meeting and may not be present during any other individuals meeting (*i.e.*, witness meetings). There is no right for the victim or the alleged assailant to confront or cross-examine the other. The victim and the alleged assailant should address any questions they feel should be asked to parties involved in the investigation directly to the Title IX Coordinator.

The Title IX Coordinator will make reasonable attempts to interview any witnesses identified by the victim and alleged assailant. In addition, the Title IX Coordinator will interview any additional party who may have information regarding the alleged incident.

Upon completing an investigation, the Title IX Coordinator will evaluate all information gathered and prepare a report. Both the victim and alleged assailant will be provided with the opportunity to review the report and identify any clarifications or comments they wish to add. The finalized report will be submitted to the Student Conduct Coordinator and/or the Director of Human Resources, if applicable. For cases involving student assailants, within 10 business days of receiving the Title IX Coordinator's report, the Student Conduct Coordinator will determine based on a preponderance of evidence if this policy was violated and will determine the appropriate sanction(s) should the alleged assailant be found responsible. No additional meetings will be heard by the Student Conduct Coordinator and the decision will be made

solely from the report filed by the Title IX Coordinator. Both the victim and the alleged assailant will be notified, in writing, the Student Conduct Coordinator's decision and appeal process.

Should a report of sexual misconduct be made against a non-student member of the College Community, the report by the Title IX Coordinator will be filed with the Director of Human Resources, and a decision will be made by that office. Both the victim and the alleged assailant will be notified in writing of the Human Resources Director's decision.

### **Key Terms**

Victim: the individual who alleges that an act(s) of sexual misconduct has been committed against them.

Alleged Assailant: the individual who is alleged to have committed or engaged in an act(s) of sexual misconduct.

Witness: an individual who has first-hand knowledge of details regarding an act(s) of sexual misconduct. Witnesses may not bring an advisor with them to any meeting.

Advisor: an advisor may be anyone from the Campus community or outside of the College. The advisor's role is to support to a victim or alleged assailant during the process. Both the victim and alleged assailant are permitted to have one advisor of their choice with them during the investigation process. An advisor is not permitted to speak on behalf of a victim or alleged assailant and may not actively participate in any meeting. An advisor may confer and offer support to the victim or alleged assailant as necessary.

Preponderance of Evidence: the "more likely than not" standard used when determining if there was a violation of this policy.

FERPA: The Family Education Rights and Privacy Act of 1974.

### **Sanctions**

The College may impose any number of sanctions to individuals found in violation of the sexual misconduct. These include but are not limited to: warning, reprimand, educational classes, probation, suspension, expulsion, termination of contract, dismissal, removal from on campus housing, change of academic schedule, restricted access to the campus, and administrative stay-away orders.