



Interim Sexual Harassment/TITLE IX POLICY¹

Introduction

Fisher College is committed to fostering a community that is free from sexual harassment in order to create a successful learning and working environment for all of its members. Sexual harassment, 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 harassment.

Title IX of the U.S. Education Amendments of 1972 ("Title IX") is a federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities. Fisher College does not discriminate on the basis of sex in the education programs or activities that it operates including admissions and employment.

Under Title IX, discrimination on the basis of sex can also include sexual harassment which is defined as conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the College conditioning the provision of education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; or
3. Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number, electronic mail address, or by mail to the office address listed for the Title IX Coordinator. The following person has been designated to handle inquiries regarding the non-discrimination policies and/or laws:

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Ellen Lyon, Title IX Coordinator
Fisher College, 118 Beacon Street, Office 116-11
Boston, MA 02116,
T. 617-236-8812, Email. elyons@fisher.edu.

The dedicated Fisher College Title IX Hotline is 617-236-5409. This line is checked daily. Fisher College's Title IX Policy provides information on Fisher's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how Fisher will respond. This information may also be found in the Student Code of Conduct at www.fisher.edu/academic

Inquiries about the application of Title IX may be referred to Fisher's Title IX Coordinator, to the Assistant Secretary of the Department of Education, or both. The Assistant Secretary contact information is

U.S. Department of Education
Office of Postsecondary Education
400 Maryland Avenue, S.W.
Washington, DC 20202,
Main Telephone: 202-453-6914.

POLICY: Sexual Harassment, Including Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Retaliation

1. Glossary

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could sexual harassment based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that the College investigate the allegation.
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when the College is in normal operation.
- *Education program or activity* means locations, events, or circumstances where College exercises substantial control over both the Respondent and the context in which the sexual

harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the College.

- *Final Determination*: A conclusion by the standard of proof that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Grievance Process* means “Process A,” a method of formal resolution designated by the College to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- *Grievance Process Pool* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-maker* refers to those who have decision-making and sanctioning authority within the College’s Formal Grievance process.
- *Investigator* means the person or persons charged by a College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of the College who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator [and/or their supervisor].²
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of the College explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the College.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Process A* means the Formal Grievance Process detailed below and defined above.

² Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

- *Process B* means any process designated by the College to apply only when Process A does not, as determined by the Title IX Coordinator.
- *College* means a postsecondary education program that is a College of federal funding.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College's educational program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by the College on a Respondent who is found to have violated this policy.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.
- *Title IX Coordinator* is at least one official designated by the College to ensure compliance with Title IX and the Fisher College's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- *Title IX Team* refers to the Title IX Coordinator, any deputy coordinators, and any person assigned or engaged as an Advisor, Hearing Officer, or Appeal Officer.

2. Rationale for Policy

Fisher College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from sexual harassment and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity,

Fisher College has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation sexual harassment or retaliation. Fisher College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

3. Applicable Scope

The core purpose of this policy is the prohibition of sexual harassment and retaliation. When an alleged violation of this policy is reported, the allegations are subject to resolution using Fisher College's "Process A" (Title IX Process) or "Process B", (Student Conduct Process or Employee Discipline Process) as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the Fisher College community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Fisher College community. This community includes, but is not limited to, students,³ student organizations, faculty, administrators, staff, and third parties such as guests, visitors, and volunteers.

The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

4. Title IX Coordinator

Ellen Lyons serves as the Title IX Coordinator and oversees implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating Fisher College's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment, and retaliation prohibited under this policy.

5. Independence and Conflict-of-Interest

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures.

The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Fisher College Interim President, Steve Rich, srich@fisher.edu, 617-236-8832. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct committed by the Title IX Coordinator should be reported to Fisher College Interim President Steve Rich, srich@fisher.edu, 617-236-8832, or designee. Reports of misconduct committed by any other Title IX Team member should be reported to the Title IX Coordinator.

6. Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Ellen Lyons, Title IX Coordinator
Fisher College, 118 Beacon Street, Boston, MA 02116.
617-236-8812, elyons@fisher.edu

You can also call the Title IX hotline at 617-236-5409.

³ For the purpose of this policy, the College defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with Fisher College.

Fisher College has determined that the following administrators are Officials with Authority to address and correct sexual harassment and/or retaliation. In addition to the Title IX Team members listed above, these Officials with Authority listed below may also accept notice or complaints on behalf of the College.

Steven Rich	Interim President	srich@fisher.edu	617-236-8810
Janet Kuser	Vice President for Academic Affairs	jkuser@fisher.edu	617-236-5458
Robert Melaragni	Vice President of Enrollment Management	rmelaragni@fisher.edu	617-670-4401
Brenda Sanchez	Vice President of Advancement and Alumni Relations	Bsanchez@fisher.edu	617-236-8859
Kathleen Ehlers	Vice President for Online, Graduate and Professional Studies	kehlers@fisher.edu	617-670-4501
Shiela Lally	Dean of Students	slally@fisher.edu	617-670-4422
Jeffrey Conrad	Interim Vice President of Finance	jconrad@fisher.edu	617-236-8831
Brian Perrin	Chief, Fisher College Campus Police	bperrin@fisher.edu	617-236-5451
Scott Dulin	Athletics Director	sdulin@fisher.edu	617-438-9945

The College has also classified most employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing sexual harassment and/or retaliation.

The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

Office for Civil Rights (OCR)
 U.S. Department of Education
 400 Maryland Avenue, SW
 Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

For complaints involving employees:

The United States Equal Employment Opportunity Commission ("EEOC"), John F. Kennedy Federal Building, 475 Government Center, Boston, MA 02203, 1-800-669-4000

The Massachusetts Commission Against Discrimination (“MCAD”), One Ashburton Place Sixth Floor, Room 601, Boston, MA 02108, 617-994-6000

7. Notice/Complaints of Sexual Harassment and/or Retaliation

Notice or complaints of sexual harassment and/or retaliation may be made using any of the following options:

- 1) File a complaint with, or give verbal notice to, the Title IX Coordinator at

Ellen Lyons, Title IX Coordinator

Fisher College, 118 Beacon Street, Boston, MA 02116.

617-236-8812, elyons@fisher.edu

You can also call the Title IX hotline at 617-236-5409. A complaint or verbal notice may be made to any or any Official with Authority or Mandated Reporter as described above.

Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.

[2] Anonymous reports are accepted but can give rise to a need to investigate. Fisher College tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as Fisher College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows Fisher College to discuss and/or provide supportive measures.

A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that Fisher College investigate the allegation(s).

A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the College investigate the allegations.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

8. Supportive Measures

Fisher College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to Fisher College's education program or activity, including measures designed to protect the safety of all parties or the College's educational environment, and/or deter sexual harassment and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Fisher College will inform the Complainant, in writing, that they may file a formal complaint with the College either at that time or in the future, if they have not done so already.

The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

Fisher College will maintain the privacy of the supportive measures, provided that privacy does not impair the College's ability to provide the supportive measures. The College will act to ensure as minimal an academic/occupational impact on the parties as possible.

Fisher College will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments

- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely Warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

9. Emergency Removal

Fisher College can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

This risk analysis is performed by the Title IX Coordinator in conjunction with the Students of Concern Committee using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate.

When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived.

A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

Fisher College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, [temporarily re-assigning an employee], restricting a student's or [employee's] access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the Respondent is an employee, existing provisions for interim action are applicable.

10. Promptness

All allegations are acted upon promptly by Fisher College once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the College will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in Fisher College's procedures will be delayed, the College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

11. Privacy

Every effort is made by the Fisher College to preserve the privacy of reports.⁴ The College will not share the identity of any individual who has made a report or complaint of harassment or retaliation; any

⁴ For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of College employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the College's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the College's Student Records Policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. Fisher College has designated individuals who have the ability to have privileged communications as Confidential Resources. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

Fisher College reserves the right to determine which College officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Student Life, Academic Affairs, Fisher College Police, and the Students of Concern Committee.

Information will be shared as necessary with Investigators, Hearing Officers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

Fisher College may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below.

12. Jurisdiction of Fisher College

This policy applies to the education program and activities of Fisher College, to conduct that takes place on the campus or on property owned or controlled by Fisher College, at College-sponsored events, or in buildings owned or controlled by the College. The Respondent must be a member of the College's community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Fisher's educational program. The College may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial Fisher College interest.

Regardless of where the conduct occurred, Fisher College will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial Fisher College interest includes:

- a) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;

- c) Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests or mission of Fisher College.

If the Respondent is unknown or is not a member of the Fisher College community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator, the College Nurse, or Counseling Services.

In addition, the College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Fisher College property and/or events.

All vendors serving Fisher College through third-party contracts are subject to the policies and procedures of their employers or to these policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sexual harassment or retaliation in an externship, study abroad program, or other environment external to Fisher College where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

13. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to Fisher College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, Fisher College will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

14. Online Sexual Harassment and/or Retaliation

Fisher College's policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the College's education program and activities or use College networks, technology, or equipment.

Although Fisher College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Fisher College community.

Off-campus harassing speech by employees, whether online or in person, may be regulated by Fisher College only when such speech is made in an employee's official or work-related capacity.

15. Policy on Nondiscrimination

Fisher College prohibits discrimination on the basis of gender/sex (including pregnancy), gender identity/expression, race, color, religion or religious creed, sexual orientation, nation origin, ancestry, disability or handicap, age, genetics, marital status, veteran status, and any other category protected by law. Discrimination on the basis of sex violates Fisher College policy as well as a number of state and federal laws, including Title IX of the Educational Amendments Act of 1972, which provides that

"No person in the United States shall, on the basis of sex, be excluded in participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance."

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the Fisher College Community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of the College community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the Recipient policy on nondiscrimination.

When brought to the attention of the College any such discrimination will be promptly and fairly addressed and remedied by the College according to the appropriate grievance process described below or in the Student Code of Conduct and Employee Handbook.

16. Definition of Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the Commonwealth of Massachusetts regard Sexual Harassment as an unlawful discriminatory practice.

Fisher College has adopted the following definition of Sexual Harassment for purposes of Title IX in order to address the unique environment of an academic community. The College's Sexual Harassment and Unlawful Discrimination Policy definition⁵ will apply to all situations not within the jurisdiction of Title IX.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or that is sexual that satisfies one or more of the following:

- 1) Quid Pro Quo:
 - a. an employee of the College,
 - b. implicitly or explicitly conditions the provision of an aid, benefit, or service of the College,
 - c. on an individual's participation in unwelcome sexual conduct.

- 2) Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and,
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to the College's education program or activity.⁶

⁵ Sexual harassment is a form of discrimination and is prohibited by federal and state laws. Unlawful sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
submission to such conduct is made either an explicit or implicit condition of an individual's employment or educational opportunity;
submission to or rejection of such conduct by an individual is used as the basis of decisions affecting such individual; or
such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile or offensive working environment.

⁶ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

3) Sexual assault, defined as:

a) Sex Offenses, Forcible:

- Any sexual act⁷ directed against another person⁸,
- without the consent of the Complainant,
- including instances in which the Complainant is incapable of giving consent.

b) Sex Offenses, Non-forcible:

- Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by [insert state] law.
- Statutory Rape:

⁷ Sexual acts include:

Forcible Rape:

- Penetration,
- no matter how slight,
- of the vagina or anus with any body part or object, or
- oral penetration by a sex organ of another person,
- without the consent of the Complainant.

Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age[#] or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

⁸ This would include having another person touch you sexually, forcibly, or without their consent.

- 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent of sixteen.
- 4) Dating Violence, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a person,
 - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant'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. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.
- 5) Domestic Violence, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a current or former spouse or intimate partner of the Complainant,
 - d. by a person with whom the Complainant shares a child in common, or
 - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of [insert your state here], or
 - g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Massachusetts.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6) Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Fisher College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When

someone makes clear that they do not want to engage in certain sexual activity, 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.

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM⁹ or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so College’s evaluation of communication in

⁹ Bondage, discipline/dominance, submission/sadism, and masochism.

kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

17. Retaliation

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Fisher College will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Fisher College and any member of the College's community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Filing a complaint within Process B could be considered retaliatory if those charges could be applicable under Process A, when the Process B charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within Process A that is not provided by Process B. Therefore, Fisher College vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

18. Mandated Reporting

All College employees (faculty, staff, administrators) are expected to report actual or suspected sexual harassment or retaliation to appropriate officials immediately, 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 and are not required to report actual or suspected sexual harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at College for a Complainant or third-party (including parents/guardians when appropriate):

a. Confidential Resources

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

Health Services 617-236-8860

Counseling Services 617-236-8894

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Employees who are confidential and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

b. Anonymous Notice to Mandated Reporters

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by Fisher College to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous notice typically limits the College's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. [Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements].

c. Mandated Reporters and Formal Notice/Complaints

All employees of Fisher College (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from Fisher College.

Supportive measures may be offered as the result of such disclosures without formal Fisher College action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of sexual harassment or retaliation of which they become aware is a violation of Fisher College policy and can be subject to disciplinary action for failure to comply.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though the College is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

19. When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether Fisher College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The College may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the College's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the College proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting

to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that the College's ability to remedy and respond to notice may be limited if the Complainant does not want the College to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Fisher College to honor that request, the College will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by Fisher College, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

20. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Fisher College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The College will ensure that a Complainant'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 potential danger.

21. False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under College policy.

22. Amnesty for Complainants and Witnesses

The Fisher College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to College officials or participate in grievance processes because they fear that they themselves may be in violation of certain

policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the Fisher College community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Fisher College maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

Students: Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the [Campus Police]).

The College maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, the College may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

23. Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA-based crimes,¹⁰ which include sexual assault, domestic violence, dating violence, and stalking;
and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

¹⁰ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

All personally identifiable information is kept private, but statistical information must be shared with [campus law enforcement] regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs/student conduct staff, [campus law enforcement/public safety/security], local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective as of August 14, 2020.