



**TITLE IX SEXUAL MISCONDUCT:  
STUDENT POLICY AGAINST HARASSMENT IN EDUCATION PROGRAMS AND  
EMPLOYMENT AT FISK UNIVERSITY**

# **TITLE IX SEXUAL MISCONDUCT: POLICY AGAINST HARASSMENT IN EDUCATION PROGRAM AND EMPLOYMENT AT FISK UNIVERSITY**

## **INTRODUCTION**

Fisk University is committed to providing its students, employees, and guests with an environment that is free from all forms of sexual harassment, including sexual violence and gender-based harassment.

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et. seq.*, and its implementing regulations, 34 C.F.R. Part 106 (“Title IX”), expressly prohibit discrimination in any of the University’s programs and activities. It is the policy of Fisk University to strictly comply with Title IX.

## **APPLICABILITY/PURPOSE**

### **Who is Covered**

The following types of persons with interactions with Fisk University students are covered under this Policy:

- Students
- Faculty
- Staff
- Contractors
- Visitors

### **Purpose and Scope**

The purpose of this policy is to prohibit all forms of sex or gender-based misconduct, harassment, sexual violence, sexual exploitation, relationship/domestic/dating violence, and stalking (such conduct is referred to in this policy as “Sexual Misconduct”) on Fisk University’s campus. This policy applies to students, faculty, staff, contractors and visitors in their interactions with students. This policy also specifically prohibits retaliation for the purpose of interfering with any right or privilege secured by Title IX or created by this policy.

This policy also outlines reporting, investigation and complaint resolution in cases where it is alleged that a student has been involved, as a victim or as a perpetrator, or Sexual Misconduct.

In addition, this outlines resources available to victims of Sexual Misconduct.

The University reserves the right to respond to any complaint of Sexual Misconduct which occurs during a student's matriculation of the University, whether on or off campus and including incidents which occur during breaks, leaves of absence, periods of dismissal/suspension, volunteer or paid work or activity for a third party.

#### **TITLE IX COORDINATOR/INQUIRIES ABOUT TITLE IX COMPLIANCE**

The University's Title IX Coordinator is:

Mickey West  
Fisk University  
1000 17th Avenue North  
Nashville, TN 37208  
Office: 615-329-8680  
Cell: 615-438-4942  
[mwest@fisk.edu](mailto:mwest@fisk.edu)

Inquiries regarding Fisk University's Title IX Compliance should be directed to the University's Title IX Coordinator listed above.

The Title IX Coordinator oversees the University's responses to reports and complaints that involve Sexual Misconduct in order to monitor outcomes, identify and address any patterns, and assess effects on the campus climate so that Fisk can address issues that affect the broader university community. This individual is primarily responsible for coordination and administration of Fisk University's Title IX Compliance.

The Office of Student Engagement is charged with implementing the procedures under this policy. The Office of Student Conduct investigates and administratively resolves allegations of Sexual Misconduct, and it refers, as appropriate, Complaints for disciplinary proceedings.

For matters involving a violation of this policy/Sexual Misconduct, students should contact the University's Title IX Coordinator or the Dean of Student Engagement as follows:

Natara K. Garvin, M.A.  
Dean of Student Engagement  
Office of Student Engagement  
Division of Enrollment Management  
Fisk University  
1000 17<sup>th</sup> Avenue North  
Nashville, TN 37208  
[ngarvin@fisk.edu](mailto:ngarvin@fisk.edu)  
615.329.8635 office  
615.329.8714 fax

Mickey West  
Title IX Coordinator  
Fisk University  
1000 17<sup>th</sup> Avenue North  
Nashville, TN 37208  
[mwest@fisk.edu](mailto:mwest@fisk.edu)  
615.329.8680 office  
615.438.4942 cell

A student may contact the Title IX Coordinator or the Dean of Student Engagement to:

- Seek information or training about students' rights and courses of action available to resolve reports or complaints that involve potential Sexual Misconduct,
- File a complaint or make a report of Sexual Misconduct,
- Notify the University of an incident or policy or procedure that may raise potential Title IX concerns,
- Get information about available resources (including confidential resources) and support services relating to Sexual Misconduct, and
- Ask questions about the University's policies and procedures related to Sexual Misconduct.

## **RETALIATION**

Retaliation by any member of the University community against any person who seeks to enforce this policy, whether as a victim or witness, is strictly prohibited. Actual or perceived lack of merit does not excuse retaliatory conduct. Any person who observes or hears of retaliation should promptly notify the University's Title IX Coordinator.

Complaints of retaliation are treated seriously and anyone found guilty of retaliatory conduct will be subject to discipline under the Student Code of Conduct, the Employee Handbook or any other agreement, resource, practice, policy, law, rule or regulation available.

## **DEFINITIONS AND EXAMPLES**

### **Sexual Misconduct, Generally**

"Sexual Misconduct" includes all forms of sex or gender-based misconduct, harassment, sexual violence, sexual exploitation, relationship/domestic/dating violence, and stalking. A number of acts are encompassed within the definition of Sexual Misconduct including rape, sexual battery, sexual abuse, and sexual coercion. All acts of Sexual Misconduct are strictly prohibited at Fisk University.

### **Specific Definitions**

Appropriate University Officer with respect to student on student Sexual Misconduct, means the Title IX Coordinator, the Dean of Student Engagement, the Vice President of Enrollment Management, the Dean of Women, the Dean of the Chapel, any Resident Director, any Resident Assistant, or the Athletic Director, and with respect to Sexual Misconduct perpetrated against a student by a member of the faculty, employee or contractor of Fisk means the Title IX Coordinator, the Dean of Student Engagement, the Vice President of Enrollment Management, the Dean of Women, the Dean of the Chapel, any Resident Director, any Resident Assistant, the Athletic Director, or the managing individual responsible

for the office, school or administrative unit with direct authority over the faculty, or employee or contractor.

Complainant means the person (including, in certain circumstances the University) filing a report complaining of Sexual Misconduct under this policy. The term “victim” is used interchangeably with the term Complainant as appropriate within this policy.

Coercion means the threat of kidnapping, extortion, force or violence or use or act of Undue Interfering to be performed immediately or in the future.

Crime of Violence means an act of Sexual Violence, arson, burglary, robbery, criminal homicide, assault, hazing, destruction/damage/vandalism of property and kidnapping/abduction.

Domestic Violence means an act of violence between two individuals who are spouses or are living together, or are dating or who have dated or who have had or had a sexual relationship (but does not include individuals in a business or social context who are fraternizing), or are related by blood or adoption, or are related or formerly related by marriage. In the Title IX context, Domestic Violence includes Sexual Violence, and vice versa.

Gender-Based Harassment means acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex or sex-stereotyping, even if those acts are not of a sexual nature.

Harassment occurs when one intentionally: (1) threatens, by telephone in writing or by electronic communication including without limitation text messaging, facsimile transmissions, electronic mail or Internet services, to take action known to be unlawful or for the purpose of Coercion and by this action annoys or alarms the Complainant; (2) places one or more telephone calls anonymously, or at an hour(s) known to be inconvenient to the Victim, or in an offensively repetitious manner, or without a legitimate purpose of communication, and by this action knowing annoys or alarms the Victim; (3) communicates by telephone to the Victim that a relative or other person has been injured, killed or is ill when the communication is known to be false; or (4) communicates with another person or transmits or displays an image without legitimate purpose with the intent that the image is viewed by the Victim and the person maliciously intends the communication to be a threat of harm to the Victim, and a reasonable person would perceive the communication to be a harm. Harassment also means conduct directed toward a Victim that includes, but is not limited to, repeated or continuing Unconsented Contact that would cause a reasonable person to suffer emotional distress, and that actually causes the Victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose. *See also the definitions of Gender-Based Harassment and Sexual Harassment.*

Perpetrator is the person who is alleged as having committed the act of Sexual Misconduct. *See also the definition for “Respondent.”*

Rape means 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 victim.

Respondent means the person who is alleged as having committed the act of Sexual Misconduct.

Sexual Battery is unlawful sexual contact with a victim by the Respondent accompanied with any of the following circumstances: (1) force or coercion is used to accomplish the act; (2) the sexual contact is accomplished without the consent of the Victim and the Respondent knows or has knowledge at the time of contact that the Victim did not consent; (3) the Respondent knows or has reason to know that the Victim is mentally incapacitated or physically helpless; or (4) the sexual contact is accomplished by fraud.

Sex Discrimination means giving preferential treatment to one gender to the disadvantage of the other because of his or her gender. It may be the result of policies or practices that seem neutral but which have a disproportionately adverse impact on a particular gender when applied.

Sexual Harassment is a form of sex discrimination and includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (i) submission is made either an explicit or an implicit term or condition of employment, academic evaluation or advancement, or inclusion or status in a course, program or activity of the University, or (ii) submission to or rejection of such conduct is used as a basis for decisions affecting the individual, or (iii) such conduct has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment or unduly interfering with an individual's work or academic performance. *See also the definition of Harassment* which includes act that can be included as Sexual Harassment when appropriate.

Sexual Misconduct is an act prohibited under Title IX and includes, without limitation, Domestic Violence, Gender-Based Harassment, Harassment, Rape, Sexual Battery, Sexual Discrimination, Sexual Harassment, Sexual Violence, Stalking and Unconsented Contact.

Sexual Violence is a physical act perpetrated against a person's will or where a person is incapable of giving consent due to the Victim's incapacity, which incapacity can be the result of the use of drugs or alcohol or due to an intellectual, physical or mental disability. Included among the acts of Sexual Violence are: Rape, Sexual Battery; Stalking; and Sexual Coercion.

Stalking means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the Victim to feel terrorized, frightened, intimidated, threatened, harassed or molested. Stalking includes cyberstalking.

Unconsented Contact means any contact with another person that is initiated or continued without that person's consent, or in disregard of that person's expressed desire that the contact be avoided or discontinued. Unconsented Contact includes, but is not limited to, any of the following: (a) following or

appearing within the sight of that person; (b) approaching or confronting that person in a public place or on private property; (c) appearing at that person's workplace or residence; (d) entering onto or remaining on property owned, leased, or occupied by that person; (e) contacting that person by telephone; (f) sending mail or electronic communications to that person; or (g) placing an object on, or delivering an object to, property owned, leased, or occupied by that person.

Undue Interfering means interfering with another in a manner that is unjustified, inappropriate and/or which offends the senses of reasonable people in the University community.

Victim means the person who is harmed by an act of Sexual Misconduct and also the person (including, in certain circumstances the University) filing a report complaining of Sexual Misconduct under this policy. The term "victim" is used interchangeably with the term Complainant as appropriate within this policy.

### **Examples**

Examples of Sex/Gender-Based Harassment include, but are not limited to:

- Continued and unwelcome questioning about intimate or personal matters
- Continuing/Pervasive or extreme jokes of a sexual nature
- Continuing and unwelcome questions about an individual's sexual orientation or gender identity
- Emails that contain persistent or extreme sexual messages, images or language
- Remarks of a sexual nature about a person's clothing or body
- Remarks about sexual activity or speculations about previous sexual experience
- Persistent and unwelcome flirtation, requests for dates, or repeated and unwelcome staring
- Gratuitous displays of sexually suggestive objects or pictures, including images displayed, transferred, forwarded or shared via the internet, text messaging or other electronic means

Examples of Sex/Gender-Based Discrimination include, but are not limited to:

- Treating individuals adversely because they do not conform to stereotypical norms of gender behavior.

Examples of Sexual Violence include, but are not limited to –

- Unwanted touching or attempted touching of a person's breasts, buttocks, inner thighs, groin or genitalia, either directly or indirectly; and/or sexual penetration (however slight) of another person's oral, anal or genital opening with any body part or object.

## **UNDERSTANDING WHEN CONSENT IS GIVEN**

Consent is something that is informed, voluntary, and mutual, and can be withdrawn at any time. There is no consent when there is force, express or implied, or when Coercion, intimidation, threats, or duress are used. Whether or person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person. There is no exception to the necessity to obtain another's consent to engage in sexual activity, each time.

Consent will not be deemed present when there is no clear expression of consent given, verbal or nonverbal. Consent is not present in circumstances where the individual is unable to give it freely or voluntarily such as when a person is incapacitated as a result of alcohol or drug use, when they are passed out or less than fully conscious for any reason, isolated, confined, asleep or threatened.

## **STANDARDS OF REVIEW**

### **Intoxication and Consent**

Intoxication is never a defense to Sexual Misconduct under this policy. When either the Complainant or the Respondent is alleged to have been under the influence of drugs or alcohol, whether consent existed is based on whether a reasonable person similarly situated to the Respondent, in the context in which the Sexual Misconduct occurred, would have known or should have known about the impact of the use of alcohol or drugs on another's ability to give consent.

### **Standard of Proof**

Cases involving Sexual Misconduct at Fisk shall be adjudicated according to the Preponderance of the Evidence Standard. "Preponderance of the Evidence" means by the weight of the evidence or, stated otherwise, that it is more likely than not. Preponderance means more than half.

The accused student must not be presumed "guilty" (or "responsible"). Instead, guilt or responsibility must be established by a "preponderance of the evidence" (e.g. "more likely than not") standard. An adjudication regarding Sexual Misconduct requires a conscientious and rational judgment based on the whole record. If, for example, the hearing panel concludes that the evidence— considered overall — weighs equally on both sides, the preponderance standard has not been met and the charges have not been proven.

This does not shift the burden of proof away from the Complainant. Hence, the Complainant is required to show the Respondent engaged in Sexual Misconduct by the Preponderance of the Evidence.

## **USE OF ATTORNEYS IN THE TITLE IX PROCESS**

The University's Title IX disciplinary processes do not and are not intended to afford the specificity of the due process or other rights of criminal or civil statutes or other legal authorities. Fisk's is not a legal process and attorneys are not allowed to participate in the process except as advisors to the Complainant and/or Respondent. Attorneys may be present during meetings, interviews and/or hearings but must participate quietly by directing any and all correspondence and/or discussion only to his or client by written note or a whisper. Attorneys may not address the Title IX Coordinator, any member of the Office of Student Engagement and/or any member of a hearing panel and/or the University's President. Attorneys who need to correspond with the University regarding a matter under this policy must address the University's Legal Counsel only.

Conduct addressed under this policy may involve criminal acts, and advice outside the disciplinary process should be considered by any individual involved.

## **REPORTING SEXUAL MISCONDUCT**

### **Confidentiality**

Fisk considers all complaints of Sexual Misconduct, and all Title IX investigations to be confidential. There are occasions when Victims of Sexual Misconduct ask that the related complaint and investigation be kept confidential. By honoring a request for confidentiality, the University may be limited in its ability to respond fully to the incident, including pursuing disciplinary action against the Perpetrator.

There are situations when the University must override a Victim's request for confidentiality in order to meet its Title IX obligations; however, these instances are limited and the information shared will only be with individuals who are responsible for handling Fisk's Title IX Compliance. A request to maintain confidentiality of any party involved should be made to the Title IX Coordinator. After a review of the request, the Title IX Coordinator will inform the requesting party whether, and to what extent, the request to maintain confidentiality may be upheld. The Title IX Coordinator may consult with the University's Legal Counsel or a sexual response counselor in making the determination. Generally, the University will honor requests for confidentiality unless doing so would jeopardize the safety of members of the University community, including the Complainant, the University's ability to provide a nondiscriminatory environment for all constituencies, including the Complainant, or where the University is required by law to disclose the information. Additionally, the University will take into account whether there exists an increased risk of the alleged Perpetrator committing additional acts of Sexual Misconduct or other violence, whether a weapon was involved, the age of the Victim, and whether Fisk has any other means available to obtain relevant information (e.g., security cameras, personnel, or physical evidence). If the University concludes that it cannot keep confidential the Victim's identity from the Perpetrator, then the University will notify the Victim in advance.

## **Contacting the Police to Make a Report and Preserving Evidence**

If you are a victim of Sexual Misconduct, it is important that you contact the police immediately. If you believe you are in imminent harm you should contact 911. If you believe you are not in imminent harm, you should first contact the police at 615 -862-8600 and report any crime.

Preserving evidence is critical for reports to the police and the University, and every attempt should be made to preserve any relevant evidence for the police and/or the University, including without limitation clothing, the scene, texts, voice messages, etc.

## **Making the Report to the University**

Fisk encourages all members of the University community to report violations of this policy to:

*Mickey West, Title IX Coordinator*

Reports involving Sexual Misconduct may be made at any time.

A report involving Sexual Misconduct may be made confidentially to those who serve in a professional role in which communications are privileged under Tennessee law and to those which Fisk has designated as confidential reporters consistent with Title IX. Those persons are:

Medical Providers  
Therapists  
Clergy

(said persons referred to herein individually and collectively as “Privileged Professionals”).

With the exception of Privileged Professionals, all students and employees (including Administrators, Faculty and Staff) who become aware of conduct that might fall under this policy are expected to notify the Title IX Coordinator with the names of the parties involved and the details of the report. Students who serve in a peer-advising role (such as Resident Assistants) are also expected to share such reports with the Title IX Coordinator.

Once a report is made, an investigation and remedial actions may occur, including adjudication through the judicial process.

The University reserves the right to initiate a Complaint at any time, and to initiate an investigation and resolution, administratively or through the disciplinary process, at any time, with or without the consent or at the request of a student/Victim, even instances where the student/Victim requests that the University does not investigate the matter or does not pursue action against the Perpetrator. In these cases, the Victim may choose whether or not he or she wants to participate in the process.

## **TIME FRAME**

Fisk's goal is to resolve complaints of Sexual Misconduct within 60 days after a report is made. Fisk reserves the right to extend this time frame when, in Fisk's sole discretion, circumstances warrant an extension of time. Examples of reasons why the University may extend the time frame are the complexity of facts, the number of witnesses involved, lack of availability of the Victim or the Perpetrator, holidays, inclement weather, etc. When a case requires more than 60 days for resolution, Fisk will notify the Complainant and the Perpetrator.

## **INTERSECTION WITH CRIMINAL INVESTIGATIONS**

When appropriate, a Victim may file a criminal complaint with the appropriate law enforcement agency while simultaneously pursuing remedies against the Perpetrator under this policy. Similarly, the University may be obligated to report an act(s) of Sexual Misconduct to an appropriate law enforcement agency. Victims are, in fact, encouraged to file criminal complaints, and should do so, when they believe a crime has been committed against them.

The existence of a criminal investigation or charges does not impact the University's processing and investigation of a Complaint filed under this policy. In addition, it does not affect the University's imposition of Interim Protective Measures. However, Fisk may be required to delay fact finding while the police are gathering evidence. Any delay necessitated by a criminal investigation will not impair the University's ability to impose interim measures to protect the Complainant and/or the University's campus community when appropriate.

## **INTERIM PROTECTIVE MEASURES**

In the discretion of the Office of Student Engagement, in consultation with the Title IX Coordinator, pending the investigation, hearing or appeal of a Complaint under this policy, Fisk may impose interim protective measures to protect the Complainant, and any other member(s) of the Fisk University community. Such protective measures (the "Interim Protective Measures") may include, without limitation:

1. A "No Contact" order prohibiting either, or both of, the Complainant and/or the Respondent from having contact with any other person(s) or each other.
2. A transfer of the Complainant or the Respondent to another classroom setting or living arrangement, including without limitation moving to another residence and/or distance learning.
3. Place an employee or a member of the faculty on administrative leave. In such cases, the Office of Student Engagement and the Title IX Coordinator shall: (i) if it is an employee, consult with the Director of Human Resources and the employee's unit head; and (2) if it is a member of the Faculty consult with the Provost and the Director of Human Resources.

## **THE INVESTIGATION**

### **Responsible Authority**

Under the direction of the Title IX Coordinator, the Office of Student Engagement performs investigations of Sexual Misconduct under this policy. After receiving a Complaint from the Title IX Coordinator, the Office of Student Engagement will assign an investigator to the file. The University reserves the right to hire an independent investigator to conduct the investigation at any time and for any reason as it determines in its sole discretion.

### **General Applicability and Time Frames**

Each Complaint under this policy involves a differing fact scenario, sensitivities, witnesses and evidence. Hence, there is not an exact procedure involved the investigation of any Complaint. However, the following are generally applicable to each investigation.

The time frames set forth for the Investigation stage are those which can be generally expected. However, there is no guarantee as to the exact time frame in which each step will occur as the circumstances differ in each case.

Sometimes a University break or a holiday intervenes during the investigation stage. In these cases, the process may be suspended, in the sole discretion of the University based on availability of staff and/or witnesses and the seriousness of the alleged offense, until the University is back in session.

### **Information for Complainants, Respondents and Witnesses**

Complainants, Respondents and Witnesses (collectively "Impacted Parties") will be treated with respect before, during and after the disciplinary process. Complainants and Respondents will be informed of the University's disciplinary process and possible outcomes, and of all substantive procedural developments about the case, when warranted.

Impacted Parties are strongly encouraged to seek counseling and support available through resources identified by the Office of Student Engagement and the assigned investigator.

Complainants and Respondents may request changes to academic and living arrangements through the Office of Student Engagement. Staff from the Office of Student Engagement will contact the Complainant and/or the Respondent with information as to what changes are reasonably available.

An advisor of the Complainant's and/or Respondent's choice may accompany either to any meeting during the Investigation phase. That advisor's role is limited to quietly conferring with the Complainant and/or the Respondent through written notes or whispers. The Complainant and/or Respondent is not permitted to interrupt, delay or otherwise interfere with the Investigation process, in whole or at any

interview, to confer with the advisor, and the advisor may not address any Impacted Party or the investigator.

### **Step 1 Initial Interview with the Victim/Complainant**

The investigator will generally contact the Victim within 24 hours to set up an interview. Prior the interview, the student will be asked to submit a written statement detailing the Complaint. If the student is incapacitated, the written statement will be waived in lieu of a recorded statement or another appropriate means of obtaining a detailed statement from the Victim. During the interview, the investigator will review the Complaint and the written statement from the Victim, obtain additional details and clarify and questions. During this interview, the investigator may ask about your relationship with the Perpetrator, other potential witnesses and ask for copies of any evidence relating to the Complaint, including without limitation social media, phone records, email correspondence, photographs, etc. The investigator will also discuss the Title IX process for resolving the Complaint, and identify support resources for the Victim, including licensed counselors for personal support as well as those administrators who can confidentially answer questions about the process. If applicable, the investigator will also remind and encourage the student to pursue a criminal complaint. This step is the “Initial Interview.”

During the Initial Interview, the investigator will remind the Victim of the University’s zero tolerance policy against Retaliation and provide him or her with the information necessary to report any instance of Retaliation which he or she feels is being directed towards him or her.

At any time during the investigation process, the investigator may follow up with the Victim to discuss new information obtained, or to clarify any conflicting information.

### **Step 2 Notifying the Respondent**

Within 24 hours after the Initial Interview, the investigator will contact the Respondent and notify him/her of the Complaint. This step is called “Notification to the Respondent.”

Following, the investigator will set up an interview in person with the Respondent. Prior to the interview, the Respondent will be asked to submit a written statement detailing his or her response to the Complaint (the “Written Response”). If the Respondent is incapacitated (other than by means of detention or imprisonment by a law enforcement agency), the written statement will be waived in lieu of a recorded statement or another means of obtaining a detailed statement from the Respondent. During the interview, the investigator will review the Complaint and the Written Response, obtain additional details and clarify and questions. During this interview, the investigator may ask about your relationship with the Victim, other potential witnesses and ask for copies of any evidence relating to the Complaint and Written Response, including without limitation social media, phone records, email correspondence, photographs, etc. The investigator will also discuss the Title IX process for resolving the Complaint, and identify support resources for the Respondent, including licensed counselors for

personal support as well as those administrators who can confidentially answer questions about the process. This interview is called the “Interview with the Respondent.”

During the Interview with the Respondent, the investigator will establish the University’s expectations regarding the process with the Respondent, and remind him or her of the University’s zero tolerance policy against Retaliation.

At any time during the investigation process, the investigator may follow up with the Respondent to discuss new information obtained, or to clarify any conflicting information.

### **Step 3 Interviewing Witnesses and Documentary Evidence**

Following the Initial Interview and the Interview with the Respondent, the investigator will interview all witnesses identified. Each case varies on the number of witnesses and no specific time frame can be developed except that the investigator will seek to contact witnesses within one week after the Interview with the Respondent. The investigator will also obtain written statements from each witness prior to his or her interview and review them during their meeting. The investigator will also review and seek to verify all documentary evidence obtained.

The investigator may consult with the Office of Student Engagement, the Title IX Coordinator or the University’s legal counsel at any time for assistance.

### **Step 4 Completing the Investigation and Next Steps**

Upon completion of the investigator’s review of all documentary evidence available and his or her interview of all witnesses, the investigator will prepare a final written report regarding the matter (the “Final Investigative Report”) and present it to the Title IX Coordinator for review, with a copy to the Office of Student Engagement.

If appropriation information exists, the Complaint will proceed to a formal hearing. In some cases, the investigator may determine, in consultation with the Title IX Coordinator, that insufficient information exists to proceed to a formal hearing. In this case, the Title IX Coordinator will notify the Office of Student Engagement of this fact. The Office of Student Engagement will then notify the Victim and the Respondent that insufficient information exists to continue with the case, and the case will be considered closed unless additional substantive information is obtained which justifies, in the University’s sole discretion, re-opening of the case.

## **HEARING PROCEDURES**

### **Administrative Hearing**

Once the Final Investigative Report is submitted to the Title IX Coordinator, the Title IX Coordinator will determine whether sufficient grounds exist for the Complaint to proceed to a formal hearing.

The Title IX Coordinator may, in his or her sole discretion, may consult with the Office of Student Engagement to determine whether the Complaint may be resolved administratively (i.e., with the Respondent agreeing upon a finding of Sexual Misconduct or otherwise and an appropriate disciplinary sanction without the need for a formal hearing). In such cases as where an administrative resolution is approved, staff from the Office of Student Engagement will meet first with the Complainant privately to discuss the Complainant's position on any proposed disciplinary sanction.

If the Complainant objects to an administrative resolution of the case, the matter will proceed to a formal hearing. If the Complainant agrees with proposed sanction, staff from the Office of Student Engagement will meet next with the Respondent privately. The Respondent will be given at least 24 hours advance notice that the University seeks administrative resolution of the Complaint, and the specific violations of this policy under consideration. During the private meeting, the Respondent and the designated staff from the Office of Student Engagement will review the Final Investigative Report together. The designated staff member will also inform the Respondent of the sanction(s) being recommended by the Office of Student Engagement.

Following the meeting, the Respondent will be given at least 48 hours to provide written notification to the designated staff member from the Office of Student Engagement that he or she accepts the proposed sanction(s), or that he or she contest(s) the findings and/or sanctions and requests a formal hearing.

If the Respondent fails to attend the private meeting or to inform the Office of Student Engagement that he or she accepts the proposed sanction(s) or requests a formal hearing, the designated staff from the Office of Student Engagement may proceed to resolve the case administratively without the consent of the Respondent and/or his or her input.

If no formal hearing is requested, the Complainant and the Respondent will receive a written statement prepared by the Office of Student Engagement, and approved by the Title IX Coordinator, detailing the outcome of the administrative resolution within three business days of the deadline for the Respondent to accept or reject the proposed sanction(s).

### **Formal Hearing**

If the Title IX Coordinator, in consultation with the Office of Student Engagement, determines that the case should proceed to a formal hearing or if a Respondent or Complainant objects to a proposed

administrative resolution, the Respondent and the Complainant will be provided a minimum of 120 hours advance written notice of the same from the Office of Student Engagement, exclusive of Saturday and Sunday and any official University break or holiday, prior to the convening of a formal hearing panel to hear the case. The written notice will contain the date, time and location of the hearing in addition to a copy of the Final Investigative Report.

### **The Panel**

The Title IX Hearing Panel for cases under this policy shall not be the same as assigned to other disciplinary matters, although nothing herein precludes a non-student from serving on either or both panels. The Title IX Hearing Panel shall be selected by the Title IX Coordinator and shall be comprised of at least five persons who are members of the faculty and/or staff and who are trained to understand and evaluate allegations of Sexual Misconduct. Students shall not be permitted to serve on the Title IX Hearing Panel due to the sensitive nature of the Complaint and the complexity of analyzing certain matters involving Sexual Misconduct. Prior to finalizing the panelists in each case, the Title IX Coordinator will identify the Impacted Parties to the proposed panelists. Designated panelists with a close relationship with any Impacted Party may not serve on the Title IX Hearing Panel for the case at issue. Designated panelist with a bias towards an Impacted Party or a factual scenario, alleged or proven, may not serve on the Title IX Hearing Panel for the case at issue. A final panel must be selected at least 96 hours in advance of the hearing, although the University reserves the right to substitute panelists due to illness, conflicting obligations, etc., in its sole discretion.

### **Hearing Packets**

At least 72 hours in advance of the Hearing, the Office of Student Engagement will:

1. Notify the Complainant and the Respondent of the panelists' names and titles. The Complainant, the Respondent and any potential witness(es), and/or any person acting on any one of their behalf, are prohibited from contacting any member of the panel. Violation of this rule will result in discipline for interfering with a University official function. The University reserves the right to substitute panelist due to illness, conflicting obligations, etc., in its sole discretion. If a panelist is substituted the new panelist's name will be provided to the Complainant and the Respondent within 24 hours of the substitution.
2. Provide the Complainant and the Respondent with any and all information to be shared with the Title IX Hearing Panel which was not provided previously by the Office of Student Engagement along with the Final Investigative Report (i.e., additional evidence).
3. Provide the Complainant and the Respondent with the name(s) of any witness(es) the University will seek to have testify or the Hearing Panel. The Complainant and the Respondent are prohibited from contacting any witness identified by the Panel or the University for the purpose of discussing his or her intended testimony before the Title IX Hearing Panel. Any violation of this rule will result in discipline of the offending party for interfering with a University official function. Nothing herein is intended to prohibit the Complainant or the Respondent from contacting any such person to ask that they serve as a

witness on their behalf. The purpose of this rule is to prohibit rehearsing testimony with a witness or intimidating a witness into not testifying or into changing his or her testimony to suit another's interest.

### **Additional Information to be Submitted to the Title IX Hearing Panel by the Complainant and the Respondent/ Witnesses**

Either the Complainant or the Respondent may submit additional information to the Title IX Hearing Panel through the Title IX Coordinator at least 48 hours in advance of the hearing.

If the Complainant or Respondent intend to have a witness(es) testify on his or her behalf before the Hearing Panel, he or she must submit the name(s) of the witness(es) to the Dean of the Office of Student Engagement at least 48 hours in advance of the hearing. The Dean of the Office of the Student of Engagement shall provide the Hearing Panel and the other party with the name(s) of any such witness(es). Each party is prohibited from contacting the other parties' witness(es) for the purpose of discussing his or her intended testimony before the Title IX Hearing Panel. Any violation of this rule will result in discipline of the offending party for interfering with a University official function. Nothing herein is intended to prohibit the Complainant or the Respondent from contacting such person to ask that they serve as a witness on their behalf. The purpose of this rule is to prohibit rehearsing testimony with a witness or intimidating a witness into not testifying or into changing his or her testimony to suit another's interest. If a Complainant or Respondent has a need to contact another party's witness, even if that witness is a friend or an acquaintance, the safest way to avoid a potential violation of this policy is to first contact the Title IX Coordinator to explain the need to contact the witness and to obtain his or her approval of the contact, or permit him or her to make contact on the individual's behalf.

The Title IX Hearing Panel may, in its discretion, exclude witnesses or witness testimony that it deems irrelevant or duplicative.

### **Challenging the Participation of a Title IX Panelist**

Either the Complainant or the Respondent may challenge *the* participation of a designated Title IX Hearing Panelist due to a perceived conflict of interest. Such challenges, including the rationale, must be provided to the Title IX Coordinator, in writing, at least 48 hours prior to the commencement of a hearing. At its discretion, the Title IX Coordinator will determine if a conflict exists and a panelist should be substituted. If a panelist is substituted under this policy in less than the 72 hours notice provided for the names of the panelists to be provided to the parties, as described in the section above under "Hearing Packets," it shall not operate to delay the scheduled hearing date and/or time.

### **Character References**

Either the Complainant or the Respondent may submit up to five (5) character references each addressing the character of the Complainant or Respondent, as appropriate, but not the specific facts

involved in the case. Such references must be submitted no later than 72 hours in advance, and any information so submitted will be shared with the other party.

### **Hearing Principles**

The Honor Code applies to all statements before the Title IX Hearing Panel. Students and employees who appear before the hearing panel are subject to discipline, up to and including termination, for dishonesty before the Title IX Hearing Panel.

Efforts will be made to ensure that the Complainant and the Respondent will not wait in the same area outside of the hearing room.

The Title IX Hearings will be recorded, but not the Title IX Hearing Panel's deliberations.

The Title IX Hearing Panel will strictly follow the Standards of Review and the Standard of Proof set forth in this policy.

The past sexual history or sexual character of an Impacted Party will not be allowed as consideration of any Complaint under this policy unless the Title IX Coordinator, in consultation with the designated investigator, has notified the Title IX Hearing Panel, the Complainant and the Respondent in advance that such information is deemed highly relevant. In determining directly relevant patterns of behavior, the Title IX Coordinator reserves the right to share with the investigator any documented conduct violations of any Impacted Party such as sexual misconduct violations, acts of violence, bullying, harassment, Honor Code offenses, etc.

### **Order of the Title IX Hearing**

Normally, the order of the Title IX Hearings shall proceed as follows:

- Opening by the Panel Chair (to be designated by the panelists)
- Introductions by the Panel Chair
- A reminder that the Student Honor Code applies to all statements before the Title IX Hearing Panel by students, and that employees who falsify information before the Title IX Hearing Panel will be disciplined, up to and including termination
- Announcements, if any, regarding the hearing
- The Complainant will then be asked for comments, and then to present any witnesses
- The Respondent will then be asked for comments, and then to present any witnesses
- Consideration of any questions posed by the parties of each other or any other witness by the Title IX Hearing Panel
- The Complainant will be asked for rebuttal statements, if any
- The Respondent will be asked for rebuttal statements, if any

- Closing of the Title IX Hearing

Any member of the Title IX Hearing Panel may ask questions of the Complainant and the Respondent at any time during their respective presentation before the Title IX Hearing Panel. The Complainant and the Respondent may not question each other or of witnesses but they raise questions to be asked of the other party or other witnesses through the Title IX Hearing Panel, which will determine whether to ask them. The Title IX Hearing Panel will exclude questions on the basis of repetition, vexation and/or harassment or non-applicability to the case at issue. The appropriate time to present the Title IX Hearing Panel with such questions is during the portion of the hearing reserved for consideration of opposing parties' questions which is immediately prior to rebuttals. The Title IX Hearing Panel will notify a party in the event that his or her questions will not be asked, and provide the reason therefor.

The Title IX Hearing Panel has absolute authority over the conduct of the hearing and may set time frames for witness testimony and limit opening/closing statements and rebuttals. Impacted Parties may be notified of time limits upon receipt of their Hearing Packet or at the commencement of the hearing.

The Title IX Hearing Panel Chair may, in consultation with the Title IX Coordinator and the Office of Student Engagement, grant extensions of time at any time prior to the commencement of a hearing to permit reasonably sufficient time for: (i) a Complainant to prepare his or her case and/or present additional evidence; (ii) a Respondent to prepare his or her response and/or present additional evidence; or (iii) any of the above. After the commencement of the hearing, if the Title IX Hearing Panel discovers the need for more preparation time or more time to hear testimony, the Title IX Hearing Panel Chair shall recess the hearing to a later time. The Chair will inform the Title IX Coordinator of any continuance of the hearing.

The inability to obtain witnesses shall not justify undue delay to continue a hearing. If a witness is unable to attend the hearing in person, he or she may participate: (i) telephonically or electronically (e.g., by Skype, Vber or video conference, etc.); (ii) by sworn, notarized statement; or (iii) through a written statement.

Upon the closing of the Title IX Hearing, the Title IX Hearing Panel will hold a closed meeting(s) to deliberate and form a decision. Decisions shall be made on the basis of three-fourths of the votes of the Title IX Hearing Panel.

### **Notification of Title IX Hearing Panel's Decision**

The Title IX Hearing Panel will render a decision regarding the case within five business days after the Title IX Hearing concludes. The Complainant and the Respondent will receive verbal notification of the decision at approximately the same time from the Office of Student Engagement. A written notification prepared by the Title IX Hearing Panel Chair stating the decision and outlining the rationale for the decision will be delivered by the Office of Student Engagement to the Complainant and the Respondent within three business days after notification is made to the Complainant and the Respondent. All

decisions will be delivered by email and in-person or by certified U.S. Mail or overnight courier if hand-delivery is not an option or unsuccessful after the first attempt. Nothing herein delays implementation of the decision if the Office of Student Engagement is unable to make verbal contact with either the Complainant and/or the Respondent.

### **When Delivery is Deemed Made**

When a student fails to accept verbal notification, it will be deemed made upon hand delivery of a written notification or upon deposit of the decision in the U.S. Mail. If verbal notification is made, notification is deemed made upon contact, and a written notification serves a follow up and may be mailed by hand-delivery, certified U.S. Mail, or overnight delivery.

### **SANCTIONS**

Possible sanctions which may be imposed should the Title IX Hearing Panel find the Respondent responsible for violating this policy include, without limitation, expulsion, suspension, disciplinary probation, recommended counseling and/or other educational sanctions. The Title IX Hearing Panel has discretion in sanctioning. Factors pertinent to the determination of which sanction to apply include, without limitation, the nature of the conduct, the severity of the violation, the expressed wishes of the Victim/Complainant, prior disciplinary history of the Respondent (which the Office of Student Engagement shares in a private meeting with the Title IX Hearing Panel only upon a finding that the Respondent has violated this policy), the Respondent's willingness to accept responsibility for his or her actions, previous University responses to similar conduct and the University interests as a whole. Students who are expelled will have no more than 24 hours to vacate the University's campus after notification. Students who are suspended will have no more than 72 hours to vacate the University's campus after notification.

Sanctions are premised on the University's role as an educational institution.

### **APPEALS**

#### **Generally**

Either party may appeal a decision of the Title IX Hearing Panel. Students are afforded only one appeal through the Title IX Panel.

Appeals must be made in writing within 72 hours of the appealing party's receipt of Notification of the Title IX Hearing Panel's decision to the Title IX Coordinator. An appeal may not be deemed properly filed and received unless and until the Title IX Coordinator sends the appellant a written confirmation of receipt of the appeal, which may be made via electronic communication.

Appeals are generally given consideration only in those cases involving the most serious matters and the most significant consequences.

The only available grounds for an appeal are:

1. That there is new information that substantially alters the understanding of the event(s) in question.
2. That the discipline process was not followed in a fundamentally fair manner; and/or
3. That the disciplinary process is disproportionate to the offense.

Failure to strictly to adhere to expected time frames and other technical, non-substantive errors are not sufficient grounds for an appeal. The fact that a student is an honor student, makes good grades or is otherwise has good character and is well-liked has no bearing on the decision and is not sufficient grounds for an appeal.

All appeals must be in writing and state with specificity the grounds for the appeal listed above and the reasons why the appeal should be granted. Any appeal which fails to specify which of the three enumerated reasons an appeal should be granted will be dismissed for failure to state a basis for an appeal. General appeals that fail to state with specificity the grounds for the appeal will be dismissed.

Appeals will be shared with the other party who will have 72 hours to respond to the appeal through a written submission to the Title IX Coordinator. A response to an appeal may not be deemed properly filed and received unless and until the Title IX Coordinator sends the appellant a written confirmation of receipt of the response, which may be made via electronic communication.

Appeals do not delay or stay a requirement that a student leave campus due to suspension or expulsion or requirement to reside off campus. However, at the discretion of the Office of Student Engagement, in consultation with the Title IX Coordinator, the student may be permitted to return to campus/stay on campus during the appeals process.

### **The Title IX Appeals Panel**

Appeals will be reviewed in a closed meeting by a three person Title IX Appeals Panel comprised of a members of the faculty and staff appointed by the Title IX Coordinator within seven business of the filing of an appeal. Students shall not be permitted to serve on the Title IX Hearing Panel due to the sensitive nature of the issues on appeal and the lack of training in matters involving Sexual Misconduct. Designated panelists with a close relationship with any Impacted Party may not serve on the Title IX Appeals Panel for the case at issue. Designated panelist with a bias towards an Impacted Party or a factual scenario, alleged or proven, may not serve on the Title IX Appeals Panel for the case at issue.

Appeals will be reviewed on the basis of the written records, and will not involve a new hearing except at the sole discretion of the Title IX Appeals Panel. In cases where a new hearing is granted, the parties

will be notified of the same within eight business days of the filing of an appeal, and a hearing date will be set within 15 business days of the filing of an appeal.

Meetings of the Title IX Appeals Panel which are not formal new hearings are closed.

#### **NOTIFICATION OF THE TITLE IX APPEALS PANEL'S DECISION**

Decisions shall be made on the basis of a majority vote of the Title IX Appeals Panel.

If no hearing is granted, a decision on the appeal will be issued within 15 business days of the filing of an appeal, and if a hearing is granted, a decision on the appeal will be issued within 20 business days of the filing of an appeal.

The Complainant and the Respondent will receive verbal notification of the decision at approximately the same time from the Office of Student Engagement. A written notification prepared by the Title IX Appeals Panel Chair stating the decision and outlining the rationale for the decision will be delivered by the Office of Student Engagement to the Complainant and the Respondent within three business days after notification is made to the Complainant and the Respondent, either in person, by certified U.S. Mail or by overnight delivery service. Nothing herein delays implementation of the decision if the Office of Student Engagement is unable to make verbal contact with either the Complainant and/or the Respondent.

#### **When Delivery is Deemed Made**

When a student fails to accept verbal notification, it will be deemed made upon hand delivery of a written notification, within three days after deposit in the U.S. Mail, or upon confirmed delivery by an overnight delivery service. If verbal notification is made, notification is deemed made upon contact, and a written notification serves a follow up and may be mailed by regular U.S. Mail, overnight delivery service or hand delivered.

#### **FINAL APPEAL TO PRESIDENT**

Students may appeal any decision of the Title IX Appeals Panel in writing to the University's President. The only available grounds for an appeal to the University's President are:

1. That there is new information that substantially alters the understanding of the event(s) in question.
2. That the discipline process was not followed in a fundamentally fair manner; and/or
3. That the disciplinary process is disproportionate to the offense.

Failure to strictly adhere to expected time frames and other technical, non-substantive errors are not sufficient grounds for an appeal to the University President. The fact that a student is an honor student,

makes good grades or is otherwise has good character and is well-liked has no bearing on the decision and is not sufficient grounds for an appeal to the University President.

Appeals must be submitted to the Title IX Coordinator who will forward the appeal to the University President. Students should not submit appeals directly to the President and/or the Office of the President.

All appeals must be in writing and state with specificity the grounds for the appeal listed above and the reasons why the appeal should be granted. Any appeal which fails to specify which of the three enumerated reasons an appeal should be granted will be dismissed for failure to state a basis for an appeal. Any appeal which fails to state with specificity the reason(s) why the appeal should be granted will be dismissed.

Appeals will be shared with the other party who will have 72 hours to respond to the appeal through a written submission to the Title IX Coordinator who will forward it to the University President. A response to an appeal may not be deemed properly filed and received unless and until the Title IX Coordinator sends the appellant a written confirmation of receipt of the response, which may be made via electronic communication.

Appeals do not delay or stay a requirement that a student leave campus due to suspension or expulsion or requirement to reside off campus. However, at the discretion of the Office of Student Engagement, in consultation with the Title IX Coordinator, the student may be permitted to return to campus/stay on campus during the appeals process with the President.

The President will generally issue a decision on the appeal within ten (10) business days of his or her receipt of the appeal.

#### **NOTIFICATION OF THE PRESIDENT'S DECISION**

The Complainant and the Respondent will receive verbal notification of the President's decision from a member of the Office of Student Engagement. A written notification prepared by President stating the decision and outlining the rationale for the decision will be delivered by the Office of Student Engagement to the Complainant and the Respondent within three business days after oral notification is made to the Complainant and the Respondent. Nothing herein delays implementation of the decision if the Office of Student Engagement is unable to make verbal contact with either the Complainant and/or the Respondent.

#### **When Delivery is Deemed Made**

When a student fails to accept verbal notification, it will be deemed made upon hand delivery of a written notification, within three days of deposit in the U.S. mail or upon confirmation of delivery by an overnight delivery service. If verbal notification is made, notification is deemed made upon contact, and

a written notification serves a follow up and may be mailed by regular U.S. Mail, overnight delivery service

#### **RETAINING RECORDS OF THE INVESTIGATION**

The Final Investigative Report, the Hearing Packet, all evidence and the decision shall be collective and retained in the Office of Student Engagement for five (5) years, at which time they will be destroyed, or at the Title IX Coordinator's discretion, preserved.

The decision of the Title IX Hearing Panel is part of the educational record of the accused individual, and is protected from release by the University under the Federal Educational Rights & Privacy Act ("FERPA"). However, the University observes the following exceptions:

1. Complainants have the right to be informed of the outcome, in writing, and to be informed of any sanctions that directly relate to them, and to essential findings.
2. The University may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a college policy that is a Crime of Violence.

#### **FALSE ACCUSATIONS**

Fisk University has a zero tolerance policy for false accusations of Sexual Misconduct under this policy because such accusations can permanently impair a person's ability to pursue life, liberty and the pursuit of happiness. The University prohibits false accusations under this policy, regardless of the outcome of any investigation or a subsequent withdrawal of the Complaint. The University will initiate disciplinary proceedings against any person filing a false Complaint under this policy, and sanctions may include expulsion, suspension, recommended counseling or any other sanction available under the University's Code of Judicial Conduct.

A finding that the Respondent has not committed Sexual Misconduct under this policy does not mean a false accusation has been made. False accusations require proof that the accusation was made knowingly and willfully with malice and an intent to accuse the Respondent falsely.

#### **PARENTAL NOTIFICATION AND NOTIFICATION TO OTHER UNIVERSITY OFFICIALS**

The University reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status, or conduct situation, involving Title IX matters under this policy, drugs and/or alcohol. The University will notify parents/guardians of dependent students under 21 who are found in violation of this policy or of alcohol or drug violations regardless of status under this policy.

The University also reserves the right to designate which University officials have a need to know about individual conduct complaints pursuant to FERPA.