



Sexual Misconduct Response

Policy SS004

Volume 13, Safety and Security

Responsible Administrator: Deputy to the President

Responsible Offices: Affirmative Action Officer/Title IX Coordinator; Department of Public Safety

Last Updated: August 2018

I. Policy Statement

FIT seeks to create and maintain a safe environment in which all members of the community –students, faculty, administrators, staff, guests and visitors – can learn and work free from the fear of sex or gender discrimination, including sexual misconduct. FIT prohibits sexual misconduct by its students, faculty, administrators, or staff. Sexual misconduct covered by this policy includes, among other things, sexual assault, gender-based harassment, sexual harassment, stalking, and domestic and intimate partner violence. The college will promptly investigate all allegations of sexual misconduct and take appropriate disciplinary action upon finding a violation of this policy. The college is committed to supporting victims of sexual misconduct and is committed to providing support services and accommodations. Just as important, FIT offers education and training programs intended to prevent sexual misconduct from happening in our community. FIT also prohibits other types of discrimination and harassment. Members of the FIT Community should consult the FIT’s Nondiscrimination and Anti-Harassment Policy if they believe they have been the subject of other types of discrimination and harassment.

II. Reason for the Policy

Sexual misconduct is an intolerable intrusion into the most personal and private rights of an individual. It impacts both the victim and the community as a whole. FIT wants all victims of sexual misconduct, including sexual assault, stalking and domestic and intimate partner violence, to be aware of the many resources FIT offers to support them. FIT also wants to provide those who are accused of violations of this policy with appropriate procedural protections to ensure fairness, and protection against retaliation.

The community must also be confident that those who are found to have committed sexual misconduct will be disciplined up to and including expulsion for students or termination for employees. The training and educational opportunities available at the college for students and employees are intended to help prevent sexual misconduct as well as to teach how to deal with its aftermath. Additionally, this policy adheres to specific laws such as Title IX (a comprehensive federal law that protects people from discrimination based on sex), New York State Education Law Article 129-B “Enough is Enough” legislation, and Violence Against Women Act (VAWA), the Campus Sexual Violence Elimination Act (SaVE Act), and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

III. Who is Affected by this Policy

- Students

- Employees
- Other members of the FIT community

IV. Who is Responsible for this Policy

- Counseling Center
- Employee Assistance Program
- Enrollment Management and Student Success
- Health Services
- Human Resource Management and Labor Relations
- Residential Life
- Public Safety
- Student Life
- Title IX Coordinator (Affirmative Action Officer)

V. Principles

A. Title IX Coordinator

The Affirmative Action Officer serves as FIT's Title IX Coordinator and coordinates FIT's compliance with Title IX. The Title IX Coordinator will be informed of all complaints or reports of violations of this policy, and oversees FIT's response to ensure compliance with Title IX, Violence Against Women Act (VAWA), and other applicable laws. The Title IX Coordinator may delegate responsibilities under this policy to designated administrators, who will be appropriately trained.

FIT's Title IX Coordinator's contact information:

Deliwe Kekana
333 7th Avenue, 16th Floor
titleix@fitnyc.edu
(212) 217-3365

Inquiries concerning the application of Title IX may also be directed to:

U.S. Department of Education Office for Civil Rights
New York—Region II
32 Old Slip, 26th Floor
New York, NY 10005
Telephone: (646) 428-3800
Email: OCR.NewYork@ed.gov

B. Scope of This Policy

This policy governs the conduct of (i) all the members of FIT's community, such as employees and students, and (ii) non-members of FIT's community, such as contractors, vendors and visitors. Non-members of FIT's community are both protected by and subject to this policy. A non-member may make a complaint or report of a violation of this policy committed by a member of FIT's community. A non-member may also be permanently barred from FIT or subject to other restrictions for failing to comply with this policy. This policy applies to conduct that occurs on and off FIT's campus.

i. On-campus violations

This policy forbids acts of sexual misconduct anywhere on campus, which includes FIT-owned, -leased, -operated, or -controlled property, streets and pathways contiguous to FIT property, or in the immediate vicinity of campus. It also includes the property, facilities, and leased premises of organizations affiliated with FIT, including FIT housing and all actions by a member of the FIT community that involve the use of FIT's computing and network resources from a remote location, including but not limited to accessing email accounts or any social media platforms.

ii. Off-campus violations

This policy also applies to conduct that occurs off FIT's campus when the conduct is associated with an FIT-sponsored activity, such as travel, study abroad, research, internship programs, or in any other off-campus location when such conduct may have a continuing adverse effect or could create a hostile environment on campus.

C. Definitions

In determining whether alleged conduct violates this policy, FIT will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged conduct and the context in which it occurred. Individuals of any gender can commit any of the prohibited conduct defined in this policy, and it can occur between individuals of the same gender or different genders. It can occur between strangers or acquaintances, as well as people involved in domestic, intimate, or sexual relationships.

i. Sexual Misconduct – Prohibited Conduct

- a) Dating Violence:** any act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the victim's statement and with consideration of the type and length of the relationship and the frequency of the interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship, regardless of whether the relationship is sexual in nature. This definition does not include acts covered under domestic and intimate partner violence.
- b) Domestic and Intimate Partner Violence:** any violent felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim, a person sharing a child with the victim, a person cohabiting with the victim as a spouse or intimate partner or by any other person against a person protected under applicable domestic or family violence law.
- c) Gender-Based Harassment:** acts of aggression, intimidation, stalking, or hostility based on an individual's actual or perceived sex, gender identity and status, gender expression, and nonconformity with gender stereotypes that is sufficiently serious to adversely affect an individual's educational, campus life or employment experience. The effect will be evaluated based on the perspective of a reasonable person in the position of the Complainant (as defined in Section C, under "Terminology").
- d) Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- e) **Sexual Assault - Contact:** any intentional sexual touching other than nonconsensual sexual penetration without affirmative consent. Examples of non-consensual sexual contact may include: genital-genital or oral-genital contact not involving penetration; contact with breasts, buttocks, or genital area, including over clothing; removing the clothing of another person; and kissing.
- f) **Sexual Assault - Penetration:** any act of vaginal or anal penetration by a person's penis, finger, other body part, or an object, or oral penetration by a penis or any other body part, without a person's affirmative consent.
- g) **Sexual Exploitation:** any act whereby one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another who has not provided consent, and that does not constitute non-consensual sexual penetration, non-consensual sexual contact, or sexual harassment. Examples may include recording, photographing, transmitting, viewing, or distributing intimate or sexual images or sexual information without the knowledge and consent of all parties involved; voyeurism (i.e., spying on others who are in intimate or sexual situations).
- h) **Sexual Harassment:** is defined as unwelcome conduct of a sexual nature that is sufficiently severe, pervasive, or persistent so as to interfere with or limit an individual's ability to participate in or benefit from FIT's programs or activities. It can take different forms; accordingly, the determination of what constitutes sexual harassment will vary according to the particular context and circumstances. Sexual harassment is often imposed upon a person in an unequal power relationship through the abuse of authority. Central to this concept is the use of implied reward or threat of deprivation that interferes with the academic or work effectiveness of the victim. Examples of sexual harassment include, but are not limited to:
- Making unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature;
 - A pattern of conduct intended to discomfort or humiliate, or both, that includes comments of a sexual nature or sexually explicit statements, questions, jokes, or anecdotes whether delivered in person, in writing, by email, voice-mail message, social media, blogs, chats, or any other communication medium;
 - A pattern of conduct that would discomfort or humiliate, or both, that includes one or more of the following: unnecessary touching, patting, hugging, or brushing against a person's body; remarks of a sexual nature about a person's clothing or body; or remarks about a person's sexual activity or speculation about a person's sexual experience;
 - Direct or implied threats that submission to such conduct is made explicitly or implicitly a term or condition of an individual's participation in an educational program, grades, or letters of recommendation;

- Direct or implied threats that submission to such conduct is made explicitly or implicitly a term or condition of an individual's continued employment, work status, promotion, or other condition of employment;
- Such conduct is intended to interfere, or results in interference, with an employee's work performance, or creates an intimidating, hostile, or offensive work environment.

- i) **Sexual Intimidation:** threatening behavior of a sexual nature directed at another person or group that reasonably leads the target(s) to fear for their physical well-being or to engage in sexual conduct for self-protection, such as threatening to sexually assault another person or engaging in indecent exposure.
- j) **Stalking:** a course of conduct (two or more acts by which a person(s) directly, indirectly, or through third parties follows, monitors, observes, surveils, threatens, or communicates about another person or interferes with their property) directed at a specific person that would cause a reasonable person to feel fear. Stalking behaviors may include: pursuing or following; non-consensual (unwanted) communications or contact – including face-to-face, telephone calls, voice messages, electronic messages, text messages, unwanted gifts; trespassing; and surveillance or other types of observation. Cyberstalking involves using the Internet or other electronic means as a way to harass someone.
- k) **Retaliation:** adverse action against an individual for reporting a violation of this policy in good faith or against any individual (e.g., a Complainant, a Respondent, a witness, etc.) for participating in any way in the investigation or conduct process. Retaliation includes harassment and intimidation, including but not limited to violence, threats of violence, property destruction, and adverse educational or employment consequences and bullying. Any individual or group of individuals, not just a Respondent or Complainant, can be responsible for retaliation.

ii. **Terminology**

- a) **Affirmative Consent (“Consent”):** a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance does not in and of itself, demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be initially given but withdrawn at any time. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. When consent is withdrawn or can no longer be given, sexual activity must stop.

Children under 17 years of age cannot legally consent under New York State law to having sex or sexual contact with an adult (i.e., someone who is 17 years of age or older).

- b) **Bystander:** an individual who observes a crime, impending crime, conflict or unacceptable behavior. (See Section F for Safe Bystander Interventions).
- c) **Coercion:** is verbal and/or physical conduct, including intimidation, and explicit or implied threats of physical, emotional, or other harm, that would reasonably place an individual in fear of immediate or future harm and that is used to compel someone to engage in sexual contact against their will. Coercion is more than an effort to persuade, entice, or attract another individual to engage in sexual activity. When an individual makes it clear that they do not want to participate in a particular form of sexual activity, that they want to stop or that they do not want to go beyond a certain sexual activity, continued pressure can be coercive. In evaluating whether coercion was used, the frequency, duration, and intensity of the other individual's verbal or physical conduct or threats are all relevant, as is the degree of isolation of the individual being subjected to that conduct or those threats.
- d) **Complainant:** the individual making the allegation(s) of sexual misconduct.
- e) **Confidentiality:** may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials in a manner consistent with state and federal law. Licensed mental health counselors, medical providers, and pastoral counselors are examples of institution employees who may offer confidentiality. For a list of confidential resources at FIT, see below.
- f) **Force:** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation, and coercion to overcome resistance.
- g) **Incapacitation:** occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent.
 - 1. **Alcohol and Other Drugs:** depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent. The impact of alcohol and other drugs varies from person to person as they can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. The perspective of a reasonable person will be the basis for determining whether the Respondent should have known about the impact of alcohol or other drugs on the Complainant's ability to give consent. The use of alcohol and other drugs is never an excuse for a policy violation.

- h) **Persona non grata:** means that an individual is no longer permitted to be present on FIT's owned, -leased, -operated, or -controlled property.
- i) **Preponderance of the Evidence:** the standard of proof in sexual misconduct cases, which asks whether it is "more likely than not" that the sexual misconduct occurred.
- j) **Privacy:** may be offered by an individual when such individual is unable to offer confidentiality under the law. Privacy means that a person will not disclose information unless necessary to comply with this and other applicable laws, including informing appropriate institution officials.
- k) **Respondent:** the individual alleged to have committed the sexual misconduct.
- l) **Third Party:** any individual who may or may not be part of the FIT community (this may include vendors, contracted individuals, or others who are not FIT employees or students).

D. Options for Confidentially Disclosing Sexual Misconduct

The college recognizes that confidentiality is particularly important to victims of sexual misconduct. A victim who has made a report to a non-confidential resource at FIT may make a request for privacy, but must understand that FIT cannot guarantee complete confidentiality because of its responsibility to safeguard all members of the community and its obligations under the law, including Title IX. Even FIT offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. FIT understands that it may be difficult for a victim to come forward, and there are several options available for individuals who wish to maintain confidentiality while getting the support they need.

Certain on-campus employees and off-campus professionals have different abilities to maintain confidentiality:

- i. **Confidential Resources:** Medical providers, licensed mental health counselors, staff in medical and counseling offices supervised by those with a professional licensing requiring confidentiality, clergy, and off-campus counselors and advocates are not required to re-disclose any information provided by an individual except in the cases where there is an imminent health or safety risk, in some circumstances involving a child, or a lawfully issued subpoena. Confidential resources on the FIT campus are identified in the next Section E, subsection (i).
- ii. **Non-Confidential Resources:** All other FIT employees are required to report all relevant information to the Title IX Coordinator. A report to any FIT employee, including faculty, chairpersons, and department heads, constitutes a report to FIT. FIT is obligated to take appropriate steps to address the situation, and the Title IX Coordinator will confer with the victim before determining whether to conduct an investigation. While not bound by confidentiality, these employees will be discreet and will respect the privacy of those involved.

- iii. **Note on Public Awareness Events:** FIT is not obligated to conduct an investigation based on information disclosed during public awareness events such as candlelight vigils, protests, or “Take Back the Night” events.

E. Support Resources and Accommodations

i. Support Resources

FIT wants to ensure that victims of sexual misconduct seek medical attention for physical and mental health. FIT will ensure that those who come forward are advised of all the support resources available on and off campus and at the reporting individual’s request, assist in the initiation of legal proceedings in family or civil court. The following resources are available to provide support and assistance.

a) On-Campus Confidential Resources

Students

- [FIT Counseling Center](#)
(212) 217-4260
Dubinsky Student Center
Room A-212B
- [FIT Health Services](#)
(212) 217-4190
Dubinsky Student Center
Room A-402

Employees

- **Employee Assistance Program**
(212) 217-5600
Pomerantz Center
Lower Level, Room DC35

b) Anonymous Reporting

Individuals may make an anonymous report concerning a violation of this policy by contacting FIT’s Tip Line, (212) 217-TIPS (212-217-8477). The reporting individual’s name, if provided, will be kept confidential, but the incident may be included in the annual crime statistics report without divulging the individual’s name or any other information that would infringe on their confidentiality. Please note that an allegation of sex- or gender-based misconduct involving students or other members of the college community, even if made anonymously, will be reported to the Title IX Coordinator.

c) Other On-Campus Resources

Individuals may also report a violation of this policy to the following resources. While these officials are not bound by confidentiality, they will be discreet and will respect the privacy of those involved.

- **Title IX Coordinator**
titleix@fitnyc.edu
(212) 217-3365
333 7th Avenue, 16th Floor

Students may also reach out to the Dean of Students, the Care Team, or International Student Services at the following contacts:

- **Dean of Students**
dean_of_students@fitnyc.edu
(212) 217-3800
Business and Liberal Arts Center, Room B-221
- **FIT Care Team**¹
(212) 217-3800
Business and Liberal Arts Center, Room B-221'
- **International Student Services**
(212) 217-3700
Business and Liberal Arts Center, Room B-103

Employees may also reach out the Department of Human Resource Management and Labor Relations:

- **Human Resource Management and Labor Relations**
(212) 217-3650
333 7th Avenue, 16th Floor

d) Emergency Resources and Law Enforcement

Emergency medical assistance, Public Safety, and local law enforcement assistance are available both on- and off-campus. Individuals may contact Public Safety and/or local law enforcement and seek medical treatment following an incident that poses a threat to safety or physical well-being or following a potential crime. Treatment and preservation of evidence are crucial to a criminal investigation, and are best gathered as soon as possible after an incident, and may be helpful in obtaining an order of protection.

- **FIT Public Safety**
(212) 217-7777
236 West 27th Street
- **NYPD 10th Precinct**
230 West 20th Street
New York, NY 10011-3502
911 or (212) 741-8211

An individual who may be a victim of sexual misconduct as a consequence of alcohol and/or other drugs should have a toxicology examination at the hospital as quickly as possible as drugs may remain in a person's system for only a short time. Most hospitals have rape victim protocols that are very supportive of victims. Victims are able to receive a sexual assault forensic examination (commonly referred to as a "rape kit") within 96 hours of an assault. You are encouraged to let hospital personnel know if you do not want your insurance policy holder to be notified about your access to these services. The New York

¹ Some individuals on the FIT Care Team are considered "Confidential Resources," as described above. Although the FIT Care Team itself is not a Confidential Resource, a report made to the individuals who otherwise sit on the FIT Care Team and who are "Confidential Resources" will be kept confidential and not reported to the FIT Care Team without the consent of the victim.

State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds. More information may be found here: [Office of Victim Services](#).

e) New York State and Community Resources

Any individual may also access resources located throughout New York State and in the local community. These organizations can provide crisis intervention services, counseling, medical attention, and assistance in dealing with the criminal justice system.

- New York State Domestic Hotline:
<http://www.opdv.ny.gov/help/dvhotlines.html>
- [Office for the Prevention of Domestic Violence](#):
- [SurvJustice](#)
- [Legal Momentum](#)
- [NYSCASA](#)
- [NYSCADV](#)
- [Pandora's Project](#)
- [Anti-Violence Project](#)
- [RAINN](#)
- [Safe Horizon](#)
- [New York City Family Justice Centers](#)
- Visit SUNY's [Sexual Assault and Violence Response website](#), then click on off-campus resources, and search by zip code to find further additional off-campus resources near you. This resource also includes immigration and visa information, provided in many different languages, for victims.

ii. Protections and Accommodations

In deciding on the appropriate accommodation/protective measure, factors considered include, but are not limited to: the specific need expressed or information provided by the Complainant or Respondent; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the Complainant or Respondent; whether the Complainant and Respondent share the same residence hall, dining hall, class, transportation, or job location; and whether other judicial measures have been taken to protect the parties (e.g., civil protection orders). While requests for accommodations may be made by or on behalf of the Complainant to any of the offices referenced in this policy, (1) where the individual(s) is a student or a Third Party, the Title IX Coordinator will decide the appropriate protections and accommodations²; and (2) where the individual(s) is an employee, the Title IX Coordinator will recommend the appropriate protections and accommodations to the Vice President for Human Resource Management and Labor Relations or their designee(s). All accommodations or protective measures will be treated as confidential to the extent it is possible to do so without impairing implementation of the measures.

² Should the Title IX Coordinator believe that interim suspension is an accommodation worth considering during an investigation, the Title IX Coordinator will confer with the Dean of Students. The Dean of Students will then make the final determination as to whether interim suspension is an appropriate accommodation during an investigation.

Both the Respondent and the Complainant have the right to request a prompt review, that is reasonable under the circumstances, of the terms of and need for any protections and accommodations that directly affect them (such as the terms of a “no contact order” or interim suspension) including potential modifications. Both parties shall be allowed to submit evidence in support of their request.

a. FIT Protections and Accommodations – Student

The following protections and accommodations are offered by FIT to students involved in a Sexual Misconduct investigation. As mentioned above, the Title IX Coordinator will weigh a number of factors in deciding on the appropriate accommodation/protective measures.

1. **No Contact Orders** – once a “no contact order” has been issued, intentional attempts to contact or come into contact with the other party is prohibited for the duration of the investigation. Violation of a “no contact order” after it has been issued, is a violation of college policy and the individual will be subject to additional misconduct charges and/or the immediate imposition of appropriate sanctions, including but not limited to interim suspension.
2. **Accommodations** – to obtain reasonable and available interim measures and accommodations that effect a change in academic, housing, transportation, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment.
3. **Interim Suspension** – to have the Respondent placed on interim suspension where the Respondent is a student and presents a continuing threat to the health and safety of the community. Should the Title IX Coordinator believe that interim suspension is an accommodation worth considering during an investigation, the Title IX Coordinator will confer with the Dean of Students. The Dean of Students will then make the final determination as to whether interim suspension is an appropriate accommodation during an investigation.
4. **Persona Non Grata** – to have assistance from Public Safety or the Title IX Coordinator in obtaining a persona non grata letter, subject to legal requirements and college policy - when the Respondent is not a member of the college community.

b. FIT Protections and Accommodations – Employee

The following protections and accommodations are offered by FIT to employees involved in a Sexual Misconduct investigation. As mentioned above, the Title IX Coordinator will weigh a number of factors in deciding the appropriate accommodations/protective measures to recommend to the Vice President for Human Resource Management and Labor Relations or their designee(s).

1. **No Contact Orders** - once a “no contact order” has been issued, intentional attempts to contact or come into contact with the other

party is prohibited for the duration of the investigation. Violation of a “no contact order” after it has been issued, is a violation of college policy and the individual will be subject to additional misconduct charges.

2. **Accommodations** - to obtain reasonable and available interim measures and accommodations that effect a change in employment, transportation, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment.
3. **Persona Non Grata** – to have assistance from Public Safety or the Title IX Coordinator in obtaining a persona non grata letter, subject to legal requirements and college policy - when the Respondent is not a member of the college community.

c. Non-FIT Protections and Accommodations

Members of the FIT community may obtain an Order of Protection or, if outside of New York State, an equivalent protective or restraining order. Should a member of the FIT community have interest in obtaining an Order of Protection, FIT will provide assistance in the following ways:

1. Upon request, Public Safety or the Title IX Coordinator will assist in obtaining an Order of Protection or, if outside of New York State, an equivalent protective or restraining order.
2. If an individual is granted an Order of Protection, they will receive a copy of the Order of Protection or equivalent and have an opportunity to meet or speak with a college official such as the Title IX Coordinator, who can explain the order and answer questions about it, including information from the Order of Protection about the Respondent’s responsibility to stay away from the Complainant.
3. Explain the consequences for violating the Order of Protection, including but not limited to arrest, additional conduct charges, and interim suspension.
4. When an individual violates an Order of Protection or equivalent protective or restraining order from outside New York State, to have Public Safety support, and, when appropriate, NYPD enforcement of the order.

FIT shall comply and assist with enforcement of all known Orders of Protection. Students should bring their Orders of Protection to the Title IX Coordinator or Public Safety’s attention and are responsible for notifying these officials/departments if there are any changes to the Order of Protection. Employees should bring their Orders of Protection to the attention of the Vice President for Human Resource Management and Labor Relations or Public Safety and are responsible for notifying these officials/departments if there are any changes to the Order of Protection.

F. Safe Bystander Interventions

Observers of a sexual assault or other types of gender or intimate partner based misconduct such as domestic violence, dating violence, or stalking, may be able to help the victim. However, it is important that the observer do so in a positive manner and in a way that keeps the observer and the victim safe. Appropriate interventions will depend on the situation. Safe and appropriate options for bystanders may include calling FIT Public Safety in violent or potentially violent situations, intervening if the observer believes someone is in a potentially uncomfortable or unsafe situation, and/or encouraging the target of such conduct to report the incident and seek support.

It is imperative that bystanders report sexual assault, harassment, and other forms of gender-based misconduct, even if those involved in reporting the alleged misconduct may be violating other FIT policies. FIT expects that members of the community will look out for each other and immediately report troubling behavior so that FIT can intercede to stop such behavior, address the effects of the behavior, and prevent its recurrence.

G. Alcohol and/or Drug Use Amnesty

The health and safety of every student at FIT is of utmost importance. FIT recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that sexual misconduct, including but not limited to domestic violence, dating violence, stalking or sexual assault, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. FIT strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to campus officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to FIT officials or law enforcement will not be subject to FIT's conduct disciplinary action for violations of alcohol and/or drug use policies occurring at or near the time of the domestic violence, dating violence, stalking, or sexual assault.

H. Student Bill of Rights

FIT is committed to providing options, support, and assistance to the members of the FIT community that are affected by sexual misconduct. With this in mind, the college has created the Student Bill of Rights to educate all students about their rights to be treated with respect and dignity when reporting sexual misconduct, as well as all students accused of sexual misconduct. Students have the right to make a report to Public Safety, local law enforcement and/or state police or choose not to report; to report the incident to the college; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution. This [Bill of Rights can be found on FIT's website](#).

I. False Complaints

Individuals who knowingly and intentionally make false reports will be subject to disciplinary action.

J. Non-Retaliation

All members of the FIT community are prohibited from engaging in retaliation against an individual who, in good faith, reports or complains of a violation of this policy or participates in any way in the investigation or disciplinary process (for example, a Complainant, a Respondent,

a witness, etc.). Reports or complaints of retaliation will be investigated and any individuals found to have engaged in retaliation may be subject to disciplinary action in accordance with the processes and procedures set forth in this policy or, depending on the nature of the allegations, disciplinary procedures under FIT's Code of Student Conduct or other applicable policy (for students) or as determined by the Vice President for Human Resource Management and Labor Relations or their designee (for employees).

K. Privacy

In general, FIT will reveal information about its investigations and adjudication for conduct prohibited by this Policy only to those who need to know the information in order to carry out their duties and responsibilities, unless otherwise required or prohibited by federal, state, or local laws, rules, or regulations. Students with questions about who may receive such information should contact the Title IX Coordinator.

All students and FIT personnel participating in an investigation, proceeding, or hearing are expected to maintain the privacy of the process. This does not prohibit a Complainant or Respondent from obtaining the assistance of family, friends, legal or non-legal advisors, union representatives, counselors, therapists, clergy, doctors, or similar resources.

L. Non-Legal Advisor and Legal Counsel

Complainants and Respondents may have a non-legal advisor or legal counsel present at any meeting or hearing during the investigation, adjudication, or appellate process subject to the guidelines below. Students and employees must provide advance written notice to the Title IX Coordinator of the anticipated presence of a non-legal advisor or legal counsel, and their affiliation with the student or employee, at least three (3) business days prior to their scheduled meeting or hearing. Failure to present timely notice will result in a rescheduling of the meeting or hearing. Such non-legal advisor or legal counsel accompanying a student or employee is not allowed to participate in the investigation or disciplinary process, including responding to questions on the student or employee's behalf, offering arguments on the student or employee's behalf, or otherwise participating in disciplinary proceedings other than to speak with the student or employee before, after, or on breaks from the meeting or hearing; except that, in accordance with applicable law and the collective bargaining agreement between FIT and United College Employees of FIT, employees in the collective bargaining unit may have the right to request that a union representative be present during meetings or hearings related to the process and to have a union representative participate in the meetings or hearings to the extent permitted by the collective bargaining agreement and law. Students will be required to sign a FERPA release allowing the non-legal advisor or legal counsel to hear protected student information pertaining to the case. The non-legal advisor or legal counsel will be required to leave the meeting or hearing if they violate any of the above terms.

M. Request for Disability Accommodations During Process

Students and employees with disabilities may be eligible for accommodations during the investigatory, adjudication, and/or disciplinary process. If a student is seeking accommodations due to disability, they must make a request to the Office of Disability Services, FIT-ABLE, and provide the required documentation under FIT's Disability Accommodations and Support Services Policy³. If an employee is seeking accommodations due to disability, they must make a

³ Students requesting accommodations should fully review FIT's Disability Accommodations and Support Services Policy.

request to the Office of Human Resources. While students and employees can make a request at any point during the process, however, accommodations cannot be provided retroactively. Students and employees are encouraged to make their requests as early as possible during the process to ensure approved accommodations are implemented in a timely fashion.

N. Sexual History and Mental Health Diagnosis

During the adjudication process, Complainants and Respondents have the opportunity to exclude their own prior sexual history with persons other than the opposing party during the proceedings. However, past findings of responsibility for domestic violence, dating violence, stalking or sexual assault may be admissible during the sanction process. Complainants and Respondents also have the opportunity to exclude their own mental health diagnoses and treatment during the adjudication process.

VI. Procedures

A. Reporting

The following procedures have been adopted by FIT to receive, investigate, and resolve complaints of discrimination on the basis of sex and sexual misconduct. These procedures are designed to provide a supportive process for Complainants who file complaints and to ensure a fair process for Respondents accused of discriminatory conduct and sexual misconduct. Sexual misconduct, including domestic violence, dating violence, stalking, sexual exploitation, sexual intimidation, and sexual assault, has been recognized as a form of sex or gender discrimination in violation of Title IX and this policy.

FIT's procedures seek to ensure a prompt, fair, and impartial investigation and resolution and will seek to resolve sexual misconduct cases within approximately 60 days. This time frame may be extended for good cause (such as cooperating with compliance requests from law enforcement and the time of year) as necessary to ensure integrity and completeness of the process. Procedures will be conducted by college officials who receive annual training on issues related to sex discrimination, sexual misconduct, as well as on conducting investigations and managing the hearing process that protects victim safety and promotes accountability. The standard of evidence used in the adjudication of these cases will be Preponderance of Evidence. Retaliation of any kind against a Complainant, Respondent, or against any other individual participating in the investigation is strictly prohibited. Any Retaliation will be treated as a new and additional violation of this policy.

Individuals have the right to report sexual misconduct to FIT and to request that charges be brought against a Respondent who has engaged in sexual misconduct. Complainants have the option to choose not to participate in an investigation and the right to withdraw their report and their involvement in FIT's disciplinary process at any time. The Title IX Coordinator will honor the request of a Complainant who declines to consent to participate in an investigation. While honoring such a request may limit the college's ability to meaningfully investigate and pursue conduct action against an accused individual, the Title IX Coordinator may still need to proceed with an investigation even if a Complainant specifically requests that the matter not be pursued or withdraws their report. The Title IX Coordinator will consider the following factors in determining whether to pursue investigation and/or conduct action:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the accused;
- The increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor;
- Whether the college possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

If a Complainant self-identifies but asks to remain anonymous during an investigation, the Title IX Coordinator will consider how to proceed, taking into account the Complainant's articulated concerns, the safety, well-being and best interests of the FIT community, fair treatment of all individuals involved, and FIT's obligations under all applicable laws. If a Student-Respondent withdraws from FIT while conduct charges are pending and the Student-Respondent declines to complete the student disciplinary process, the following notation will be listed on that student's transcript: "Withdrew with conduct charges pending."

i. Filing a Report On-Campus – Student

Any student who experiences conduct that the student believes is in violation of Title IX and this policy may (a) report that conduct to the Title IX Coordinator (333 Seventh Ave, 14th Floor; titleix@fitnyc.edu; (212) 217-3365; or (b) report that conduct to a responsible employee.

A responsible employee is an FIT employee who has a duty to report incidents of sexual misconduct or who a student could reasonably believe has this authority or duty. This definition encompasses virtually every FIT employee, including all faculty, staff, and administrators with the exception of professional counselors (and those who act under their supervision) working in FIT's Counseling Center and medical providers working in FIT's Health Services. A responsible employee must report all relevant details about the learned incident to the Title IX Coordinator or other offices designed to streamline the accepting of reports such as Public Safety or the Dean of Students. Please note that these responsible employees cannot guarantee confidentiality, but will maintain the student's privacy to the greatest extent possible. Students seeking confidential support should contact FIT's Counseling Center and/or FIT Health Services.

The student may also report to Public Safety or local law enforcement for legal action if the conduct violates New York State or local laws. FIT can assist students in making such a report, if the student so chooses. Both of these processes can happen simultaneously. Students also have the right to decline to notify law enforcement.

ii. Filing a Report On-Campus – Employees and Third Parties

Any employee and Third Parties who experience conduct that they believe is in violation of Title IX and this policy may report that conduct to the Title IX Coordinator, Public Safety, or the Department of Human Resource Management and Labor Relations.

Employees and Third Parties may also report to Public Safety or local law enforcement for legal action if the conduct violates New York State or local laws. FIT can assist

employees and third parties in making such a report, if the non-student so chooses. Both of these processes can happen simultaneously. Employees and third parties also have the right to decline to notify law enforcement.

iii. Filing a Report Off Campus

All Complainants, whether students, employees, or third parties, also have the option of filing a report off-campus with a number of New York State and Community Resources. However, disclosures to such organizations do not provide any notice to FIT about a potential violation of this policy. For this reason, individuals are encouraged to additionally contact an on-campus resource that is not bound by confidentiality so that FIT receives notice of such violation and can take the appropriate action. See above for a list of New York State and Community Resources and Other On-Campus Resources.

B. Investigation and Disciplinary Procedures

For purposes of this policy, the status of the Respondent will determine the disciplinary procedures used. For example, if the Respondent is a student, the disciplinary procedures used will be those delineated for students in this policy. If the Respondent is an employee, the appropriate disciplinary procedures will be determined by the Vice President for Human Resource Management and Labor Relations. Some claims of gender discrimination may be more appropriately handled under FIT's Nondiscrimination and Anti-Harassment Policy. FIT will make the determination as to which policy is most appropriate⁴.

i. Student as Respondent

a. Pre-Adjudication

The Title IX Coordinator will review the report and conduct an initial assessment to determine if the case falls under the guidelines of this policy and its procedures. Following the initial assessment, the Title IX Coordinator may take any of the following actions:

1. If the Title IX Coordinator determines that the report, even if substantiated, would not rise to the level of a policy violation, or, after consultation with the Complainant about the Complainant's preferences regarding participation, the Title IX Coordinator determines that there will be insufficient information to investigate the matter, the Title IX Coordinator may dismiss the report. The Title IX Coordinator will inform the parties involved of dismissal with rationale for the dismissal in writing.
2. If the Title IX Coordinator determines at any point prior to Adjudication that a matter may be resolved through an informal process, the Coordinator may begin that process by first discussing the possibility with the Complainant. At no time will the Title IX Coordinator attempt to mediate a complaint of sexual assault (contact or penetration). In

⁴ FIT reserves the rights to amend discrete aspects of the Investigation and Disciplinary Procedures based on parties' minor status and status in its Precollege programs. Any such amendments will be communicated to the parties at the outset of the process.

addition, the Title IX Coordinator will only attempt to resolve a matter informally with the consent of the Complainant.

3. If the Title IX Coordinator determines that the report is outside the scope of this policy, the Title IX Coordinator may refer the report to another office for review. The Title IX Coordinator will inform the parties of the transfer in writing.
4. If the Title IX Coordinator determines that the report would, if substantiated, constitute a violation of this policy, the Title IX Coordinator will initiate an investigation and determine appropriate interim measures and accommodations. Both the Respondent and the Complainant have the right to request a prompt review, that is reasonable under the circumstances, of the terms of, and need for, any protections and accommodations that directly affect them (such as the terms of a “no contact order” or interim suspension) including potential modifications. Both parties shall be allowed to submit evidence in support of their request. The Title IX Coordinator will inform the parties involved of the commencement of the investigation in writing.

Informal Resolution - At the request of either the Complainant or the Respondent any time prior to adjudication, the Title IX Coordinator will assess whether a matter may be resolved through an informal process. If the Title IX Coordinator determines an informal process may be appropriate, the Coordinator may begin that process after obtaining permission to do so by both the Complainant and the Respondent. At no time will the Title IX Coordinator attempt to mediate a complaint of Sexual Assault – Contact or Sexual Assault - Penetration.

b. Investigation

1. Initial Meeting

The Title IX Coordinator will interview the parties to the report separately and advise them of their rights at the outset of the investigation including their right to have a non-legal advisor or legal counsel present at any meeting or hearing. Each party will be notified prior to any meeting they are eligible to attend. The Title IX Coordinator will interview witnesses as necessary. Witnesses may not bring a non-legal advisor or legal counsel. At the conclusion of each interview, the Title IX Coordinator will review the notes with the interviewee.

2. Case File

The Title IX Coordinator will prepare a case file of all interview summaries, witness statements, and other documents. The file, redacted of personally identifiable information as necessary, will be shared with the Complainant and the Respondent. The Title IX Coordinator will describe in writing for the parties the charges that will be adjudicated, the basis for such charges, and the potential sanctions that may be levied if the Respondent is found responsible. This charge

letter will be available in the case file for Complainant's and Respondent's review.

3. Complainant/Respondent Review

After reviewing the file, each party will have an opportunity (1) to meet again with the Title IX Coordinator, (2) to respond in writing, (3) to request the collection of other information by the Title IX Coordinator, and (4) to identify individuals who may possess relevant information (and request that such individuals be interviewed). If any additional information is gathered, a summary of that information will be shared with both parties and each will have the opportunity for a final response. The Title IX Coordinator will designate reasonably prompt time frames to ensure a timely completion of the process but also an adequate opportunity for both sides to respond thoroughly to the information gathered in the investigation.

4. Accepting Responsibility

Upon receipt and review of the case file, the Respondent also has the opportunity to accept responsibility for the charges listed in the charge letter. If the Respondent accepts responsibility, the Title IX Coordinator will notify the Complainant and Respondent in writing of the responsible finding and that the case file has been forwarded to the Dean of Students for disciplinary sanctions. Depending on the circumstances, a Respondent who accepts responsibility may also have a notation on their transcript. In cases where a Respondent accepts responsibility for charges, the Respondent and/or Complainant may appeal the sanction but not the finding of the violation itself.

If the Respondent does not accept responsibility for the charges, or the Complainant and the Respondent have not consented to an informal resolution process, at the conclusion of the investigation, the Title IX Coordinator will notify the Complainant and Respondent in writing that the case file has been forwarded to the hearing panel for adjudication.

c. Adjudication

After the conclusion of the investigation of the facts, the Title IX Coordinator will forward the case file to a hearing panel for adjudication. Every reasonable effort will be made to conduct the hearing within 10 business days of the Title IX Coordinator's referral of the case file.

1. Panelists

The President or the President's designee(s) will appoint a three-person hearing panel consisting of three voting faculty or staff members, one of whom will serve as Chair. All panelists will have training in investigating and evaluating conduct prohibited under the policy. The panelists will also be impartial and unbiased. All hearing panel members must be present for the adjudication hearing.

2. Appearance Before Panel

Both the Complainant and the Respondent are afforded the equal opportunity to participate in the hearing in person and will be presented with the opportunity to meet with the Title IX Coordinator before the hearing. If either party is not comfortable being in the same room with the other during the hearing, the college will make arrangements for the parties to participate in real time in separate rooms via telephone or video conference. When it is their turn to appear before the hearing panel, the Complainant, the Respondent, and/or witnesses will appear individually before the panel.

3. Submission of Evidence

Each party has the right to present witnesses and cross-examine witnesses through the hearing panel and should submit questions in writing to the Title IX Coordinator two (2) business days before the scheduled hearing. A list of witnesses, any written evidence, and notice of whether a non-legal advisor or legal counsel will be present must be submitted in writing to the Title IX Coordinator four (4) business days before the scheduled hearing.

Additionally, each party will have the opportunity to present discrete additional questions to the hearing panel to ask of the witness(es) during the hearing. The hearing panel reserves the right to refuse to ask a witness a question if that question is collectively determined by the panel to be inappropriate. Complainant and Respondent will also have the opportunity to provide an opening and closing statement if they choose to do so.

4. Panel Deliberations and Record Retention

The hearing panel will make and retain a verbatim record of the hearing in the form of a complete tape recording that will be retained by the Title IX Coordinator in accordance with FIT's Records Retention and Disposition policy. After all presentations are complete, the hearing panel will deliberate in a closed session and arrive at a decision and determine, by a majority decision, whether the Respondent, based on the Preponderance of Evidence standard, violated this policy. The deliberations and vote will remain confidential.

Following the conclusion of the hearing, the hearing panel will prepare an outcome letter, which will include findings of fact, findings of responsibility, and the hearing panel's rationale for its decisions. The Title IX Coordinator will endeavor to send the outcome letter to the Complainant and Respondent simultaneously within five (5) business days of the hearing.

FIT will, upon written request, disclose to the alleged victim of a crime of violence (as that term is defined in section 16 of title 18 of the United States Code), or a non-forcible sex offense (incest or statutory rape), the report on the results of any disciplinary proceeding conducted by such

institution against a student who is the alleged perpetrator of such crime or offense. If the alleged victim is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for such purposes. Please note that under this policy, FIT notifies both the Complainant and Respondent simultaneously and thus it is not necessary to make a written request.

d. Disciplinary Sanctions

If a student is found responsible for violating this policy, the Title IX Coordinator will forward the entire case file to the Dean of Students who will determine if there may be justification to suspend or expel the student based on the charge. If so, the hearing panel will determine whether to suspend or expel the student.

If the Dean of Students finds that there are not grounds to refer the matter back to the hearing panel for consideration of suspension or expulsion, or if upon such referral the hearing panel determines that suspension or expulsion are not warranted, then the Dean of Students shall determine the student's sanction. Sanctions will be determined based on the seriousness of the misconduct and the student's prior disciplinary record.

Prior to the imposition of the sanction, both the Complainant and the Respondent may provide a written impact statement to the Title IX Coordinator for either the hearing panel's or the Dean of Students' review prior to their imposition of sanction(s). FIT may impose a disciplinary sanction which may include, but is not limited to, suspension, expulsion, transcript notations, and one or more of the disciplinary sanctions listed in the Code of Student Conduct. Sanctions will be communicated simultaneously and in writing to the Complainant and the Respondent by the Title IX Coordinator.

1. Transcript Notations

Where a student is suspended, the following notation will be listed on that student's transcript: "Suspended after a finding of responsibility for a code of conduct violation." Where a student is expelled, the following notation will be listed on that student's transcript: "Expelled after a finding of responsibility for a code of conduct violation." Should a student withdraw from the college while conduct charges are pending and the student declines to complete the student disciplinary process, the following notation will be listed on that student's transcript: "Withdrew with conduct charges pending." If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

2. Appeal of Transcript Notations

A notation of suspension may be appealed, in writing, to the Dean of Students. Appeals for the removal of a suspension transcript notation may be granted provided that one year has passed since the conclusion of the suspension, the term of suspension was completed and any conditions complied with, and the Dean of Students has determined that the student is once again in good standing with all applicable

college standards. Notations for expulsion may not be appealed or removed.

e. Appeals

Both parties have the equal right to request an appeal of the decision and/or the sanction. Appeals will be heard by a panel. The purpose of an appeal is not to initiate a review of substantive issues of fact or to re-hear the case. The right to appeal is limited to: (i) procedural error affecting the decision or sanction; (ii) the appearance of substantive new evidence not available at the time of the decision; or (iii) excessiveness or insufficiency of the sanction. Neither deliberate omission of information by the appealing party in the original investigation nor disagreement with the decision or sanction are, by themselves, grounds for appeal.

Each party has 10 business days following the receipt of the written decision of the Dean of Students or the hearing panel, as communicated to each party by the Title IX Coordinator to indicate their intention to appeal. Requests for appeal, with reasons, should be sent in writing to the Title IX Coordinator at titleix@fitnyc.edu. Any new evidence or proof of a procedural error should be included in the request for the Title IX Coordinator's review⁵. If the request is granted, the appeal will be heard before an appellate panel appointed by the President or the President's designee(s) that is fair and impartial and does not include individuals with a conflict of interest.

The appellate panel may (i) return the case to the original hearing panel and task them with reviewing the decision with the substantial new information; (ii) return the case to the original hearing panel to correct the procedural problem and re-review the case; or (iii) change the sanction or task the Dean of Students or the hearing panel with reviewing and amending the originally imposed sanction. If the original decision is upheld by the original hearing panel, this decision will be final. Additionally, decisions made by the appellate panel are also final. The results of any appeal will be communicated simultaneously and in writing to the Complainant and the Respondent by the Title IX Coordinator.

ii. Employee as Respondent

The Complainant or Third Party should contact the Title IX Coordinator to make any report of a violation of this policy. The Title IX Coordinator will notify the Respondent that a report has been made, giving the Respondent the opportunity to respond to the allegations. The Title IX Coordinator will review supporting documentation and will interview witnesses to investigate the complaint. At the end of the investigation, the Title IX Coordinator shall submit a summary of the investigation to the Vice President for Human Resource Management and Labor Relations or their designee(s).

- a.** For employees in the collective bargaining unit, the Vice President for Human Resource Management and Labor Relations or their designee(s) will review the summary and determine appropriate action, which may include

⁵ The Title IX Coordinator's review is to check that the request for an appeal is appropriate and fits within the prescribed grounds for an appeal. This is not a substantive review.

disciplinary action or other action under the applicable collective bargaining agreement.

- b. For employees not in the collective bargaining unit, the Vice President for Human Resource Management and Labor Relations or their designee(s) will review the summary and may make a recommendation to the President to take such administrative action, including, but not limited to disciplinary action such as dismissal, demotion, reassignment, suspension, reprimand, removal of privileges, or training.

iii. **Third Party as Complainant or Respondent**

When a third party is involved as a Complainant or Respondent, FIT will use the disciplinary procedures that are generally consistent with the procedures stated in Section B (Student) or Section B (Employee), appropriately modified based on the particular circumstances involved, the status of the member of the FIT community involved in the complaint, and taking into account privacy requirements.

VII. Related Policies

- [Bias Crime Prevention](#)
- [Child Protection and Mandatory Reporting of Abuse](#)
- [Code of Student Conduct](#)
- [Acceptable Use for FIT IT Systems](#)
- [Nondiscrimination and Anti-Harassment](#)
- [Social Media](#)

VIII. Related Documents

- [Bill of Rights of Sexual Violence Victim/Survivor](#)
- Complaint Intake Form/Information Sheet
- [Collective Bargaining Agreement](#) – Disciplinary Procedure 28.28.0
- [Reporting Obligation of Confidential, Semi-Confidential and Private Resources](#)
- [Resident Handbook](#)
- [Violence Against Women Act \(VAWA\)](#)

IX. Contacts

- **Title IX Coordinator (Affirmative Action Officer)**
titleix@fitnyc.edu
(212) 217-3360
333 7th Avenue, 16th Floor
- **Vice President for Human Resource Management and Labor Relations**
(212) 217-3650
333 7th Avenue, 16th Floor
- **Dean of Students**
Enrollment Management and Student Success
Dean_of_students@fitnyc.edu
(212) 217-3800
Business and Liberal Arts Center, Room B221

- **Department of Public Safety**
(212) 217-7777
236 West 27th Street
- **Counseling Center**
(212) 217-4260
Dubinsky Student Center, Room A-212B
- **Employee Assistance Program (EAP)**
(212) 217-5600
Pomerantz Center, Lower Level, Room DC35
- **FIT CARE Team**
Health Services
(212) 217-4190
Dubinsky Student Center, Room A-402
- **Residential Life**
(212) 217-3900
210 West 27th Street
- **Student Life**
(212) 217-4130
Dubinsky Student Center, Room A-713