

Community Standards Sexual Misconduct

Conduct Staff and Faculty Resources

Community Standards Sexual Misconduct

The F&M staff and community recognize the impact of sexual violence across the world and in our own Franklin & Marshall community. To access resources for survivors or engage in conversations around sexual violence response and prevention, we encourage the community to reach out to:

- Title IX Office at <https://www.fandm.edu/campus-life/title-ix>, Dr. Kate Buchkoski, Director of Title IX and ADA Compliance at kate.buchkoski@fandm.edu
- Office of Student Wellness and Violence Prevention (WEVP) at go.fandm.edu/we-vp,
- Counseling Services (confidential) at 717-544-9051
- YWCA Lancaster (confidential): Hotline (717) 392-7273

In addressing incidents impacting our own community, you will find that Franklin & Marshall's student codes related to sexual misconduct are published in two different places in the College's policies. The College follows federal guidelines related to [Title IX](#), which is a law that covers specific behaviors related to sex discrimination and sexual harassment. The College also addresses sexual misconduct that is not covered by Title IX definitions but goes against our mission and values.

Non-Title IX sexual misconduct will be addressed through the F&M general Code of Conduct under the categories *Community Standards Sexual Misconduct* and *Community Standards Sexual*

Harassment.

Reporting

All allegations of sexual misconduct, whether they fall under Title IX or Community Standards, [are reported](#) to the [Title IX Coordinator](#), who will provide resources, guidance about your options, follow-up through appropriate resolution channels, and make any necessary referrals.. **You do not have to know whether the behavior you are reporting fits the Title IX or the Community Standards definition(s) of violations.** To submit an allegation of sexual misconduct, fill out the reporting form [HERE](#).

Definition of Community Standards Sexual Misconduct

Community Standards Sexual Misconduct includes behavior by an individual or a student organization that does not constitute [Title IX Sexual Harassment](#), but has adverse effects on, or creates a hostile environment for, individuals participating or attempting to participate in Franklin & Marshall's education program or activity, or otherwise has a reasonable connection to F&M. It may constitute one or more of the following:

- **Sex Discrimination:** Discrimination on the basis of sex. See Discriminatory Conduct policy.
- **Sexual Harassment:** Sexual Harassment can be a single, serious incident or a series of related, repeated incidents. Sexual harassment is defined as unwelcome conduct of a sexual nature (verbal or physical conduct) when the conduct includes at least one of the following:
 - is reasonably perceived as creating an intimidating or hostile work, learning or living environment
 - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from any educational program and/or activities
 - is based on power differentials, the creation of a hostile or unwelcoming environment, or retaliation.
- **Sexual Penetration Without Consent:** Penetration of the mouth, vagina, anus or sex organs of another person, however slight, by, an object or any part of the body, when consent is not present. This includes performing oral sex on another person when consent is not present.
- **Sexual Contact Without Consent:** Knowingly touching or fondling the private body parts of another person, or knowingly touching a person with one's own private body parts, when consent is not present and for the purposes of sexual gratification or other improper motivation. This includes contact done directly or indirectly through clothing, bodily fluids or with an object. It also includes causing or inducing a person, when consent is not present, to similarly touch or fondle oneself or someone else.
- **Statutory Sexual Assault:** Non-forcible sexual activity with a person who is under the statutory age of consent.
- **Domestic Violence** behaviors used by one person in a relationship to control the other. Domestic violence also encompasses actions as defined by the Clery Act, 34

CFR 668.46(a). Partners may be married or not married; heterosexual, LGBTQIA; living together or separated.

- **Intimate Partner Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the other. It includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

- **Sexual Exploitation:** Taking sexual advantage of another person or violating the sexual privacy of another when consent is not present. This includes, but is not limited to, the following actions (including when they are done via electronic means, methods or devices):

- Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's consent;
- Indecent exposure or inducing others to expose themselves when consent is not present;
- Recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person's consent.
- Prostituting another individual;
- Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

- **Sexually Inappropriate Behavior:** Conduct that is lewd or obscene including sexually suggestive gestures or communication. Public masturbation, disrobing or exposure of one's self to another person without that person's consent are examples. This may be an isolated occurrence.

- **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to 1) fear for the person's safety or the safety of others or 2) suffer substantial emotional distress.

Consent

A person who wants to engage in a specific sexual activity is responsible for obtaining Consent for that activity. Silence or lack of resistance, in and of itself, does not constitute Consent. Consent can be given by words or actions, provided that those words or actions clearly communicate willingness to engage in the sexual activity. Consent cannot be obtained through coercion. For purposes of this Policy, coercion is the use of threats (*i.e.*, words or actions) or intimidation (*i.e.*, implied threats) that would cause a reasonable person to engage in unwelcome sexual activity against their will.

Consent cannot be obtained from an individual who is incapacitated, where a reasonable person initiating sexual activity would have known or reasonably should have known that the individual was incapacitated. An individual who is under the influence of alcohol and/or other drugs may be incapacitated, and therefore unable to Consent. However, consumption of alcohol or other drugs alone is insufficient to establish incapacitation. Incapacitation is a state beyond drunkenness or intoxication, where an individual cannot make a knowing and deliberate choice to engage in the

sexual activity. Individuals who are asleep, unresponsive or unconscious are incapacitated. Other indicators that an individual may be incapacitated include, but are not limited to, the inability to communicate coherently, inability to dress/undress without assistance, inability to walk without assistance, slurred speech, loss of coordination, vomiting, or inability to perform other physical or cognitive tasks without assistance. An individual also may be incapacitated due to a temporary or permanent physical or mental health condition.

Consent may be withdrawn by any party at any time. An individual who seeks to withdraw Consent must communicate, through clear words or actions, a decision to cease the sexual activity. Consent is automatically withdrawn when a party is no longer capable of consenting. Once Consent is withdrawn, the sexual activity must cease immediately. Consent must be re-established before resuming any sexual activity. Consent to one form of sexual activity does not, by itself, constitute Consent to another form of sexual activity. Consent to sexual activity on one occasion does not constitute Consent to sexual activity on other occasions. An individual's use of alcohol or drugs does not diminish that individual's responsibility to obtain Consent.

Resources and Education

The College will make interim and supportive measures available to all individuals who are reported to be the victim of Community Standards Sexual Misconduct whether or not they opt to file a complaint. Written notification regarding resources (e.g. counseling, legal assistance) will be provided to all complainants, who may also find information regarding access to resources on F&M's Wellness and Violence Prevention page at go.fandm.edu/we-vp. Supportive measures as outlined in the [Title IX policy](#) will also be provided.

Rights of Complainants and Respondents

In proceedings under the Community Standards Sexual Misconduct process, the parties have the following rights:

- The right to a written explanation of the students' rights and options.
- The right to a prompt, fair and equitable process and the College will follow these procedures before the imposition of any disciplinary sanctions or other actions that are not interim or supportive measures against a respondent.
- The right to an objective evaluation of all relevant evidence. The parties will be provided with an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a complaint.
- The right to a process conducted by adequately trained staff. Therefore, the College will ensure that staff involved in the process are appropriately trained as required by state and federal law.
- The complainant and respondent shall be provided with the same opportunities to have an advisor, of their choosing, present during any proceeding at which their presence is required or expected such as meetings with staff, the Investigator, informal resolution proceedings or hearings. The advisor's role in any meeting is limited to quietly conferring with their advisee through written or verbal communication and may be subject to other restrictions.

their advisee through written or verbal communication and may be subject to other restrictions as determined by the administrative officer. The parties are responsible for identifying their own advisor, if they wish to have one.

- The right to simultaneous notification of actions taken in the proceedings including the result, appeal options, and final decisions.
- The right to a process that is free from conflicts of interest or bias.

Amnesty

The College will not pursue disciplinary action against any person for possession or consumption of alcohol or drugs use when that possession or consumption is revealed in the course of a good faith report of sexual misconduct or relationship violence or other good faith statements made in connection with an investigation under this policy.

Franklin & Marshall College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time sexual misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report incidents of sexual misconduct. A witness to or individual who experiences sexual misconduct, acting in good faith, who discloses any incident of sexual misconduct to the College will not be sanctioned under the College's Code of Conduct for violations of alcohol and/or drug use policies occurring at or near the time of the incident(s) of sexual harassment or sexual violence. Amnesty is not in place if alcohol or other drugs are used in order to purposefully incapacitate another person for non-consensual sexual gratification. Amnesty does not preclude or prevent action by police or other legal authorities pursuant to relevant state or federal criminal statutes.

Resolution Information

Non-Title IX (Community Standards Sexual Misconduct) allegations are resolved through the processes outlined in the [Student Code of Conduct](#). Title IX violations are resolved through the processes outlined in the [Title IX](#) Policy. **You do not have to know whether the behavior you are reporting fits the Title IX or the Community Standards definition(s) of violations.** [All reports](#) will filter through the Title IX Coordinator, who will review the report and reach out to you to learn more about the incident, provide you with information about next steps and, if appropriate, provide resources and options to support you through the process.

Law Enforcement and Preservation of Evidence

You may also file a report with the College's Department of Public Safety and local law enforcement, independent of or parallel with any report made to the College. Contacting law enforcement to make a report allows for forensic evidence to be collected, including a SART exam if needed, which may be helpful if a decision is made to pursue criminal charges. Please note that the College's policy, definitions, and burden of proof may differ from Pennsylvania criminal law. Neither law enforcement's decision whether to prosecute, nor the outcome of any criminal prosecution, is determinative of whether sexual misconduct has occurred under this policy. In cases where there is a simultaneous law enforcement investigation, there may be circumstances when the College may need to

temporarily delay its investigation while law enforcement gathers evidence. However, the College will generally proceed even during the time of a pending law enforcement investigation.

You also have the right to seek a restraining order or similar no-contact/protective order from the police. The College will make reasonable efforts to enforce all protective and restraining orders regardless of who issues them. Enforcement of these orders by the College will begin upon notification and receipt of documentation of their existence.

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Have a question or suggestion? Get in touch at [*cshaw@fandm.edu*](mailto:cshaw@fandm.edu)

