Franklin & Marshall College  
2019-2020  
Sexual Misconduct/Discrimination/Harassment Policy

This policy is applicable when at least one of the parties is an F&M student. The policy applicable to non-student employees is on the College’s Human Resources website noted as the anti-harassment policy.

Sexual misconduct is prohibited by the rules of Franklin & Marshall College and violates the laws of the Commonwealth of Pennsylvania. A student found responsible for violation of the F&M student code of conduct is subject to disciplinary action by the College. The College may proceed with its process concerning sexual misconduct before, during, or after any criminal or civil court proceedings involving the same event.

According to the federal statute Title IX of the Educational Amendments of 1972, the sexual harassment of students, including sexual violence, may also interfere with students’ right to receive an education free from discrimination. Discrimination is understood to occur when the conduct is sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the school’s program.

The College takes steps to ensure that the campus community is not subject to a hostile environment and to respond promptly and appropriately to allegations of harassment on the basis of sex or gender identity. Definitions within this policy include dating violence, domestic violence, sexual assault, sexual exploitation, stalking and sexual harassment. The College promptly investigates incidents of harassment on the basis of sex or gender identity, takes appropriate action (including disciplinary action) against students found to have violated this policy, and provides remedies as appropriate to the students involved and the campus community. The College takes immediate action to end a hostile environment or sexual discrimination situation if one has been created, prevent its recurrence, and remedy the effects of any hostile environment on affected members of the campus community.

These policies apply to incidents taking place either on or off College-owned property or during College-sponsored travel off campus. Conduct that occurs off campus can be the subject of a report, and will be evaluated to determine whether it violates this policy, e.g., if off-campus harassment has continuing effects that create a hostile environment on campus. Allegations of off-campus sexual misconduct are of particular concern and should be brought to the College’s attention. These policies also apply to F&M students when visiting other campuses.

All College employees, including student employees, are mandated reporters of sexual misconduct and discrimination. Mandated reporters must ensure that any sexual misconduct or discrimination that they become aware of is reported to Kate Snider, Title IX Coordinator (ksnider@fandm.edu or 717-358-7178). Reports may also be made to the College’s Department of Public Safety at 717-358-3939. This policy applies to all sexual misconduct, discrimination, or harassment regardless of the gender, gender identity or sexual orientation of the reporting student or responding student. See below for a list of confidential reporting sources.

Definitions

Consent to Sexual Activity
Consent must be freely, willingly and clearly given. Consent has an expiration date; consent to one sexual activity does not imply consent to another or more sexual activity. Prior sexual activity with a partner does not imply future consent. Consent must be given with each sexual act. Silence without activity demonstrating permission cannot be construed as consent. An individual cannot be understood to consent to sex unless that individual has the capacity to understand the behavior (See below for an explanation of “Capacity”).

Coercion
Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear that they do not want sex, want it to stop, or do not wish to go past a certain point of sexual interaction, continued pressure beyond that point is coercive. That pressure can be subtle and/or
relentless. More obvious forms of coercion include: intimidating, shaming, harassing and embarrassing the reporting student. Examples could include: threatening the reporting student with exposure, threatening to spread rumors about the reporting student, or threatening to exclude the reporting student socially.

There is a difference between seduction and coercion. Coerced sexual activity violates this policy just as physically forced sex does. Coercion happens when someone unreasonably pressures someone else for sex. Seduction occurs when there is clear and welcome willingness to be coaxed.

**Force**
The use of a weapon of any type is force. Force can exist without the use of a weapon. Use of disparate weight and size to detain a student is force. Physically restraining a student is force.

**Capacity**
Under-aged persons – those under the age of 18 – are not considered legally capable of giving consent. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Someone who engages in sexual activity with someone whom they know to be – or should know to be – mentally or physically incapacitated because of alcohol or other drug use has committed sexual misconduct. This prohibition also applies when an individual is incapacitated because of mental disability, sleep, involuntary physical restraint or from the influence of incapacitating drugs such as “date rape” drugs or alcohol. Possession, use and/or distribution of any of these substances (including Rohypnol, Ketamine, GHB and others having similar effect) is prohibited, and administering any of these drugs to another or administering alcohol for the purpose of incapacitation is a violation of this policy.

Indicators of incapacity includes, but is not limited to, slurred speech, bloodshot eyes, alcohol on the breath, poor equilibrium, vomiting, unusual behavior, unconsciousness, awareness of the observer that the person has ingested an excessive amount of alcohol or drugs or the information shared by a witness that the person is incapacitated as a result of any of the above.

**Non-consensual Sexual Contact**
The College holds students responsible for behavior that violates the College Code of Conduct, which differs from the criminal standard. Behavior that is not criminal may be a violation of the College Code of Conduct. Examples are listed below under the definition of Sexual Harassment.

**Sexual Harassment**
Sexual harassment is unwelcome sex or gender-based verbal, nonverbal or physical conduct that has the purpose or effect of unreasonably interfering with an individual’s work or academic performance or that creates a humiliating, degrading, intimidating, hostile, or offensive working, educational, or living environment. Sexually offensive language and activities in the College’s public spaces constitute harassment where such conduct is sufficiently serious to create a hostile environment. Stalking (as defined in this policy) either electronically or in person constitutes sexual harassment where stalking is based on sex or gender.

Examples of sexual harassment may include: (1) “catcalling,” e.g., making public, gendered and/or sexual remarks about a person within others’ hearing with or without the intended recipient’s consent (2) publicly ranking a person’s sexual or physical attributes without their consent. These behaviors attempt to reduce the value of the person being rated to a one-dimensional stereotype that is antithetical to an atmosphere of inclusiveness. This behavior is inherently disrespectful to all those of the gender being ranked regardless of the response of any single student; and (3) intruding in private spaces such as shower stalls and locker rooms.

Other types of harassment include comments, questioning, innuendos or jokes of a sexual nature. Derogatory comments referencing gender or sex, unwelcome sexual advances, propositions, threats, requests or demands for sexual favors all constitute sexual harassment. Displaying, posting, advertising or distributing offensive, indecent or abusive material of a sexual nature; leering or making obscene gestures; constitutes sexual harassment. Quid pro quo sexual harassment exists when submission to or rejection of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature results in adverse educational or employment action, or the threat of such adverse action, or when submission is made a condition of educational or employment advancement.
Respect for all members of the campus community is expected at F&M. Although sexually offensive depictions may also be seen as sexual harassment, the College does not consider visual and/or aural demonstrations, depictions or conduct to be sexual harassment when there is a legitimate pedagogical context, such as material having an appropriate connection to course subject matter.

**Sexual assault**

Sexual assault is a form of sexual harassment and is sexual contact or sexual intercourse that is not consensual: non-consensual sexual contact is any intentional touching of the intimate parts of another person or other sexual touching, against the person’s will or without consent. Intimate parts include mouth, genitalia, groin, breast, and buttocks, whether or not covered by clothing. Non-consensual sexual contact includes attempted non-consensual sexual intercourse. Non-consensual sexual intercourse is any act of sexual penetration (anal or vaginal), however slight, with any body part or object by a person upon another person, without consent; or oral penetration with a sex organ without consent. Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion.

**Sexual Exploitation**

Sexual Exploitation is a form of sexual harassment. Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute another form of sexual misconduct. Examples of sexual exploitation include, but are not limited to, prostitution, non-consensual video or audio-taping of sexual or other private activity, exceeding the boundaries of consent (e.g., permitting others to secretly observe consensual sexual activity, videotaping of a person using a bathroom), engaging in voyeurism, or engaging in consensual sexual activity with another person while knowingly infected with sexually transmitted infections (STI) and without informing the other person of such infection.

**Stalking**

Stalking is a form of sexual harassment. Stalking refers to a course of conduct directed at a specific person that would cause a reasonable person to fear for their or other's safety or to suffer substantial emotional distress. (Electronic stalking via phone, text, email or other web-based means is considered to be stalking.)

**Domestic Violence**

Domestic Violence includes asserted violent misdemeanor and felony offenses committed by the student’s current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

**Dating Violence**

Dating violence means violence by a person who has been in a romantic or intimate relationship with the student. Whether there was such a relationship will be gauged by its length, type and frequency of interaction.

**Retaliation**

The College does not tolerate retaliation against individuals who report or file reports of sex discrimination (including sexual harassment), participate in investigations under this policy, or otherwise assert rights protected by Title IX. Franklin & Marshall College takes seriously reports of retaliation and retaliatory harassment, and takes disciplinary action, where appropriate, to address incidents of retaliation. Examples of retaliation include ostracizing, spreading rumors, banning a student from clubs, social or living groups as a result of their having reported sexual harassment/misconduct. Reports of retaliation will be investigated using the same process and standards outlined in this policy. Reports of retaliation should be directed to Kate Snider, Title IX Coordinator (ksnider@fandm.edu or 717-358-7178).

**How to File a Report and How to Receive Information on Options**

A student has multiple options when considering what to do regarding sexual misconduct. The student may: (1) file a report with the College; (2) file a criminal complaint with the police; or (3) make a confidential report that does not constitute notice to the College and speak confidentially with one of the designated confidential sources below to decide next steps. Each is described in detail below. Reports to the College and police may be filed concurrently.
Filing a Report with the College

All students wishing to file a report, or seek information about options for filing a report of sexual misconduct, harassment, discrimination, domestic violence, dating violence or stalking should contact the Title IX Coordinator, Kate Snider, Title IX Coordinator (ksnider@fandm.edu or 717-358-7178). The Title IX Office is on the first floor of College Square. These reports, made directly to the Title IX Coordinator, are considered private but not confidential reports: they invoke the requirements of Title IX and may initiate a College investigation and possible College judicial process.

The College makes every effort to respond to student requests for anonymity and the student’s communicated preference to waive the judicial process unless the allegations indicate an ongoing or likely future threat to the safety of the reporting student and/or other members of the campus community. Students should understand that a request for anonymity will limit the College’s ability to investigate and respond to the report. Reports will remain confidential and the information regarding the allegation will be shared on a need-to-know basis and treated with regard for the privacy of the parties involved. Reports to the College of sexual misconduct need not be immediate; there is a four-year time limit to making a report that will be in turn be investigated by the College.

When a student files a report against a member of the faculty or staff, the initial report should be made to the Title IX Coordinator who will then direct the report to the appropriate office(s) and assist in the coordination of the Title IX process. These reports are resolved according to procedures detailed in the College’s Sexual Harassment Policy, which can be found online at www.fandm.edu/college-policies/article/anti-harassment-policy-and-title-ix-notification.

Students will be advised of their right to file a criminal complaint with the police department in whose jurisdiction the alleged incident occurred.

Filing a Criminal Complaint with the Police

Students may file a criminal complaint by:

- Contacting directly the police department in whose jurisdiction the offense occurred. This is, in most cases, the Lancaster City Police, who can be reached by phoning 911.

- Reporting to the F&M Department of Public Safety, who will contact the police department in whose jurisdiction the offense occurred. DPS is available at all times throughout the calendar year at 717-358-3939.

- Meeting with the Title IX Coordinator, who will accompany them to either the F&M Department of Public Safety (DPS) or the local police department in the jurisdiction where the offense occurred. Contact: Kate Snider, Title IX Coordinator (ksnider@fandm.edu or 717-358-7178).

The College does not discourage any student from filing a report with the police. Importantly, the College may be obligated to conduct its own investigation regardless of any criminal investigation. The College will comply with law enforcement requests for cooperation; such cooperation may require the College to temporarily suspend the fact-finding aspect of a Title IX investigation while the law enforcement agency is in the process of gathering evidence. The College will promptly resume its Title IX investigation as soon as it is notified by the law enforcement agency that it has completed the evidence gathering process, which typically takes three to ten calendar days, although the delay in the College’s investigation may be longer in certain instances. The College will implement appropriate interim steps during the law enforcement agency’s investigation period to provide for the safety of the student(s) and the campus community and the avoidance of retaliation. The College will pursue its investigation in a timely manner regardless of the progress of the criminal complaint, in which case the investigations may be simultaneous. The College will provide appropriate support for students engaging a criminal process.
**Making Confidential Reports of Sexual Misconduct That Do Not Put the College or Police on Notice**

Certain reports of sexual misconduct are not considered to be “filing a report with the College” and do not put the College or police on notice regarding an event of sexual misconduct, discrimination, or harassment. These reports are “confidential reports” to resources that can advise students of their options. There are three resources for confidential reports:

- Counseling Services at 717-544-9051
- Student Health and Wellness Center at 717-544-9051
- The YWCA 24-hour Sexual Assault Response Line at 717-392-7273.

The confidentiality extended to the above offices extends to the support staff of these offices.

**Two Choices for Resolution Following Filing a Report to the College**

After filing a report with the College, the reporting student has the option of requesting two different levels of response, which are briefly described below.

a. **Filing a formal judicial report:** After discussing the initial report with the Title IX Coordinator, a student may file a formal judicial report by submitting to the Dean of Students a signed written statement, including, at a minimum, the time, place and nature of the alleged offense and the name of the responding student. Concurrently, the reporting student, with the assistance of the Title IX Coordinator, will select an advisor. Students will be given a list of names of trained members of the Sexual Misconduct Panel from which they may select an advisor but the student is not restricted in their choice of an advisor and may choose someone who is not from the F&M community. Students may not choose a current F&M student as an advisor. It is not required that the reporting student choose an advisor. Submitting this statement activates the Sexual Misconduct Panel procedures and involves the Title IX Coordinator, the Chair of the hearing panel Committee (Deputy Title IX Coordinator or designee), the Dean of Students, the investigative team and the Sexual Misconduct Panel. In addition to taking action within the College, a student may also elect to file a criminal complaint with the Lancaster City Police or the police in the jurisdiction where the conduct occurred. Upon notice of the report, the Title IX Coordinator may recommend interim measures to stop the behavior, prevent it from recurring and to protect the reporting student and College community. These are outlined below in the section titled Remedies/Interim Measures.

b. **Requesting informal resolutions:** After discussing the incident with the Title IX Coordinator, and after the Title IX Coordinator has explained the processes and options, the reporting student may move forward in the following ways, all of which are informal resolutions and do not constitute a formal Title IX report and do not activate the judicial process: (1) take more time to make a decision; (2) request interim measures; (3) request that the Title IX Coordinator meet with the responding student to discuss the behavior that lead to the report. (4) request a mediation with a trained campus mediator. Please note that The College does not participate in mediation of allegations of nonconsensual sexual intercourse or sexual assault and advises against the use of mediation in this circumstance. Again, the above four informal resolutions do not initiate the college’s judicial process. The reporting student may at any time, after requesting an informal resolution, choose to file a formal report.

**Procedure Following Filing a Formal Judicial Report with the College:**

a. **Meeting with the Title IX Coordinator**

Upon notice to the College, the reporting student will be directed promptly to the Title IX Coordinator (if the original report was not filed with the Title IX Coordinator) to discuss the investigation process and possible outcomes. At this meeting the reporting student, with the assistance of the Title IX Coordinator, will be advised to
choose an advisor. Reporting students will be given a list of names of trained members of the Sexual Misconduct Panel from which they may select an advisor but the student is not restricted in the choice of an advisor and may choose someone who is not from the F&M community. Students may not choose a current F&M student as an advisor. It is not required that the reporting student choose an advisor. If an advisor is chosen, the reporting student must notify the College of the name of the advisor within 5 business days of filing the report. The Title IX Coordinator will direct the student to the website for information on the process and other pertinent information.

b. Writing the report
The reporting student will be assisted by their advisor in writing a formal report. This document is a description of the incident giving names of possible witnesses and details that will be helpful to the investigators. This report will be shared with the responding student.

c. Informing the responding student
After the Title IX Coordinator receives the report, the Title IX Coordinator will meet with the responding student to notify, in writing, the allegation(s) that may violate the College’s sexual misconduct policy. After receiving notice of the allegations, the Title IX Coordinator will schedule an initial interview with the responding student. The Title IX Coordinator will also inform the responding student of available resources.

The responding student may choose at any point to waive the hearing process by admitting responsibility. The responding student must submit in writing the decision to waive a hearing to the Dean of Students and the Title IX Coordinator. In such cases, the Dean of Students, in consultation with the Title IX Coordinator, may determine an appropriate sanction.

If the responding student does not choose to admit responsibility, the responding student will be advised to choose an advisor. The responding student will be given a list of names of trained members of the Sexual Misconduct Panel from which they may select an advisor but the student is not restricted in the choice of an advisor and may choose someone who is not from the F&M community. Students may not select another student as an advisor. It is not required that the responding student choose an advisor. If an advisor is chosen, the responding student must notify the College of the name of the advisor within 5 business days of being notified of the report. The Title IX Coordinator will direct the student to the website for information on the process and other pertinent information. The responding student may write a report of the incident. If the responding student chooses to write a report, it will be shared with the investigators and the reporting student. The responding student will be asked to submit a list of witnesses to the Title IX Coordinator within a reasonable timeframe.

d. Remedies/interim measures
Upon becoming aware of a report of misconduct, the Title IX Coordinator may institute or recommend to the Dean of Students or to the Vice President and Dean of Student Affairs remedies/interim measures be taken to protect the involved students. The purpose of the remedies/interim measures in this process is: (1) to stop the behavior that lead to the report; (2) to prevent the behavior from happening again; and (3) to restore the reporting student as much as possible to their pre-incident state. The choice of the numerous accommodations and resources available will be determined in conversation with the involved students and the appropriate College administrators.

The following remedies/interim measures may be put in place before a formal report has been filed or if the reporting student requests informal resolutions. The responding student may request remedies/interim measures as well. These may include, but are not limited to, the following:

- Change in living situation
- Change in work situation
- Issue a no-contact order
- Confirm that the reporting and responding students do not attend the same classes
- Provide an escort to classes
- Inform reporting and responding students about Counseling and Health Care services
- Provide academic support services such as tutoring
- Arrange for the reporting student to retake a class or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the reporting student’s academic record, and
- Review any disciplinary actions taken against the reporting student to see if there is a causal relation
between the harassment and the misconduct that may have resulted in the reporting student being disciplined.

· Provide written notification about existing advocacy, legal assistance, student financial aid, and visa and immigration assistance, as appropriate.

· Maintain as confidential any accommodations or protective measures provided to the extent that maintaining such confidentiality would not impair the ability of the College to provide the accommodations or protective measures.

Note: Some of these measures and others may become permanent depending on the outcome of the investigation and judicial process.

e. Investigation

The College investigates reports of sexual misconduct in a prompt, impartial and thorough manner. After notification to the responding student, the Title IX Coordinator, in collaboration with the Deputy Title IX Coordinator, will assign two investigators to begin the investigation of the report and collect any evidence. Typically, one of the investigators will be an outside attorney with experience in Title IX matters. It is the responsibility of the investigators to take custody of and arrange safe keeping of any available physical evidence to be used in making a determination subject to the qualification that law enforcement authorities should handle evidence related to the commission of a crime.

The investigation will be concluded in a timely manner. The responding student and reporting student are expected to participate in all facets of the investigation and are expected to be forthcoming and to answer truthfully all of the questions posed during the investigation. Both the reporting student and the responding student may be accompanied by their advisor when attending all interviews for the purpose of explaining the process and providing support. The responding student and reporting student will have identified suggested witnesses and may present evidence. The investigators will add to the list of interviewees as the investigation progresses. If there is additional information received during the investigation that reveals additional or related information, including reports against the reporting student by the responding student, the processes described in this policy will apply, including appropriate notice of such a report.

It is the obligation of students called as witnesses to cooperate fully and truthfully with the investigation and subsequent hearing.

f. Conclusion of the investigation and referral of the report to an administrative review, panel hearing, or dismissal of the report

Upon conclusion of an investigation, the investigators submit a written report summarizing the information gathered to the Associate Dean of Students and the Title IX Coordinator. This report includes a credibility report. The Associate Dean of Students and the Title IX Coordinator will determine whether there is enough information to proceed with a hearing or an Administrative Review. The investigation report, including the credibility report, may be shared with both the reporting and responding student.

If, upon review of the summary, the Associate Dean of Students and the Title IX Coordinator determine that there is enough information of a potential violation of the Student Code of Conduct, they may: (1) refer the report to the Dean of Students to review the report, determine if a violation occurred and assign a sanction if appropriate, or (2) refer the report for a panel hearing to review the report, determine if a violation occurred and recommend a sanction, if appropriate, to the Dean of Students who will make the final determination on sanction.

A report will be referred for a panel hearing upon request by either the reporting student or responding student.

In the event that a report is dismissed, the reporting student or responding student may request that the remedies/interim measures continue.

Alternatively, if the Associate Dean of Students and the Title IX Coordinator find sufficient information to proceed, the responding student will have the opportunity to accept responsibility and waive a panel hearing or administrative review. Upon being advised of the sanction the responding student may:

· Accept the finding and sanction made by the Dean of Students or
Appeal the sanction to the Vice President and Dean of Student Affairs or designee. The criteria for an appeal are listed below in this policy.

**Hearing Procedure**

**Hearing Preparation Timeline:**

- The Deputy Title IX Coordinator will set a date for the hearing.
- The responding student and reporting student, with their advisors, will prepare opening and closing statements as well as their impact statement to be presented at the hearing. These statements are not submitted prior to the hearing.
- At least 5 days prior to the date of the hearing, the responding student and reporting student will be notified in writing of the charges against the responding student. The investigation report and supplemental materials collected during the investigation are shared with the reporting student and responding student, their advisors, the Title IX Coordinator and the hearing panel.
- Within 3 business days of receiving the investigation materials, the reporting student and responding student must notify the Chair of their final witness list. If there will be testimony beyond what appeared in their written investigation interview or if they were not interviewed previously, the Chair of the hearing panel shall have discretion to determine which proposed witnesses and evidence the hearing panel will hear to provide for a fair hearing. The Chair shall also have authority to call expert sources of information, as necessary. Counselors, psychiatrists and psychologists are not permitted as in-person witnesses unless they have substantive testimony to provide regarding the incident under review. The reporting student and responding student may submit relevant documentation from health care professionals. Admission of the statement will be at the discretion of the Chair.
- The Chair will share the names of all approved witnesses, including expert sources of information, with the reporting student, responding student, their advisors, the Title IX Coordinator and the hearing panel in advance of the hearing.
- Prior to the hearing all parties will be notified of the time and location of the hearing.

**Hearing Procedures, Step-by-Step:**

A hearing panel hearing normally consists of a single session that typically takes between four and six hours. In the event of a lengthy hearing, the hearing panel, at its sole discretion, may decide to continue the hearing at a later date. If the responding student or reporting student has disabilities that will require accommodations during the hearing they should notify the Chair of the hearing panel as to what accommodations will be needed.

The following instructions will be read to all parties providing testimony at the hearing:

It is essential that all information presented in this hearing be completely confidential. The hearing shall be conducted in an orderly manner and anyone violating that directive will be required to leave. All participants are obligated to tell the truth and be forthcoming. All participants shall speak only when recognized by the Chair. All discussion and questions must be limited to the specific act(s) and charge(s) alleged in the report. The hearing panel will determine if a violation of the College’s Code of conduct occurred. Information regarding other acts or past infractions is inappropriate at this time. Please restrict any discussion accordingly. Only information presented in connection with this hearing can be used to determine if a violation occurred.

Per the College’s policy and Office for Civil Rights (OCR) guidance, questions about the sexual history of the reporting student with anyone other than the responding student are not permitted. Furthermore, the mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of responsibility. Questions about the responding student’s sexual history with anyone other than reporting student are also not permitted.
Some documents in the investigative file may have been redacted to remove information not necessary for the Panel to evaluate the claims in this proceeding. The Panel should not infer anything from the redactions nor consider the redactions one way or the other in reaching its decision.

1. The Title IX Coordinator shall appoint a three-person hearing panel composed of two Sexual Misconduct Panel members who have not served as investigators or advisors for this report. In most situations the College will appoint an attorney as the third member of the hearing panel. The Chair or designee is a non-voting member of the hearing panel who presides over the hearing. The Title IX Coordinator has the option of attending the hearing proceeding as an observer.
2. The hearing panel reviews all materials from the investigation. The panel may hold prepartory meetings as needed.
3. The hearing panel notes any questions they have based upon the investigation report and may seek more information or clarification before the hearing.
4. The hearing is called to order with the reporting student and responding student present with their advisors and separated by a screen so as to ensure privacy and comfort, or, if requested, connected remotely to the hearing via closed circuit television or internet connection. Witnesses are not present at this point and are kept sequestered outside the hearing room.
5. Each participant makes their own introduction and states their role in the hearing. There will be identifying “table tents” for the purpose of identifying the participants to each other for all parties except witnesses.
6. At the beginning of the hearing, the reporting student and responding student will provide four copies each of their opening and closing statements and four copies of their impact statement to the Chair.
7. The Chair asks if any of the participants have questions about Hearing procedures or their rights in the hearing.
8. All participants are reminded: (1) to be truthful; (2) to speak only when recognized by the Chair, who has full authority over the proceedings; (3) that the proceedings are confidential and should not be discussed outside of the hearing room; and (4) questioning about the reporting student’s sexual history with anyone other than the responding student will generally not be permitted. Questions about relevant social histories are permissible. Each witness to be called into the hearing room is informed of the same expectations.
9. The Chair introduces the formal statement and identifies the policies allegedly violated.
10. The reporting student or advisor is asked to make an opening statement. These comments should be directed to areas of agreement/disagreement with the investigation report. The decision to have an advisor read the statement in lieu of the student is a personal choice to be made at any time. The Chair does not require prior notice.
11. The responding student or advisor is asked to make an opening statement. These comments should be directed to areas of agreement/disagreement with the investigation report. The decision to have an advisor read the statement in lieu of the student is a personal choice to be made at any time. The Chair does not require prior notice.
12. The hearing panel may ask questions of the reporting student, responding student or the investigators (if the Chair has called the investigators to the hearing). The responding student and reporting student may not question each other.
13. The reporting student and responding student may submit, to the hearing panel, relevant questions to be asked of the responding student and reporting student respectively. These questions should be submitted to the Chair of the hearing panel no less than 24 hours prior to the hearing. If at the conclusion of the panel’s questioning the responding student or reporting student have additional questions to be asked of the other, they may submit questions in writing to the Chair of the hearing panel who will submit them to the panel to be asked at the panel’s discretion.
14. Witnesses are called in order as determined by the Chair. The reporting student, responding student and hearing panel may question the witnesses as called upon by the Chair. Character witnesses are not called in person. Each student may, however, submit a written statement from one character witness that will be read aloud to the hearing panel by the Chair at the completion of all questioning. Additional witnesses identified during questioning may be called to the hearing at the discretion of the Title IX Coordinator and/or the Chair.
15. Any witnesses who need to be recalled and re-questioned are called and then excused.
16. The reporting student or advisor is given the opportunity to make a closing statement.
17. The responding student or advisor is given the opportunity to make a closing statement.
18. The Chair confirms that no relevant questions remain unanswered.
19. The hearing is adjourned. The Chair collects all notes, personal and investigative, from the Panel which remain with the College. The responding student and reporting student may keep their notes but are advised that they are confidential and may not be shared with anyone other than the advisor, an attorney or their family. All participants other than the hearing panel members, Title IX Coordinator, if present, and Chair are asked to leave. The Chair will ask the reporting student and responding student if they would like to hear the outcome, without sanction, of the hearing immediately after the hearing panel reaches its conclusion or if they would prefer to wait for a meeting with the Chair and Dean of Students. If the responding student and reporting student choose to be notified immediately they will be notified by phone.

20. Using the “more likely than not” standard, also known as a “preponderance of the evidence” standard, the Hearing Panel determines first if the responding student is responsible for violation of the policy or policies identified in the report. Decisions are made by majority vote of the hearing panel members only. The Chair and Title IX Coordinator, if present, do not vote.

There are three possible findings:

- Responsible for a violation of College policy
- Not responsible for a violation of College policy
- Insufficient evidence for a finding of violation of College policy

21. If the hearing panel has found the responding student in violation of College policy, the panel reviews any impact statements that have been submitted prior to determining its recommended sanction. The panel will draft a statement explaining the panel’s reasoning for the finding of responsibility and for any recommended sanction. This will be included in the sanction letter sent to the responding student by the Dean of Students. Various sanctions, including but not limited to Reprimand, Warning, Suspension, Probation or Expulsion from the College, may be recommended by the Hearing Panel and implemented by the Dean of Students. Individuals found to have violated the College policy on non-consensual sexual intercourse through non-consensual vaginal or anal penetration with a body part or object, or through non-consensual oral penetration using a sex organ, generally will be expelled from the College.

22. The Chair and/or the Title IX Coordinator consults with the Dean of Students or designee and discusses the panel’s findings and the rationale for its recommended sanction(s). The Dean of Students or designee may request a meeting with the hearing panel. The Dean of Students or designee makes the final decision on all sanctions. The Dean of Students or designee will consult with the College’s Title IX Coordinator before assigning the sanction.

23. Typically, within 48 hours of consulting with the Chair, and/or the Title IX Coordinator, the Dean of Students or designee inform the parties of the outcome and sanctions, if any, and explain appeal options, and how sanctions will be implemented. These meetings take place in person or via phone depending on the preference of the reporting student or responding student. The meetings are separate for each student. The Dean of Students will provide a written confirmation of the outcome and sanctions concurrently to the reporting student and responding student within 5 working days of the hearing. Both letters will include the Panel’s statement regarding reasoning for the finding of responsibility if that is the outcome. The Title IX Coordinator will inform the advisors of the outcome.

**Appeals of Sexual Misconduct Panel or Administrative Review Decisions**

The responding student or the reporting student may appeal the Dean of Students’ decision in their case to the Vice President and Dean of Student Affairs (or designee). The student must file this appeal in writing, in their own words and not those of a third party, with the grounds noted, within five (5) business days after the Dean of Students issues a written notification of the decision. The Vice President and Dean of Student Affairs or designee has the discretion of extending this deadline. Appeals may be sought on the following two grounds:

a. on a claim of error in the hearing procedure that affected the outcome of the hearing.
b. on a claim of new evidence, information or material that was not available at the time of the hearing and is relevant to the case.
Before deciding whether or not to hear an appeal, the Vice President and Dean of Student Affairs (or designee) meets with the Dean of Students and the Chair of the hearing panel to review the procedures that the hearing panel followed and the evidence that it considered. If the Vice President and Dean of Student Affairs (or designee) considers it necessary, the Vice President and Dean of Student Affairs (or designee) may meet with a number of hearing panel members or the Panel as a whole. In the case of an administrative review, the Vice President and Dean of Student Affairs (or designee) meets with the Dean of Students. If the Vice President and Dean of Student Affairs (or designee) decides not to hear an appeal because neither of the two grounds for an appeal are met, the student is informed accordingly in writing. If the Vice President and Dean of Student Affairs (or designee) decides to hear an appeal, the Vice President and Dean of Student Affairs (or designee) observes the following procedural safeguards:

a. In hearing the student’s appeal, the Vice President and Dean of Student Affairs (or designee) has discretion to meet with any of the participants in the hearing and discuss with them the circumstances of the case, as well as subject matter experts, investigators assigned to the matter, and/or other sources of relevant information.

b. The decision on the appeal will determined in a timely manner, unless circumstances require a delay in the appeal process.

c. The Vice President and Dean of Student Affairs (or designee) will review the process used with the College’s Title IX Coordinator to ensure that the process meets the standards of Title IX.

d. The decisions of the Vice President and Dean of Student Affairs (or designee) are final and the responding student and reporting student will be notified in writing.

e. Both the responding student and reporting student will be notified in writing of any change in result of the finding.

The Vice President and Dean of Student Affairs (or designee) is not expected to provide detailed reasons for any decision reached.

Confidentiality

Please see “Making Confidential Reports of Sexual Misconduct That Do Not Put the College or Police on Notice” for a list of persons to whom a student may confidentially report an incident of sexual misconduct, discrimination, or harassment.

The confidentiality of all parties to a report of harassment, discrimination, or sexual misconduct must be strictly observed by the appropriate College officers and by those assigned to advise, investigate and adjudicate a report, except insofar as it interferes with the College’s obligation to investigate fully the allegations and to record statistics as required by law. Where confidentiality is not strictly observed, reports of sexual misconduct will be controlled on a need-to-know basis and treated with the utmost respect for the privacy of all parties; reporting student, responding student and witnesses. Dissemination of information and/or written materials to persons not involved in the report procedure is not permitted.

In extraordinary circumstances, College officials reserve the option of informing the parents or guardians of a student that the student is involved in a report of harassment or sexual misconduct, e.g., when significant medical, disciplinary, or academic issues are raised by the situation. The College prefers and strongly encourages students to inform parents or guardians of misconduct proceedings, although the College does not require students to do so. College officials will inform parents or guardians when requested to do so by a student. Parents who become aware of a sexual assault of any student should contact Kate Snider, Title IX Coordinator (ksnider@fandm.edu or 717-358-7178).

Alcohol and Drug Amnesty Policy in relation to reporting of Sexual Misconduct

The College strongly encourages students to report instances of gender-based discrimination, sexual harassment and sexual misconduct involving students. Therefore, students who report information about gender-based discrimination, sexual harassment or sexual misconduct involving students will not be disciplined by the College for any violation of the College’s drug or alcohol possession or consumption policies in which they might have been engaged in connection with the reported incident. Please see the College’s Amnesty Policy in the College Life
Manual for additional information on this policy.

**Additional Information Regarding Policies and Procedures**

**Sexual Misconduct Panel**
The Sexual Misconduct Panel shall be composed of professional staff members appointed by the Title IX Coordinator and the Deputy Title IX Coordinator in consultation with the Vice President and Dean of Student Affairs. In the event of a hearing, the Deputy Title IX Coordinator or designee of the Vice President and Dean of Student Affairs will serve as Chair of the Sexual Misconduct Panel. The Title IX Coordinator shall arrange for the panel members to receive in-depth, on-going training prior to assuming their responsibilities. The training includes preparation for the roles of investigator, advisor, and Hearing Panel member.

**Outcome Notification**
In rare instances, the College may choose to make a brief public announcement of the nature of the violation and the action taken. The names of individuals are not used in these announcements. Certain College administrators (e.g., the Vice President and Dean of Student Affairs and Director of Public Safety) may be informed of the names of individuals on a need-to-know basis. Notifications under the Clery Act will also be made by the Department of Public Safety. The Committee on Sexual Misconduct will send an annual letter to the College community containing aggregate data regarding the outcomes of the prior year’s sexual misconduct reports and related information. No identifying information is included in the letter.

**Advisors**
As noted above, the reporting student and responding student are informed of the right to be assisted by an advisor. They will be given a list of names of trained members of the Sexual Misconduct Panel from which they may select an advisor but the student is not restricted in the choice of an advisor and may choose someone who is not from the F&M community. Students may not select a current F&M student as an advisor. It is not required that the responding student choose an advisor. If an advisor is chosen, the responding student must notify the College of the name of the advisor within 5 business days of being notified of the report. No students or faculty serve on the Sexual Misconduct Panel. The reporting student and responding student must choose separate advisors. If the reporting student and responding student have no preference for their advisors the Title IX Coordinator or Deputy Title IX Coordinator will assign advisors from the members of the Sexual Misconduct Panel. The reporting student and responding student must notify the Title IX Coordinator and Deputy Title IX Coordinator of their choice of advisor within 5 business days of filing or notification of the report. The advisors may be present at the hearing and are given copies of the pre-hearing documents that are given to the reporting student and responding student. If the advisor is not a member of the Sexual Misconduct Panel, the responding student or reporting student is responsible for providing their advisor with the pre-hearing documents and for compliance with the timelines described in this policy. An advisor may assist a student in preparing for the hearing, which will include preparation of a closing, opening and impact statement. Breaks in the hearing are scheduled to allow an advisor to consult with the students. Advisors may not speak in the hearing Room nor willfully circumvent the hearing process; doing so may result in the advisor being asked to leave the hearing Room. Advisors may not address the hearing panel or other persons at the hearing, however, the reporting student or responding student may ask the advisor to make either an opening or closing statement on behalf and instead of the reporting student or responding student.

**Impact Statements**
Both students will prepare an impact statement describing the impact that the initial event and subsequent related events have had on their lives. The impact statement will be reviewed by the Hearing Panel only in the event of a finding of responsibility.

**Recusing Panel Members**
A member of the hearing panel who feels that they cannot be impartial or who has an immediate interest in a particular case may not sit in judgment or be present during the proceedings. Either the responding student or reporting student may question the impartiality of a member of the hearing panel prior to the hearing. The concerns must be stated in writing to the Chair. The Chair then consents with the member in question. The final decision about participation rests with the Chair.
**Closed Hearing**
All hearings are closed but the Chair may authorize the attendance of any person who may serve a legitimate purpose in the hearing process. The responding student and reporting student may have only one advisor of their choice in the hearing room. Other support persons are not permitted in the hearing room but may be present in the separate private rooms provided for the reporting student and responding student during the hearing.

**Understanding how the Sexual Misconduct Hearing Differs from a Court of Law**
The Student Code of Conduct, available in the College Life Manual, is neither a criminal nor a civil code and does not operate like one. The College’s expectations for its community members are of a different standard of conduct than is required by law. Because the purposes of the Code are different from the purposes of law, the procedures by which the Code is implemented are, by design, more informal and less adversarial than those of a court.

**Record of proceedings**
Investigation reports, written statements, materials provided during the investigation, record of the finding, sanctions and other actions taken will be maintained for seven years. The Hearing is recorded; the discussions and deliberations of the hearing panel are not recorded. The recorded record is an internal record owned by the College to be made available to the appeals officer. A student preparing an appeal may also be allowed to listen to the recording, under the supervision of a designee of the Dean of Students. The record of the hearing is the property of the College and will be maintained by the Title IX Coordinator for a period of seven years.

**The Record of an Appeal**
The record of an appeal consists of the letter of appeal; the written statements from the parties and Dean/Officer and Chair; the written decision whether to hear the appeal and the outcome of the appeal. This record is appended to the written record of the original decision and maintained with it.

**Updates to Reporting student and Responding student**
Both the reporting student and responding student will be given periodic updates regarding the status of the investigation by their chosen advisor or, if none has been chosen, by the Title IX Coordinator, or Deputy Title IX Coordinator.

**Designees**
It is understood that circumstances may require the substitution of administrators for alternate roles within this process. The Vice President and Dean of Student Affairs or the Dean of Students may always choose to appoint and empower a designee.

**Policy Amendment**
Concerns, questions and suggestions for amendments to this policy, from any member of the College community, should be addressed to Kate Snider, Title IX Coordinator (ksnider@fandm.edu or 717-358-7178).

**Mandated Reporting of Sexual Misconduct**
Franklin & Marshall has a mandated reporter policy. All employees are required to report within 24 hours any act of sexual misconduct they become aware of to the Title IX Coordinator (717-358-7178) at 623 College Avenue. This includes student employees, who are required to report if they become aware of sexual misconduct while performing in their role as an employee. House Advisors (“HAs”) are the exception. HAs are considered to be in their employee roles at all times. The mandated reporter is required to give all names and information revealed to them.

For more information and for the Mandated Reporter Reporting Form, please visit: https://cm.maxient.com/reportingform.php?FranklinMarshall&layout_id=3

**Off-Campus Resources**
- Lancaster YWCA Sexual Assault Prevention & Counseling Center 24-hour Hotline: 717-392-7273
- Lancaster City Police: 911
- Public Defender:
  - must be a criminal offense to qualify for assistance
  - must apply in person
  - Lancaster County Courthouse, Court of Common Pleas, 50 N. Duke Street, Lancaster, PA 17602, 717-295-3584
- Lancaster Bar Association Lawyer Referral Service: 717-393-0737
  - One-half hour consultation with an attorney for $50.00. The attorney than charges his regular fee.
  - Available Monday through Friday 9am to noon
- Mid Pen Legal Services does not handle criminal cases and will not handle stalking or harassment cases.
- Lancaster Bar Association Lawyer Referral Service: 717-393-0737
- For information about your Clery Act rights, please see the Campus Sexual Assault Victim’s Bill of Rights.