

# FRANKLIN & MARSHALL TITLE IX SEXUAL HARASSMENT AND SEXUAL MISCONDUCT POLICY AND PROCEDURE

## I. POLICY STATEMENT

Franklin & Marshall College is committed to fostering a living, learning and working environment free of discrimination and harassment. Franklin & Marshall is subject to Title IX of the Educational Amendments of 1972 (“Title IX”), 20 U.S.C. §§1681, *et seq.*, which states that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Franklin & Marshall does not discriminate on the basis of sex and will not tolerate sexual misconduct in any form, including as defined by Title IX or Franklin & Marshall’s community standards. Franklin & Marshall’s complete Notice of Non-discrimination is available at: [go.fandm.edu/nondiscrimination](http://go.fandm.edu/nondiscrimination)

## II. SCOPE OF POLICY

Franklin & Marshall’s Title IX Sexual Harassment and Sexual Misconduct Policy and Procedures (“Policy”) applies to all Franklin & Marshall community members, including students, faculty, staff and third parties, such as volunteers, contractors and visitors.

## III. TITLE IX AND THE TITLE IX COORDINATOR

The following individual is responsible for coordinating Franklin & Marshall’s efforts to comply with Title IX and this Policy:

Katharine J. Buchkoski, Ph.D., Director of Title IX and ADA Compliance, 313 Harris,  
kate.buchkoski@fandm.edu, 717-358-7178

#### IV. DEFINITIONS

Terms used in this Policy have the following meanings:

**Advisor:** An Advisor is a person who has agreed to provide support and advice to a Complainant or Respondent, subject to the provisions of Section X(C).

**Appeal Officer:** The individual responsible for determining the outcome of an appeal under Section XII. The Appeal Officer may be Franklin & Marshall's employee or an external contractor. The Appeal Officer will not be the Institution's Title IX Coordinator, nor the Investigator or Hearing Officer who were assigned to the matter that is the subject of the Appeal.

**Complainant:** An individual who is alleged to be the victim of Prohibited Conduct.

**Consent:** A knowing, voluntary and mutual decision among participants to engage in sexual activity, as discussed further in Section VI.

**Formal Complaint:** A document submitted by a Complainant and bearing the Complainant's physical or digital signature, or otherwise indicating that the Complainant is the one filing the Formal Complaint, requesting that Franklin & Marshall investigate the allegations of Prohibited Conduct. The Title IX Coordinator also may sign a Formal Complaint, as discussed in Section X, but does not become the Complainant by doing so. In order to file a Formal Complaint, a Complainant must be participating in or attempting to participate in Franklin & Marshall's education program or activity at the time a Formal Complaint is filed.

**Hearing Officer:** The individual responsible for conducting the Hearing under Section XI(D), reaching a decision on responsibility and recommending sanctions, if appropriate. The Hearing Officer may be a Franklin & Marshall's employee or an external contractor. The Hearing Officer will not be Franklin & Marshall's Title IX Coordinator, nor the Investigator who investigated the matter that is the subject of the Hearing.

**Informal Resolution Facilitator:** The individual responsible for facilitating Informal Resolution, as discussed in Section X(D). The Informal Resolution Facilitator may be Franklin & Marshall's employee or an external contractor.

**Investigator:** The individual(s) responsible for conducting the investigation of alleged Prohibited Conduct, as discussed in Section XI(A). The Investigator(s) may be a Franklin & Marshall's employee or an external contractor. The Title IX Coordinator may serve as the Investigator.

Party or Parties: Party refers to a Complainant or a Respondent. Parties refers to Complainant and Respondent collectively.

Prohibited Conduct: Prohibited Conduct refers collectively to all actions constituting Title IX Sexual Harassment, as defined here.

Respondent: An individual who has been reported to have engaged in any form of Prohibited Conduct.

Title IX Sexual Harassment: (a) Definition. Title IX Sexual Harassment means conduct on the basis of sex that involves an employee of Franklin & Marshall conditioning the provision of an aid, benefit, or service of Franklin & Marshall on an individual's participation in unwelcome sexual conduct; or an individual engaging in unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to Franklin & Marshall's education program or activity.

Title IX Sexual Harassment also includes the following:

- Title IX Sexual Assault: Sexual assault includes any of the following Prohibited Conduct:
  - Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration or attempted penetration by a sex organ of another person, without the consent of the alleged victim.
  - The touching of the private body part of another person for the purpose of sexual gratification without the consent of the alleged victim.
  - Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - Non-forcible sexual intercourse with a person who is under the statutory age of consent.
  
- Title IX Dating Violence: Violence, including sexual or physical abuse or the threat of such abuse, committed by a person (a) who is or has been in a social relationship of a romantic or intimate nature with the alleged victim; and (b) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, and (iii) the frequency of interaction between the persons involved in the relationship.
  
- Title IX Domestic Violence: Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the alleged victim, by a person with

whom the alleged victim shares a child in common, by a person who is cohabitating with or has cohabitated with the alleged victim as a spouse or intimate partner, by a person similarly situated to a spouse of the alleged victim under the domestic or family violence laws of Pennsylvania, or by any other person against an adult or youth alleged victim who is protected from that person's acts under the domestic or family violence laws of Pennsylvania.

● Title IX Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress. For purposes of this definition, (a) course of conduct means two or more acts, including, but not limited to, acts in which the alleged stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property; (b) reasonable person means a reasonable person under similar circumstances and with similar identities to the victim; and (c) substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

(b) Jurisdiction. In order to constitute Title IX Sexual Harassment, the alleged misconduct must have occurred (i) in the United States, and (ii) in Franklin & Marshall's education program or activity, which is defined as locations, events or circumstances over which Franklin & Marshall exercised substantial control over both Respondent and the context in which the misconduct occurred, or any building owned or controlled by a student organization officially recognized by Institution.

## V. RETALIATION

Retaliation against an individual for participating in any way in a report, investigation, hearing or other proceeding under this Policy is strictly prohibited. No one may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. Allegations of Retaliation will be handed under the Code of Conduct for students and employment policies for faculty and staff. In evaluating whether retaliation has occurred, Franklin & Marshall may consider whether the conduct in question constituted protected rights or was covered by another institutional policy, including with respect to freedom of expression or academic freedom.

## VI. 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, sober 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.

## VII. REPORTING

Any person may report conduct constituting possible Prohibited Conduct to the Title IX Coordinator in person, by mail, by telephone, by email or via the online reporting form ([https://cm.maxient.com/reportingform.php?FranklinMarshall&layout\\_id=3](https://cm.maxient.com/reportingform.php?FranklinMarshall&layout_id=3)). The Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (*see* Section IX) and to explain the process for filing a Formal Complaint.

Complainants are encouraged, but not required, to proceed with a Formal Complaint. If the Complainant desires to proceed with a Formal Complaint, the Title IX Coordinator or designee will begin the Formal Complaint Processes (*see* Section XI). If the Complainant decides not to submit a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint when the Title IX Coordinator deems doing so necessary to address the possible Prohibited Conduct, including in order to provide a safe and nondiscriminatory environment for all members of Franklin & Marshall's community. In deciding whether to sign a Complaint if the Complainant elects not to do so, the Title IX Coordinator may, but is not required to, consider factors such as whether the conduct alleged included threats, violence, serial predation or weapons. A Complainant is not required to submit a Formal Complaint in order to receive Supportive Measures.

### A. Anonymous Reporting

With the exception of Authorized and Responsible Employees, discussed in Section VII(B), any individual may anonymously report allegations of Prohibited Conduct by the online reporting form ([https://cm.maxient.com/reportingform.php?FranklinMarshall&layout\\_id=3](https://cm.maxient.com/reportingform.php?FranklinMarshall&layout_id=3)).

Depending on the information provided, Franklin & Marshall's ability to take action in response to an anonymous report may be limited.

### B. Reports to Authorized and Responsible Employees

There may be instances when a student or employee discloses alleged Prohibited Conduct to an employee of Franklin & Marshall. Whether that disclosure constitutes actual notice to Franklin & Marshall, triggering its response obligations under this Policy, depends on the role of the employee to whom the disclosure is made, as follows:

- Authorized Employees: A disclosure or report of Prohibited Conduct made to an Authorized Employee (regardless of whether the disclosure is made by the Complainant or a third party) constitutes a report to Institution (*i.e.*, actual knowledge), triggering a

response under this Policy. All Authorized Employees are required to promptly report disclosures of Prohibited Conduct to the Title IX Coordinator, including all information that has been disclosed to the Authorized Employee, such as the names of those involved, the location of the incident, the alleged Prohibited Conduct, etc. The following individuals are Authorized Employees:

- o Title IX Coordinator
- o Provost
- o Associate Vice President for Human Resources
- o Vice President and Dean of Student Affairs
- o Dean of Students
- o Assistant Deans of Student Affairs (also termed House Deans)
- o Department of Public Safety

● **Responsible Employees:** A disclosure or report of Prohibited Conduct made to a Responsible Employee (regardless of whether the disclosure is made by the Complainant or a third party) does not constitute a report to the Institution (i.e., is not “actual knowledge”) triggering a response under this Policy. Franklin & Marshall, as a matter of policy, requires Responsible Employees to promptly report disclosures of Prohibited Conduct to the Title IX Coordinator, including all information that has been disclosed to the Responsible Employee, such as the names of those involved, the location of the incident, the alleged Prohibited Conduct, etc.

All individuals who are considered employees of the College are Responsible Employees.

#### C. Privacy and Confidentiality

Franklin & Marshall respects the privacy of individuals involved in any report of alleged Prohibited Conduct, meaning the Title IX Coordinator and others responsible for carrying out this Policy will disclose information only as required to implement this Policy or by law. If a Complainant requests that a report of Prohibited Conduct remain confidential (*i.e.*, with the Complainant’s identity not being disclosed to the Respondent and an investigation not being commenced), the Title IX Coordinator will evaluate that request in the context of Franklin & Marshall’s responsibility to provide a safe and nondiscriminatory environment for all members of its community. Franklin & Marshall may question an employee-Respondent about alleged Prohibited Conduct without disclosing the identity of the Complainant, provided that it does not take disciplinary action against that Respondent without implementing the Formal Complaint Processes in Section X.

The Complainant is not required to file a Formal Complaint to receive Supportive Measures (*see* Section IX), but there may be instances when disclosing the Complainant’s

identity is necessary to provide certain Supportive Measures (*e.g.*, where the Respondent would need to know the identity of the Complainant in order to comply with a no-contact order). Franklin & Marshall will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair its ability to provide the Supportive Measures.

Only certain professionals at Franklin & Marshall are legally required to keep information shared by an individual truly confidential, without reporting it to the Title IX Coordinator. Those confidential resources and support services are discussed further in Section XVI.

#### D. False Reports and Other False Information

The submission of knowingly false information is prohibited and will be addressed under Franklin & Marshall's Code of Conduct for students and employment policies for faculty and staff. This provision does not apply to reports made and other information submitted in good faith, even if the facts alleged are not substantiated by an investigation and/or Hearing decision.

### VIII. EMERGENCY REMOVALS

If at any point following the receipt of a report of Prohibited Conduct, Franklin & Marshall determines that the Respondent poses an immediate threat to the physical health or safety of the Complainant or any other person(s), including the Respondent, Franklin & Marshall may temporarily remove the Respondent from any or all of its programs or activities. The imposition of an Emergency Removal does not suggest a finding of responsibility for any Prohibited Conduct.

Before imposing an Emergency Removal, the Associate Vice President of Public Safety, or designee, will undertake an individualized safety and risk analysis concerning the Respondent at the request of the Title IX Coordinator. An Emergency Removal will be imposed only if the Associate Vice President of Public Safety concludes that the threat to physical health or safety arises from the allegations of Prohibited Conduct and warrants the removal.

An Emergency Removal may involve the denial of access to some or all of Franklin & Marshall's campus facilities, academic program, or other programs or activities. While Franklin & Marshall may provide alternative academic or employment opportunities during an Emergency Removal, it is not required to do so. Non-punitive actions taken as Supportive Measures (*e.g.*, changes in housing) do not constitute Emergency Removals.



The Title IX Coordinator will notify Respondent of the terms imposed in connection with an Emergency Removal. Respondent has the opportunity to challenge the Emergency Removal upon receipt of that notice. In order to challenge the Emergency Removal, Respondent shall submit an appeal via email to the Vice President for Diversity, Equity and Inclusion for students matters, and the Associate Vice President for Human Resources for matters related to employees, within three (3) calendar days from the date of the notice of Emergency Removal, explaining why Emergency Removal is not appropriate. In evaluating the appeal, Vice President for Diversity, Equity and Inclusion or Associate Vice President for Human Resources, as appropriate, may seek additional information from the Respondent or any other individual. The Emergency Removal will remain in place during the three calendar days in which an appeal may be submitted by the Respondent and while any appeal is pending. The Vice President for Diversity, Equity and Inclusion or Associate Vice President for Human Resources shall issue a decision as soon as possible under the circumstances. The decision is final and not subject to further appeal.

Separate from the Emergency Removal process, the Title IX Coordinator may request that the Associate Vice President for Human Resources, place an employee-Respondent on an administrative leave, with or without pay.

## IX. SUPPORTIVE MEASURES

Supportive Measures are non-disciplinary, non-punitive individualized services that may be provided to Complainants or Respondents upon request, when deemed by the Title IX Coordinator to be appropriate and reasonably available. Supportive Measures may also be imposed at the initiative and in the sole discretion of the Title IX Coordinator or designee. Supportive Measures are available beginning at any time after the submission of a report of Prohibited Conduct.

A Complainant may seek and be provided Supportive Measures prior to or without ever filing a Formal Complaint.

Supportive Measures are designed to restore or preserve equal access to Franklin & Marshall's educational programs and activities, without unreasonably burdening the other party. Supportive Measures may be of any duration and may be modified at the discretion of the Title IX Coordinator, as circumstances warrant. Supportive Measures will be kept confidential to the extent doing so does not impair Franklin & Marshall's ability to provide them.

Supportive Measures may include, but are not limited to, the following:

- Access to counseling services;

- Extensions of deadlines or other course-related adjustments;
- Modification of work or class schedules;
- Mutual restrictions on contact between the parties (*i.e.*, “no contact” orders);
- Changes in work or housing locations;
- Leaves of absence;
- Increased security and monitoring of certain areas; or
- Any other measures deemed appropriate by the Title IX Coordinator to preserve equal access to Franklin & Marshall’s programs and activities.

A student or employee’s failure to abide by the terms of any Supportive Measure may result in discipline and, depending on the circumstances, could be deemed to constitute Retaliation.

#### X. FORMAL COMPLAINT PROCESSES

In order to commence Formal Complaint Processes, a Complainant must file a Formal Complaint with the Title IX Coordinator. Alternatively, if the Title IX Coordinator has received a report of Prohibited Conduct, but the Complainant elects not to submit a Formal Complaint or the Complainant is unknown, the Title IX Coordinator has the discretion to sign the Complaint if the Title IX Coordinator deems doing so necessary to address Prohibited Conduct, including in order to provide a safe and nondiscriminatory environment for all members of its community. In doing so, the Title IX Coordinator does not become the Complainant.

There is no time limit within which a Complainant must file a Formal Complaint. However, at the time a Formal Complaint is filed, the Complainant must be participating or attempting to participate in Franklin & Marshall’s programs or activities.

Pursuing a Formal Complaint does not preclude a Complainant from pursuing the filing of criminal charges. However, it is important to understand that the standard for criminal prosecution is different from that used in student and employee conduct proceedings. As a result, decisions rendered in either forum are not determinative of what will happen in the other.

If the Title IX Coordinator receives Formal Complaints against more than one Respondent or by more than one Complainant against one or more Respondents, or by one Party against the other Party (i.e., “counterclaims”), where the allegations of sexual harassment arise out of the same facts or circumstances and are so intertwined that the allegations directly relate to all of the Parties, the Title IX Coordinator has the discretion to consolidate the Formal Complaints. If Formal Complaints are consolidated, all Parties must receive the same version of the written determination.

A. Written Notice

Upon the submission of a Formal Complaint, the Title IX Coordinator will provide written notice to the Complainant and Respondent, if known, including the following:

- A copy of this Policy.
- Notice of the allegations of conduct that may constitute Prohibited Conduct, with sufficient detail for the Respondent to prepare a response before any initial interview, including, if known, the identities of the Parties involved and the date and location of the incident.
- The presumption that the Respondent is not responsible for the alleged Prohibited Conduct unless a determination of responsibility is reached at the conclusion of the Formal Resolution Process.
- Notice of the Parties’ entitlement to an Advisor of choice at any meeting, interview or other proceeding related to the Formal Complaint, as discussed in Section X(C).
- The identity of the Investigator as described in Section XI(A).
- Notice that the Parties may inspect and review evidence gathered during the investigation as discussed in Section XI(B).
- Notice that Franklin & Marshall’s Student Code prohibits knowingly making false statements or knowingly submitting false information during the Formal Complaint Processes.

If additional allegations of conduct that might constitute Prohibited Conduct are identified during the course of the investigation and will be included in the Formal Complaint Processes, the Title IX Coordinator will issue an updated notice.

B. Dismissal for Purposes of Title IX Sexual Harassment

If any of the following circumstances are met, the Title IX Coordinator will dismiss the Formal Complaint for purposes of any form of Title IX Sexual Harassment:

- Even if proved, the misconduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined in Section IV;
- The misconduct alleged in the Formal Complaint did not occur in Franklin & Marshall's education program or activity, which is defined as locations, events or circumstances over which Franklin & Marshall exercised substantial control over both Respondent and the context in which the misconduct occurred, or any building owned or controlled by a student organization officially recognized by Franklin & Marshall; or
- The misconduct alleged in the Formal Complaint is not alleged to have occurred in the United States.

Further, if any of the following circumstances are met, the Title IX Coordinator may dismiss the Formal Complaint for purposes of any form of Title IX Sexual Harassment, in the Title IX Coordinator's sole discretion:

- Complainant notifies the Title IX Coordinator in writing that Complainant wishes to withdraw the Formal Complaint or any allegation in it;
- Respondent is no longer enrolled or employed at Franklin & Marshall; or
- Specific circumstances prevent Franklin & Marshall from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegation.

The Title IX Coordinator will promptly send notice of the dismissal, including the reasons for dismissal, to the Complainant and Respondent via email.

Both the Complainant and Respondent may appeal any decision to dismiss the Formal Complaint for purposes of Title IX Sexual Misconduct by submitting a request for appeal to the Title IX Coordinator by email within three (3) calendar days of the date of the Title IX Coordinator's email. The appeal will be determined using the procedures set forth in Section XII.

The notice of the dismissal will advise the parties whether the Formal Complaint will proceed as possible Community Standards Sexual Misconduct. The decision whether the

matter will proceed as potential Community Standards Sexual Misconduct, and not Title IX Sexual Misconduct, is not subject to appeal.

C. Advisors

The Parties are entitled to identify an Advisor of their choice, who may accompany them to all investigative interviews, Hearings and other meetings or proceedings held in connection with a Formal Complaint (“Formal Complaint Process Proceedings”). An Advisor is a person who has agreed to provide support and advice to a Complainant or Respondent. The Parties are responsible for identifying their own Advisor, if they wish to have one. Franklin & Marshall will maintain a list of individuals who have agreed to serve as Advisors at no cost to Complainants or Respondents, whom the Complainant or Respondent may, but are not required to, contact to determine whether they are available for that purpose.

As discussed in Section XI(D)(5), the Parties must have an Advisor for purposes of conducting cross-examination at a Hearing. If a Party has not identified an Advisor to accompany them to the Hearing for purposes of conducting cross-examination, Franklin & Marshall will provide one for that limited purpose.

Except when conducting cross-examination as discussed in Section XI(D), Advisors may not speak aloud during any Formal Complaint Process Proceedings, including by addressing anyone other than the individual for whom they are an Advisor. The Advisor may confer with the individual whom they are advising quietly or by means of written notes. Parties may request a brief recess to consult with their Advisor, which may be granted at the sole discretion of the Hearing Officer. An Advisor whose presence is deemed at that individual’s sole discretion to be improperly disruptive as established by Franklin & Marshall will be required to leave and may be prohibited from participating in future Formal Complaint Process Proceedings.

While Franklin & Marshall may consider short delays in scheduling to reasonably accommodate an Advisor’s availability, whether to grant such a request is at the sole discretion of the Franklin & Marshall representative responsible for the event in question.

D. Informal Resolution

Informal Resolution presents the opportunity for the Complainant and Respondent to resolve allegations of Prohibited Conduct without an investigation or hearing.

Participation in Informal Resolution in lieu of the Formal Resolution Process is purely voluntary. Informal Resolution is available only when a Formal Complaint has been filed and the Parties agree to its use in writing. Informal Resolution may be used only with the approval of the Title IX Coordinator, who may deem its use inappropriate based on the specific allegations involved or other factors. Informal resolution is not available to resolve a student-Complainant's allegations that an employee has engaged in Title IX Sexual Harassment. Prior to initiating Informal Resolution, the Title IX Coordinator will provide the Parties with written notice disclosing the allegations, the requirements of the process, the right to withdraw from Informal Resolution to pursue formal resolution, and any consequences of participation (*e.g.*, as it relates to any subsequent formal resolution if Informal Resolution is not achieved).

Informal Resolution can be commenced at any point prior to the conclusion of a Hearing under the Formal Resolution Processes. It is conducted by an Informal Resolution Facilitator appointed by the Title IX Coordinator. The Complainant, Respondent, Title IX Coordinator or Facilitator may terminate Informal Resolution at any time prior to its completion. If Informal Resolution is terminated, the Formal Resolution Process will promptly commence or resume, as appropriate.

Informal Resolution may take many forms as agreed to between the Complainant, Respondent and Title IX Coordinator, including, but not limited to:

- Facilitated Resolution: Facilitated Resolution may involve the Complainant and Respondent being in the same or different rooms, but they will never be required to be in the same room. Mediation typically does not require an admission of responsibility for the Prohibited Conduct by the Respondent.
- Restorative Justice: Restorative Justice may involve the Complainant and Respondent being in the same or different rooms, but they will never be required to be in the same room. Restorative Justice typically requires an admission of responsibility for the Prohibited Conduct, or certain allegations, by the Respondent.

If the Informal Resolution is terminated such that the matter resumes the Formal Resolution Processes, specific statements made by either party during the Informal Resolution will not be documented or retained by the Title IX office or the Informal Resolution Facilitator, will not be shared with anyone outside the Informal Resolution Process, and may not be utilized in a subsequent Formal Process. Additionally, the Informal Resolution Facilitator shall not serve as a witness in a subsequent Formal Process.

The outcome of the Informal Resolution will be documented in an agreement or other form that is signed by both the Complainant and the Respondent. The outcome of Informal Resolution may not be utilized in a subsequent Formal Process, if any.

The College will attempt to complete the Informal Resolution process within thirty (30) calendar days of the Parties documenting their agreement to participate, subject to extenuating or unanticipated circumstances. That period may be extended at the discretion of the Title IX Coordinator.

## XI. FORMAL RESOLUTION PROCESS

Franklin & Marshall strives to resolve Formal Complaints within ninety (90) calendar days of the submission of a Formal Complaint, but balances its desire to achieve a prompt resolution with the need to conduct a thorough and complete investigation, which may delay that timeframe. Delays might also result from a number of factors, including but not limited to the appeal of a dismissal as discussed in Section XII, impacts of concurrent criminal processes, or an attempt at Informal Resolution. The Title IX Coordinator may extend the time for completion of the Formal Resolution Process for good cause as determined in the sole discretion of the Title IX Coordinator, and will provide written notice to the Parties of the reason for extension or delay.

At the discretion of the Title IX Coordinator, possible violations of the Student Code of Conduct or other policies that occurred directly in connection with the alleged Prohibited Conduct may be, but are not required to be, addressed under the Formal Resolution Processes here in lieu of engaging in a separate decision-making process for those possible violations.

### A. Investigation

The written notice described in Section X(A) will identify the appointed Investigator(s). The College will typically use a dual investigator model. Either Party may object to the Investigator(s) on the grounds of conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, by submitting an objection to the Title IX Coordinator, or designee if appropriate, in writing within three (3) business days of receipt of the issuance of the written notice, absent exigent circumstances. The Title IX Coordinator or designee, in their sole discretion, shall determine whether a different Investigator should be appointed.

The Investigator(s) will conduct an investigation of the allegations in the Formal Complaint, and is responsible for interviewing the Parties and witnesses, and gathering relevant inculpatory and exculpatory evidence. The Investigator(s) may not access,

consider, disclose or otherwise use records that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional in connection with the provision of treatment to the Complainant or Respondent, unless the Investigator obtains the Complainant's or Respondent's, as appropriate, voluntary written consent to do so.

All Parties will have an equal opportunity to identify witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, for the Investigator(s). Parties will be provided with written notice of the date, time, location, participants and purpose of all investigative interviews in which they are expected to participate. Parties may be accompanied by an Advisor of their choice at any investigative interview, as described in Section X(C).

#### B. Investigation Report

The Investigator(s) will prepare an investigation report summarizing all relevant evidence. The report will exclude all non-relevant evidence, as well as any evidence not subject to disclosure for reasons set forth herein (*e.g.*, medical records regarding which the Party has not authorized disclosure).

Prior to completing the investigation report, the Investigator(s) will send to both Complainant and Respondent, and their Advisors, if any, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, regardless of whether it is anticipated that the evidence will be used at the hearing or in connection with any decision on responsibility. The Parties are strictly prohibited from disclosing or disseminating the evidence to any third parties and from using it for purposes other than carrying out the Formal Resolution Processes.

Complainant and Respondent will have ten (10) calendar days to provide a written response concerning the evidence to the Investigator(s), including identifying additional evidence for the Investigator's consideration prior to completing the investigation report. The response must be by the Party, not the Party's Advisor. A Party's response will be shared with the other Party.

After receipt of the Parties' responses concerning the evidence and at least ten (10) calendar days before the hearing, the Investigator(s) will provide the Complainant and Respondent, and their Advisors, if any, a copy of the investigation report. The Complainant and Respondent may, but are not required to, provide written responses to the



investigation report. Any response must be by the Party, not the Party's Advisor. A Party's response will be shared with the other party.

C. Hearing Notice

After the investigation report has been provided to the Parties and their Advisors, if any, and not fewer than five (5) calendar days before the hearing, the Title IX Coordinator will issue a Hearing notice via email advising the Parties of the following:

- The date, time and location of the Hearing.
- The specific charges of Prohibited Conduct subject to disposition at the Hearing and a brief description of the conduct resulting in the charges;
- The individual to serve as the Hearing Officer; and
- At the request of either party, the Hearing will take place with parties located in separate rooms with technology enabling the parties to simultaneously see and hear the party/witness answering questions. Requests for separate rooms must be submitted to the Title IX Coordinator via email at least ten (10) calendar days before the Hearing.

Any Party may object to the Hearing date or challenge the appointment of the Hearing Officer for bias or conflict of interest by submitting a written objection to the Title IX Coordinator via email within three (3) calendar days of the Title IX Coordinator issuing the Hearing Notice. The Title IX Coordinator, in their sole discretion, shall determine whether the Hearing Officer should be removed and/or the Hearing rescheduled. Once the Hearing Officer is confirmed, the Title IX Coordinator will provide the Hearing Officer with a copy of the investigation report.

D. Hearing

Hearings are governed by the procedures set forth below. The formal Rules of Evidence that may apply to any courtroom proceeding do not apply to Hearings conducted under this Policy.

The only individuals who may appear at a Hearing are the Complainant and Advisor, Respondent and Advisor, and witnesses called by the Hearing Officer. The Parties and their Advisors may be present throughout the Hearing, with the exception of any recesses for which they are excused by the Hearing Officer. Witnesses are permitted to be present only when providing testimony. The Investigator assigned to the complaint and/or Title IX

Coordinator may be present throughout the Hearing, as may other Franklin & Marshall representatives at the discretion of the Hearing Officer. If a Party fails to attend a Hearing, the Hearing may be held in the Party's absence, at the discretion of the Hearing Officer.

### 1. Witnesses

At least five (5) days before the Hearing, the Hearing Officer will advise the Parties which witnesses will be requested to provide testimony at the Hearing. No later than two (2) calendar days after such notice, the Parties may request that additional witnesses be present at the Hearing. The request must be submitted to the Hearing Officer in writing, including a brief description of why the information is relevant to the determination of responsibility. Whether or not to approve such a request as potentially providing relevant information shall be in the sole discretion of the Hearing Officer, who will advise the requesting Party of the final decision. If the request is approved, the Hearing Officer will advise the other Party as well.

### 2. Documents

All documentary evidence provided to the parties under Section XI(B) will be made available at the Hearing, as well as all evidence produced by the Parties in their response. The availability of such evidence does not suggest a determination on relevance, which shall be made by the Hearing Officer.

### 3. Relevance

The Hearing Officer is responsible for making all determinations of relevance as to witnesses, questions and documentary evidence presented at the Hearing. For purposes of this Policy, "relevant" means that the evidence is probative, or confirming, of any material fact.

Evidence that is not relevant will be excluded at the Hearing and may not form the basis for any decision by the Hearing Officer. Evidence that is duplicative of evidence already in the Hearing record may be deemed not relevant. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct or if

the questions and evidence concern a specific incident of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

#### 4. Standard of Proof

The Hearing Officer will make decisions on responsibility using a preponderance of the evidence standard, which, per the U.S. Department of Education, means that it is more likely than not that harassment, discrimination, or violence occurred.

#### 5. Advisors at Hearings

The parties may be accompanied by their Advisor at the Hearing. As discussed in Section X(C), the Advisor may not address the Hearing Officer, other Advisors or any other individuals participating in the Hearing. The only exception is with respect to cross-examination as discussed below. An Advisor who fails to do so may, at the sole discretion of the Hearing Officer, be required to leave the Hearing.

The parties shall inform the Title IX Coordinator whether they will be accompanied at the Hearing by their Advisor of choice by no later than ten (10) days before the Hearing. If a party has not identified an Advisor, Franklin & Marshall will provide one for the sole purpose of conducting cross-examination as discussed below. The Parties may not conduct cross-examination themselves; cross-examination must be performed by an Advisor. If an Advisor is required to leave a Hearing for any reason, the Hearing Officer shall recess the Hearing until Franklin & Marshall appoints an Advisor for purposes of cross-examination. Advisors provided by Franklin & Marshall will have an understanding of the purpose of cross-examination.

#### 6. Hearing Procedures

The procedures here provide the general framework for any Hearing. The Title IX Coordinator or Hearing Officer may alter certain procedures as deemed appropriate in their sole discretion to aid in the equitable resolution of the matter.

##### a) Recording

The Hearing will be recorded by means of audio recording or recording of hearing if conducted online. Recesses taken or approved by the Hearing Officer, including for the Hearing Officer to consult with the Title IX Coordinator, Investigator or any other Franklin & Marshall representative, will not be recorded.

b) Parties

Generally, the Hearing Officer will hear from the Complainant first, followed by the Respondent. Each Party will have the opportunity to provide relevant evidence to the Hearing Officer. The Hearing Officer will ask relevant follow-up questions of each party. Each Party's Advisor will have the opportunity to ask cross-examination questions of the other Party. Advisors are reminded of the importance of adhering to the Rules of Decorum in cross-examining the Parties and any witnesses.

With respect to cross-examination, Advisors are limited to asking only relevant questions. The Hearing Officer will determine whether questions are relevant prior to the Party answering the question. If the question is deemed not relevant, the Hearing Officer will provide a brief explanation and the question will be precluded. The Hearing Officer's decision is not subject to challenge or objection during the Hearing.

c) Witnesses

A similar process and the same rules that apply to Parties will apply to the testimony of witnesses. Like the Parties, any witness may appear remotely, with technology allowing the Hearing participants to simultaneously see and hear the witness.

The Investigator may be called as a witness. At the Hearing Officer's discretion, the Investigator may be asked to testify before the Parties to facilitate an efficient presentation of evidence.

d) Closing Statement

Each Party will have the opportunity to make a brief closing statement. The Parties will make any statements themselves, not through their Advisor.

E. Hearing Outcome Letter

Within seven (7) calendar days of the conclusion of the Hearing, the Dean of Students will issue the Hearing Outcome Letter via email to the Parties if a student matter. The Associate Vice President for Human Resources or Provost, as appropriate, will issue the Hearing Outcome Letter via email to the Parties if an employee matter.

The Hearing Outcome Letter will include:

- A description of the allegations that led to the Hearing, as potentially constituting Prohibited Conduct.

- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination.
- A statement of factual findings supporting the determination.
- A statement of the conclusions regarding the application of this Policy to the facts.
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility.
- An explanation of the disciplinary sanctions imposed on the Respondent, if any.
- A statement of whether remedies designed to restore or preserve equal access to Franklin & Marshall's education program or activity will be provided to the Complainant. Specific remedies will be identified in the Hearing Outcome Letter only to the extent those remedies directly affect the Respondent. The Title IX Coordinator is responsible for implementing such remedies.
- The procedures and permissible bases for the Complainant and Respondent to appeal.

The Hearing Outcome becomes final following the determination of the appeals, if any, or upon the date following the deadline for filing an appeal, if no appeal is pursued. No further appeals of any kind are permitted.

## F. Findings, Sanctions and Remedies

### 1. Findings

There are two possible findings:

- Responsible for a violation of College policy
- Not responsible for a violation of College policy

### 2. Sanctions

If the Respondent is found responsible for any Prohibited Conduct, the Title IX Coordinator will provide the Hearing Officer with the Respondent's prior conduct record for consideration in the Hearing Officer's recommendation of a sanction or sanctions. The range of available sanctions includes:

- Warning

- Reprimand
- Probation
- Suspension
- Expulsion
- Educational Conditions may also be included in the recommendation

### 3. Remedies

The Title IX Coordinator is responsible for the implementation of remedies designed to restore or preserve equal access to Franklin & Marshall's education program or activity. While remedies might constitute Supportive Measures, they also might be in the form of Sanctions.

## XII. APPEALS

Either Party may appeal a determination as set forth in the Hearing Outcome by submitting a written appeal to the Title IX Coordinator by email within five (5) calendar days of the Hearing Officer's issues of the Hearing Outcome Letter. Appeals may be based on only one of the following:

- A procedural irregularity that affected the determination of responsibility;
- The existence of new evidence that was not reasonably available at the time of the Hearing that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that affected the outcome of the matter.

As discussed in Section X(B), appeals may also be based on the dismissal of a Formal Complaint alleging Title IX Sexual Harassment.

The appeal must be in writing and clearly explain the basis for the appeal. If the appeal is from the outcome of a Hearing, the Parties shall have access to the record of the Hearing to prepare their appeal on such terms as the Title IX Coordinator provides. Upon receipt of an appeal, the Title IX Coordinator will notify the other Party that the appeal has been

filed, permitting the party five (5) days to provide a response, and providing the parties with the identity of the Appeal Officer who will determine the matter. The Party's response will be provided to the appealing party, but no further exchange of positions is permitted.

The Title IX Coordinator will forward the appeal and the other Party's response to the Appeal Officer. The Appeal Officer will evaluate the appeal on the written record and recording of the Hearing, and may seek input from the Title IX Coordinator, Investigator and/or Hearing Officer as deemed appropriate in the Appeal Officer's sole discretion.

For appeals from a Dismissal in Section X(B), the Appeal Officer will typically issue a written decision on the appeal, including the result and a brief rationale, within ten (10) days of the Hearing Officer's receipt of the appeal materials.

For appeals from a Hearing Outcome, the Appeal Officer will typically issue a written decision on the appeal, including the result and a brief rationale, within ten (10) days of the Appeal Officer's receipt of the appeal materials. If the Appeal Officer determines that:

- A procedural irregularity affected the outcome of the Hearing.
- New evidence exists that was not reasonably available at the time of the Hearing that could affect the outcome of the matter.
- The Title IX Coordinator, Investigator or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally, or with the individual Complainant or Respondent, that affected the outcome of the matter.

The Appeal Officer has discretion to direct a rehearing of the matter, adjust the finding and/or recommended sanction if any, or make any other equitable determination. The Appeal Officer's decision is final. No further appeals are permitted.

### XIII. RECORDKEEPING

Franklin & Marshall will retain required records created in connection with a Formal Complaint for seven (7) years. Such records may include those relating to any Informal Resolution, the investigation, any determination regarding responsibility (including any audio or audiovisual recording or transcript), any disciplinary sanction imposed, any appeal and any remedies provided to the Complainant designed to restore or preserve equal access to Franklin & Marshall's education program or activity.

Franklin & Marshall will also document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the education program or activity. If Franklin & Marshall provides no Supportive Measures to the Complainant, it will additionally document why such a response was not clearly unreasonable in light of all the known circumstances.

#### XIV. TRAINING

Any individual serving as Franklin & Marshall's Title IX Coordinator, Investigator, Informal Resolution Facilitator, Hearing Officer or Appeal Officer will receive training on this Policy, the scope of Franklin & Marshall's education program or activity, how to conduct an investigation and Formal Resolution Processes (including Hearings, Appeals and Informal Resolution, as applicable), and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias. Further, they will receive training on questions of relevance, and on preparing an Investigation Report, Hearing Outcome Letter or Appeal decision, as appropriate.

#### XV. ADDITIONAL INFORMATION AND GENERAL INSTRUCTIONS

Time frames listed in this policy will be adhered to absent exigent or unexpected circumstances. Complainants and Respondents will always have ten (10) calendar days to provide a written response for the Investigator's consideration prior to completing the investigation report. Advisors are expected to comply with the College's scheduling of hearings and other meetings.

#### XVI. FRANKLIN & MARSHALL AND COMMUNITY RESOURCES

##### **Resources available year round:**

- [F&M Public Safety](#): (717) 358-3939
- [YWCA 24-Hour Sexual Assault Hotline](#) (confidential): (717) 392-7273
- 911

##### **Resources available during the academic year:**

- [F&M Public Safety](#): (717) 358-3939



- [F&M Counseling Services](#) (confidential): (717) 544-9051
- [F&M Health Services](#) (confidential): (717) 544-9051
- [YWCA 24-Hour Sexual Assault Hotline](#) (confidential): (717) 392-7273
- [Office of Student Accessibility Services](#) (717) 358-3989

Please contact Dr. Buchkoski with questions regarding Title IX or this Policy. Questions may also be directed to:

Assistant Secretary for Civil Rights

Department of Education Office for Civil Rights

400 Maryland Avenue, SW Washington, D.C. 20202-1100

Telephone: 800-421-3481 Email: [OCR@ed.gov](mailto:OCR@ed.gov)