

# FMU SEXUAL MISCONDUCT (TITLE IX)

## POLICIES AND PROCEDURES

Francis Marion University (FMU) is committed to providing a healthy living, learning, and working community with an atmosphere that emphasizes the dignity and worth of all individuals within that community. Towards that end, we promote personal integrity, civility and mutual respect, and an environment that is free from sexual misconduct and discrimination.

Francis Marion University follows all state, local, and federal laws banning discrimination in public institutions of higher learning. FMU adheres to all Title IX policies, and does not discriminate on the basis of race, color, sex, religion, ethnicity, national origin, age, sexual orientation, gender identity, veteran status or any other protected category under applicable state, local, or federal law. General questions regarding Title IX can be directed to the Office of Civil Rights ([www.ed.gov/ocr](http://www.ed.gov/ocr)). Specific questions may be referred to the University's Title IX Coordinator ([titleixcoordinator@fmarion.edu](mailto:titleixcoordinator@fmarion.edu)) or the University's Human Resources Office.

Francis Marion's sexual misconduct (Title IX) procedures define the University's response to reports of sexual misconduct and explain the recourse and protections afforded complainants and respondents.

## SCOPE OF POLICY

This policy applies to all members of the FMU community, which includes currently enrolled students, staff, faculty, contractual, and vending employees in all university programs and activities. All members of the FMU community who are complainants regarding sexual misconduct shall be provided appropriate accommodations, and directed to appropriate resources, in order to ensure that their employment and/or educational experience at FMU is not unduly hindered. This policy addresses sexual misconduct that involves members of the FMU community. Sexual misconduct may involve a member of the same sex or the opposite sex. In addition, this policy remains applicable regardless of whether the incident occurs during working hours and regardless of whether the incident occurs on or off campus. Nothing in this policy shall be construed to infringe upon any of the due process rights available to a respondent under state, local, or federal laws. Under the Francis Marion University's Faculty Handbook, faculty members have the right of academic freedom, but academic freedom does not shield faculty members from violations described in this policy.

Francis Marion University encourages faculty, students, and staff to report sexual misconduct to the Campus Police, Title IX Coordinator, and/or a responsible employee as promptly as possible.

## Sexual Misconduct

Sexual misconduct refers to a broad category of sexual behaviors which violate state and federal laws. This policy applies to all forms of sexual misconduct, as defined by applicable laws and University policies, including but not limited to, sex-based discrimination, sexual harassment, sexual assault, dating/relationship violence, and stalking by employees, students, or third parties.

**Definitions.** In general, any non-consensual contact of a sexual

nature may constitute Sexual Misconduct. Information concerning the legal and regulatory aspects of consent and various classes of sexual misconduct is presented in an Appendix section of this document, pages 15-17. A detailed description is also available in the FMU Student Handbook and the FMU Catalog, pages 57-58.

Conditions related to consent are noted below:

- If coercion, intimidation, threats, or physical force are used, there is no consent;
- If a person is mentally or physically incapacitated, or impaired, so that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent. This includes impairment or incapacitation due to alcohol, drug consumption, being asleep, or unconscious;
- Inducing incapacitation for sexual purposes includes using drugs, alcohol, or other means with the intent to affect the ability of an individual to consent or refuse to consent (as "consent" is defined in this policy) to sexual contact;
- There is no consent when there is force, expressed or implied, or use of duress upon the victim;
- Past consent to sexual activity does not imply ongoing future consent; and
- Consent can be withdrawn at any time.

## Anti-Retaliation/Anti-Intimidation Policy

Title IX and Francis Marion University strictly prohibit retaliation against and intimidation of any person because of his/her reporting an incident of sexual misconduct or participation in the University's process. The University will take strong disciplinary action in response to any retaliation or intimidation.

## FMU TITLE IX COORDINATOR AND TITLE IX COUNCIL

### Title IX Coordinator

The University President appoints the Title IX Coordinator. The Title IX Coordinator reports directly to the University President and is assigned responsibility for compliance with Title IX. The Title IX Coordinator implements the University's Title IX policy and procedures.

Specific responsibilities of the Title IX Coordinator include the following:

1. Ensures the University's compliance with Title IX's administrative requirements.
2. In consultation with the FMU Athletic Director, monitors students' participation in athletics and across academic fields to identify programs with disproportionate enrollment based on sex and ensures that sex discrimination is not negatively affecting access to equal educational opportunities.
3. Coordinates the University's responses to and procedures for resolving Title IX complaints, including educating the community on how to file a complaint alleging a violation of Title IX, investigating complaints, working with law enforcement when necessary, and ensuring that complaints are resolved promptly and appropriately. Provides consultation

and information regarding Title IX requirements to potential complainants, including informing all parties of the process, notifying all parties regarding grievance decisions, and notifying of the option to and procedures for appeal.

4. Evaluates confidentiality requests from complainants in the context of providing a safe, nondiscriminatory environment for all students.
5. Reviews the grievance procedures to help determine whether they incorporate all of the elements for the prompt and equitable resolution of student and employee complaints under Title IX that are consistent with the Title IX regulatory requirements and OCR guidance.
6. Coordinates recordkeeping and monitors incidents to help identify students or employees who have multiple complaints against them or who have been repeated targets, and addresses any patterns or systemic problems that arise, including making school officials aware of these patterns or systemic problems as appropriate.
7. Recommends, as necessary, that the University increase safety measures, such as monitoring security at locations or activities where harassment has occurred.
8. Provides training related to sexual misconduct and gender-based harassment, and develops educational programs for the entire University community.
9. Develops a method to survey the school climate and coordinates the collection and analysis of information from that survey.
10. Reviews the effectiveness of the University's efforts to ensure that it is free from sexual or gender-based harassment and provides periodic reports to the President of the University.

## Title IX Council

The Title IX Council is an advisory body with nine members who serve ex-officio as determined by the President of the University, and three elected members. In consultation with the Title IX Coordinator and others (e.g. Vice Presidents), the Title IX Council will consider and recommend policies and procedures to the President of the University for approval.

### Vice President for Administration

Dr. Charlene Wages  
Title IX Coordinator  
(843) 661-1114  
cwages@fmarion.edu  
TitleIXCoordinator@fmarion.edu

### Chair of the Faculty

Dr. Beckie Flannagan  
Chair of Title IX Council  
Professor of English  
(843) 661-1516  
rflannagan@fmarion.edu

### Provost

Dr. Peter King  
(843) 661-1281  
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### Vice President for Student Affairs

Ms. Teresa Ramey  
Dean of Students  
(843) 661-1182

tramey@fmarion.edu

### General Counsel for Francis Marion University

Jonathan Edwards, JD  
(843) 661-1181  
jedwards@fmarion.edu

### Director of FMU Counseling and Testing Center

Dr. Rebecca Lawson  
(843) 661-1841  
rlawson@fmarion.edu

### Chief of Campus Police

Mr. Donald Tarbell  
(843) 661-1119  
dtarbell@fmarion.edu

### Senior NCAA Woman Administrator

Ms. Stacey Vallee  
Head Coach  
Women's Softball  
(843) 661-1238  
svallee@fmarion.edu

### President of Student Government Association

Ms. Freddricka Pressley  
(843) 661-1361  
fpressley7549@g.fmarion.edu

### Elected Member from Staff Advisory Council\*\*

Ms. Katherine Barnette  
Administrative Coordinator/Graphic Designer  
Public Affairs  
(843) 661-1224  
kbarnette@fmarion.edu

### Elected Member from Faculty\*\*

Elected Member from Student Government Association\*\*  
\*\*Two year term, eligible for reelection

## PROCEDURES FOLLOWING AN ACT OF SEXUAL MISCONDUCT

### Physical Care

If physical trauma has occurred, a person should seek immediate assistance from Campus Police (843-661-1109), local emergency responders (911), or at a local medical facility.

### Emergency Rooms

Carolinas Hospital System	(843) 669-0927
805 Pamplico Hwy, Florence SC 29501	
McLeod Regional Medical Center	(843) 777-2027
555 E. Cheves St, Florence SC 29501	

If one's physical safety is threatened, call Campus Police (843-661-1109) if on campus; Call Emergency Services providers (911) if off campus.

### Confidential Medical Response/Sexual Assault Kit

An individual who has suffered sexual assault can elect to have a confidential sexual assault kit completed at a medical facility without first notifying the police. Once the sexual assault kit has been completed and the complainant has left the medical facility, the medical facility will notify the law enforcement agency where the incident took place. The law enforcement agency with jurisdiction over the incident location will then take custody of the sexual

assault kit. The sexual assault kit has no identifying information on it and the law enforcement agency has no way of knowing to whom the kit is associated. This anonymous kit is then stored at the law enforcement agency for a length of time as determined by state law. The kit is stored in the event the complainant wishes to pursue charges later.

## Filing a Sexual Misconduct Complaint

### Types of Reports

Allegations of sexual misconduct or retaliation for reporting sexual misconduct should be promptly reported. The type of report is determined by the person who makes the report. A “reporter,” can be an alleged victim, a bystander witness, or an anonymous person who may be a complainant or a third party. The term “reporter” will be used throughout this document when there is no need to distinguish between the type of report which has been filed.

The complainant is the individual who has been the object of alleged sexual misconduct. He/she may file a report through any of the methods outlined in the Methods of Reporting section. Complainants have the option of using one option instead of the others, or may pursue multiple options at the same time.

Third parties who are witnesses to, or have knowledge of, sexual misconduct are strongly encouraged to report the incident(s) and may use any of the methods described in the Methods of Reporting section. Each type of reporting can involve a different level of confidentiality, as well as potentially begin a different process (i.e. criminal, institutional).

### Anonymous Individual

Individuals who do not wish to be identified may report sexual misconduct anonymously using the following methods:

- Silent Witness: <http://www.fmarion.edu/about/silentwitness>
- Written notification to the Title IX Coordinator at Room 105, Stokes Administration Building

In the event that an act of sexual misconduct is reported anonymously with no names attached or only the respondent’s name attached, the Title IX Coordinator will alert Campus Police concerning any potential safety issues in parts of campus named in the report.

### Confidential

Reports made to a professional counselor will not be reported to anyone else without the consent of the individual unless state or federal law requires otherwise. There may also be other potential limits of client confidentiality.

### Where to Make the Report

Each method of reporting can involve a different level of confidentiality, as well as potentially initiating a different process (i.e. criminal, institutional). Reporters of sexual misconduct have the option of using one method only or multiple methods at the same time. Reports made to a professional counselor will not be reported to anyone else without the consent of the individual unless state or federal law requires otherwise. There may also be other potential limits of client confidentiality. All individuals listed below are required to report alleged incidents of sexual misconduct to the Title IX Coordinator.

### Campus Police

Complainants or third party reporters are encouraged to report sexual misconduct immediately to Campus Police in person, at 4804 Patriot Drive, or by phone at (843) 661-1109. Complainants

can also file anonymous reports online at Silent Witness. In order to help campus police, the complainant should preserve any evidence that is within his/her control or possession. In addition to following police procedures, the police will also notify the President of the University and the Title IX Coordinator about reports of sexual misconduct. Campus Police are obligated by law to report instances of sexual misconduct involving a minor to the SC Department of Social Services.

The standard of proof in criminal cases involves a finding of guilt beyond a reasonable doubt and can only be determined in a court of law. This is a much higher standard of proof than the standard used in resolving complaints within the University which may determine responsibility based upon preponderance of the evidence.

### Title IX Coordinator

A complainant can file an institutional complaint of sexual misconduct by contacting FMU’s Title IX Coordinator by phone at 843-661-1114, by email at [titleixcoordinator@fmarion.edu](mailto:titleixcoordinator@fmarion.edu), or via written communication at 105 Stokes Administration Building. This option is available regardless of whether or not the complainant chooses to meet with Campus Police or file a police report.

Complaints to the Title IX Coordinator will remain confidential to the extent permitted by applicable state, local, and federal laws, and proper and reasonable precautions will be taken to protect the identity of the complainant. The Title IX Coordinator will balance confidentiality with the safety of other members of the FMU community. Instances where the Title IX Coordinator may be unable to ensure confidentiality could include, but are not limited to, cases involving repeat offenders or cases where the respondent poses an imminent threat to the community.

The Title IX Coordinator will meet with the complainant to discuss the incident. If a respondent is named, the Title IX Coordinator will also meet with the respondent in a timely fashion. At these initial meetings with the complainant or the respondent, the Title IX Coordinator will discuss requests for interim accommodations.

After these meetings, the Title IX Coordinator can then direct the complaint to the appropriate body for further deliberations:

- Complaints about staff will be referred to the Associate Director of Human Resources for resolution using the procedures set forth in the FMU Staff Handbook.
- Complaints about faculty will be referred to the Provost for resolution using the procedures set forth in the FMU Faculty Handbook.
- Complaints about FMU students will be referred to the Dean of Students for resolution using the procedures set forth in the FMU Student Handbook.

In general, the Title IX Coordinator will not begin a formal investigation or make a referral to Campus Police without the consent or involvement of the alleged victim. The University may have an obligation to take action under state, local, or federal laws if the health, welfare, or safety of members of the campus community are at risk.

The University may wait for the conclusion of a criminal proceeding to begin its own investigation, and could temporarily suspend its evidence-gathering procedure so as to not interfere with the role of law enforcement in that process. In all cases, the University will take appropriate steps designed to remedy the

effects of the reported sexual misconduct, prevent its recurrence, and implement interim accommodations for the complainant where necessary, regardless of whether a formal investigation is initiated.

Upon receipt of a report of sexual misconduct from either the Campus Police or the Title IX Coordinator, and a clear indication from the complainant that he/she wants to pursue an institutional complaint against a named person, the appropriate University official (Dean of Students or his/her designee, Associate Director of Human Resources, or the Provost) will review the report and, in consultation with the Title IX Coordinator, set forth the allegations to be investigated. The standard of proof in the institutional resolution process is a preponderance of the evidence.

### **Responsible Employee**

A complainant can also disclose an act of sexual misconduct to anyone whom the University has designated a Responsible Employee. Responsible Employees are University employees who have the obligation to report sexual misconduct. Responsible Employees respect confidentiality to the extent permitted by state, local, and federal laws, except that they must report the nature of the complaint to the Title IX Coordinator, so that the Title IX Coordinator can take action if obligated to do so. The following is a complete list of employees with the obligation to report sexual misconduct to the Title IX Coordinator:

1. All University administrators including the President, Provost, Vice Presidents, and administrative division heads and directors
2. Academic department chairs and deans
3. Title IX Council Chair
4. Athletic directors and coaches
5. Student Affairs & Dean of Students staff
6. Campus Police
7. Residence Life Staff and Resident Assistants
8. Faculty Executive Committee (Chair, Vice Chair, and Secretary)

The designation of responsible employee ends when a person no longer fills one of the preceding positions.

### **Confidential Reporting**

If a complainant wishes to maintain confidentiality in his/her disclosure of sexual misconduct, he/she should meet with professional, licensed counselors and/or pastoral counselors. These counselors are not required to report any information about an incident to the Title IX Coordinator or the Campus Police without the complainant's permission unless state or federal law requires otherwise. There may also be other potential limits of client confidentiality.

Students have free access to counseling through the FMU Counseling Services, which is located at 121 S. Evander Drive in the Education Foundation building which is situated directly in front of the baseball stadium. To make an appointment, students can call 843-661-1840.

In addition, an individual can also go to Francis Marion University Health Services during posted service hours. FMU Health Services is located in the Education Foundation Building at 121 S. Evander Drive, in front of the baseball field. For more information, call 843 661-1844. Please note that a sexual assault kit is not available at FMU Health Services.

Complainants can also access confidential counseling services

through the Pee Dee Coalition Against Domestic Violence and Sexual Assault, by calling their crisis line at 1-800-273-1820, their office line at 843-669-4694, or by visiting in person at 220 South Irby Street in Florence. For more information about their services visit their website at [www.peedeecoalition.org](http://www.peedeecoalition.org).

Confidential counseling services will also advise complainants about medical support, evidence-gathering, and the complainant's options should he/she choose to file a complaint (criminal, institutional or both) at a later date. By disclosing to a confidential source, the complainant does not waive his/her options to disclose to another source later, but the complainant should know that not disclosing the event to Campus Police at the time of occurrence may reduce the Police's ability to conduct a thorough investigation later. While campus medical personnel are not counselors per se, they are also considered confidential sources for the purposes of this policy.

### **What Happens After the Report is Made**

If a report is made to either Campus Police or a Responsible Employee, the Title IX Coordinator will be contacted. Once contacted, or when a report is made directly to the Title IX Coordinator, the Coordinator will contact the complainant and request a statement. If the complainant wants to cooperate, the Title IX Coordinator will inform him/her of his/her options concerning formal investigations, potential accommodations, and available support resources. In addition, the Title IX Coordinator will contact and attempt to meet with the respondent, if named. The following sections describe how the various types of investigations proceed once initiated, and explain the concept of accommodations, which may be used in lieu of or concurrent with a formal investigation.

### **Criminal Process**

When a student, faculty, or staff member contacts Campus Police pertaining to a sexual assault, an officer will do the following:

- Interview the complainant in a setting that affords privacy and comfort concerning the incident;
- Assist the complainant in seeking medical treatment for injuries, preventative treatment for sexually transmitted diseases, and other health services. At the hospital, evidence can be collected and a sexual assault protocol can be completed;
- Connect the complainant to a licensed counselor who is experienced in sexual assault counseling;
- Notify the President of the University and the Title IX Coordinator about the incident;
- Initiate a criminal investigation; and
- Notify the South Carolina Law Enforcement Division (SLED), and seek assistance from the same if appropriate.

In cases where the complainant has control of evidence of sexual misconduct, the University encourages the complainant to take care to secure this evidence in the event that the complainant wishes to pursue criminal charges.

### **Student Sexual Misconduct Process**

Generally within five days of receipt of the report, the Dean of Students or his/her Designee will meet with the complainant to:

- Provide him/her with information about campus services, protections, and options;
- Indicate that the complainant can have an advisor to assist him/her;
- Explain the University's protections against retaliation; and
- Discuss reasonable interim measures that may be implemented

for the complainant's support and protection.

The Dean or his/her Designee will meet separately with the respondent to:

- Notify him or her that an allegation has been made and that the matter will be investigated and resolved through the Student Conduct process;
- Provide the respondent with information about the process and his/her rights and duties;
- Indicate to the respondent that he/she can have an advisor to assist him/her in the process;
- Inform the respondent about the University's policy prohibiting retaliation;
- Provide the respondent with information about his/her rights, including the right not to incriminate him/herself, and interim accommodations; and
- Discuss reasonable interim measures that may be implemented to protect and support the complainant. If the interim measures include suspension, the Dean of Students or his/her Designee will inform the respondent of his/her option to appeal the suspension in accordance with the policy outlined in the FMU Student Handbook.

These two meetings will occur within 2-3 working days of one another, absent extenuating circumstances.

Following this initial meeting with both complainant and the respondent, the complaint will come before the standard Student Conduct Process at Francis Marion University that is fully outlined in the FMU Student Handbook.

#### **Faculty Sexual Misconduct**

The process for faculty members accused of sexual misconduct is the same as the procedures described for student sexual misconduct above, except that it is the Provost who initiates contact and follows the disciplinary process in the FMU Faculty Handbook.

#### **Staff Sexual Misconduct**

The process for staff members accused of sexual misconduct is the same as the procedures described for student sexual misconduct above, except that it is the Associate Director of Human Resources who initiates contact and follows the disciplinary process in the FMU Staff Handbook.

#### **Interim Accommodations and Remedies**

The University will work with all complainants affected by sexual misconduct to ensure their safety and promote their well-being. Sometimes this assistance will take the form of interim accommodation measures, to support or protect a student in the immediate aftermath of an incident and while an investigation or a disciplinary action is pending. In some cases, these accommodations may become permanent remedies even if the complainant does not choose to file a formal disciplinary proceeding.

Complainants can request interim measures when meeting with the Title IX Coordinator and/or when the appropriate University official or his/her Designee meets with the complainant and the respondent separately at the beginning of the adjudicating process. Students, faculty, or staff complainants may request interim accommodations even in cases when the complainant has requested that no investigation be undertaken, or chooses not to participate in University disciplinary proceedings or the criminal process.

The appropriate University official in conjunction with the Title IX Coordinator will evaluate any request for interim measures

in light of the circumstances and information available at the time. The University will provide information about the interim measures only to those who need to know in order to make them effective.

Under appropriate circumstances, interim measures/remedies may include, but are not limited to, the following:

- Move a student's on-campus residence;
- Adjust a student, faculty, or staff work schedules for University employment;
- Change a student's academic schedule;
- Change a student's transportation arrangement;
- Allow a student to withdraw from or retake a class without penalty;
- Provide access to tutoring or other academic support;
- Reassign faculty or staff;
- Limit interaction between a complainant and the respondent;
- Issue a "no contact" order;
- Provide other academic, residential, and/or work interim measures;
- Increase monitoring, supervision, or security at locations;
- Take protective measures in consultation with the affected students in the event that retaliation might be reasonably expected.

The Student Affairs Office will also assist students seeking interim measures for a disability in connection with the process of reporting or responding to an incident of gender-based misconduct by working with Disability Services in the Office of Counseling and Testing.

Outside of the University, a complainant may also be entitled to obtain remedies under applicable law, such as a judicial restraining order. The University may assist the complainant in seeking these remedies.

#### **Violation of Law, Standards of Conduct, and Sanctions**

When sexual misconduct violates both the Francis Marion policies and procedures and civil or criminal law, students, faculty, and staff should understand that they may be held accountable to both authorities. University procedures related to these matters will normally continue during the pendency of criminal proceedings and will not be subject to challenge on the grounds that criminal and civil charges involving the same incident have been dismissed or reduced. The University student conduct system is not analogous to the criminal justice system. The purposes, the standards of proof, the procedures, and many other aspects of the two avenues differ.

Institutional sanctions for sexual misconduct are described in the handbooks for student, faculty, and staff conduct, and may involve any sanctions therein up to and including expulsion or termination of employment.

#### **Time for Reporting**

Any complaint should be submitted--whether to Campus Police or to the University's Title IX responsible employees--as soon as possible after the misconduct takes place or becomes known. Title IX has responsibility over enrolled students at FMU, faculty and staff in the University's employ, and contractual and vending employees. In the case of a student disciplinary action, a delay in filing could result in the respondent graduating or withdrawing before the case can be processed.

The University and Campus Police strongly encourage complainants to report as soon as possible in order to preserve evidence.