

Felician University Policy Regarding Sexual Misconduct and Sexual Harassment

I. INTRODUCTION

As a Catholic/Franciscan institution of higher education, Felician University abides by values that proclaim the dignity and rights of all people. Sexual misconduct of any type is morally offensive to students, faculty, administrators, staff members, employees and guests of the University. It is also a form of unlawful sexual discrimination prohibited by Title IX of the Education Amendments of 1972, Title VII of the 1964 Civil Rights Act and the New Jersey Law Against Discrimination. Felician University is committed to fostering an environment that protects the members of the University community from all forms of sexual misconduct. The University requests and expects the cooperation of every member of the community in demonstrating a respect for others, as well as in upholding Federal laws and the laws of the State of New Jersey. All members of the University community have a responsibility to be aware of both the consequences of sexual misconduct and the options available to those who are victims of such misconduct.

II. APPLICABILITY

This Policy Regarding Sexual Misconduct applies to all Felician University students, faculty, administrators, staff members and employees, as well as vendors and guests, on and off campus. It is also applicable to those members of the University community who are involved in the University's extension programs, such as internships, clinical practical, student teaching, etc. This policy does not replace or supersede an individual's rights and remedies under the law.

III. DEFINITION OF SEXUAL MISCONDUCT

Sexual misconduct is a broad term encompassing any non-consensual behavior of a sexual nature that is committed by force or intimidation, or that is otherwise unwelcome. The term includes sexual assault, sexual exploitation, sexual intimidation, and sexual harassment; these behaviors are described later in this section.

Sexual intimacy requires that all participants consent to the activity. Consent between two or more people is defined as an affirmative agreement--through clear actions or words--to engage in sexual activity. The person giving the consent must act freely, voluntarily, and with an understanding of his or her actions when giving the consent. Lack of protest or resistance does not constitute consent, nor does silence mean consent has been given. Relying solely on non-verbal communication can lead to misunderstanding. Persons who want to engage in the sexual activity are responsible for obtaining consent--it should never be assumed. A prior relationship or prior sexual activity is not sufficient to demonstrate consent.

Consent must be present throughout the sexual activity--at any time, a participant can communicate that he or she no longer consents to continuing the activity. If there is confusion as to whether anyone has consented or continues to consent to sexual activity, it is essential that the participants stop the activity until the confusion can be clearly resolved.

Sexual misconduct may vary in its severity and consists of a range of behaviors or attempted behaviors. It can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can occur between members of the same or different sex and can also occur while individuals are fully clothed. Sexual misconduct includes, but is not limited to, the following examples of prohibited conduct:

Sexual Assault

Sexual assault is an extreme form of sexual misconduct and represents a continuum of conduct from forcible rape to nonphysical forms of pressure that compel individuals to engage in sexual activity against their will. Examples of sexual assault under this policy include, but are not limited to the following behaviors or attempted behaviors when consent is not present:

- Sexual intercourse
- Unwanted touching of the genitals, buttocks, breast, or other body part
- Coercion or force to make someone else touch one's genitals, buttocks, breast, or other body part
- Inducing consent through drugs or alcohol
- Engaging in sexual activity with a person who is unable to provide consent due to the influence of drugs, alcohol, or other condition

Sexual Exploitation

Sexual exploitation involves taking non-consensual sexual advantage of another person, even though the behavior might not constitute one of the other sexual misconduct offenses.

Examples can include, but are not limited to the following behaviors:

- Distribution or publication of sexual or intimate information about another person without consent
- Electronic recording, photographing, or transmitting sexual or intimate utterances, sounds, or images without knowledge and consent of all parties
- Engaging in indecent exposure
- Sexual intimidation - Sexual intimidation is an implied or actual threat to commit a sex act against another person, or behavior used to coerce participation in a sex act
- Stalking - Stalking may take many forms including persistent calling, texting, or Internet posting, as well as physical stalking, when the context of the communication or the nature of the stalking is of a sexual or intimate nature
- Voyeurism - Voyeurism involves both secretive observation of another's sexual activity or secretive observation of another for personal sexual pleasure

Sexual Harassment

Sexual harassment is a form of discrimination. Sexual harassment can include unwelcome behavior (verbal, written, physical) that is directed at someone because of that person's sex or gender, and that meets either of the following criteria:

- Submission to such conduct is made explicitly or implicitly a term or condition of an individual's academic evaluation or employment;
- Submission to or rejection of such conduct by an individual is used as the basis for academic decisions or employment affecting such individual; or

- Such conduct creates a hostile, intimidating or demeaning environment that is sufficiently severe, pervasive and objectively offensive to substantially interfere with or deny participation in a student's educational activities and benefits or employment opportunities.

Determination as to whether the alleged conduct constitutes sexual harassment should take into consideration all of the circumstances, including the context in which the alleged incidents occurred.

It is important to note that sexual harassment manifests itself in many forms. This behavior may include but is not limited to the following:

1. Conduct or comments directed at an individual, based on the individual's gender, that are abusive in nature;
2. Sexual innuendoes in the guise of humor to coerce sexual favors;
3. Sexual teasing, jokes, remarks or questions;
4. Sexual remarks about a person's body, clothing or behavior;
5. Patting, pinching or other unwanted touch of another's body;
6. Leering or ogling;
7. Uninvited letters, e-mails and telephone calls;
8. Uninvited pressure for dates;
9. Inappropriate and offensive sexual advances;
10. Solicitation of sexual favors or other sexually related behavior by promise of rewards;
11. Coercion of sexual activity by threat or punishment; or
12. Sexual crimes, including rape, acquaintance rape, attempted rape or sexual assault.

IV. DEFINITIONS USED FOR REPORTING CRIMES

The following definitions are used for reporting crimes in accordance with the Uniform Crime Reporting Program for Sexual Misconduct of the Federal Bureau of Investigation:

FORCIBLE SEX OFFENSES

- **Forcible Rape** – The carnal knowledge of a person, forcibly and/or against that person's will, whereby the victim is incapable of giving consent.
- **Forcible Sodomy** – Oral or anal sexual intercourse with another person, forcibly and/or against that person's will, where the victim is incapable of giving consent.
- **Sexual Assault with an Object** – the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will, whereby the victim is incapable of giving consent.
- **Forcible Fondling** – The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will, where the victim is incapable of giving consent.

NON-FORCIBLE SEX OFFENSES

- **Incest** – Non-forcible sexual intercourse between persons who are related to one another within the degrees wherein marriage is prohibited by law.
- **Statutory Rape** – Non-forcible sexual intercourse with a person who is under the statutory age of consent.

SEXUAL VIOLENCE

- **Domestic Violence** – Felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction...or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
- **Dating Violence** – Violence committed by a person:
 1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - the length of the relationship
 - the type of relationship
 - the frequency of interaction between the persons involved in the relationship
- **Stalking** – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 1. fear for his or her safety or the safety of others; or
 2. suffer substantial emotional distress

HATE CRIMES

A criminal offense committed against a person or property which is motivated, in whole or part, by the offender’s bias based on race, gender, religion, disability, sexual orientation or ethnicity/national origin.

- Category A: Murder and Non-negligent manslaughter; Forcible sex offenses; Non-forcible sex offenses; Robbery; Aggravated assault; Burglary; Motor vehicle theft; Arson.
- Category B: Larceny-theft; Simple assault; Intimidation; Destruction/damage/vandalism of property.

V. PROCEDURES FOR ADDRESSING AND RESOLVING AN INCIDENT OF ALLEGED SEXUAL MISCONDUCT

Students or staff who subjected to sexual misconduct should report their concerns and/or information regarding occurrences of sexual harassment or misconduct to a designated Campus Security Authority.

Campus Security Authorities for sexual misconduct, sexual harassment or sexual assault include:

Student Affairs	Francine Andrea	201-559-6181
Center for Health	Carolyn Lewis	201-559-3586
Residence Life	Laura Pierotti	201-559-3505

Director, Community Rights and Responsibilities	Ian Wentworth	201-559-3082
Director, Student Development and Engagement	Patrick Dezort	201-355-1474
Director, Human Resources/Title IX Coordinator	Ginny Topolski	201-559-6055

The above Campus Security Authorities (CSA) will assist the individual in obtaining help, either through campus resources or through outside referrals, and also initiate a complaint process through the Title IX Coordinator, the Director of Human Resources.

All CSA are required by Title IX to report incidents of sexual assault. The only persons exempt from this reporting requirement are licensed counselors in the Counseling Center and with the Bergen County Rape Crisis center, 201-587-2227.

The Bergen County Rape Crisis Center, recently renamed “The Healing Space”, provides confidential sexual violence advocacy. Representatives are available 24 hours a day, seven days a week.

Counseling can be the most important step in the healing process after an assault. Counseling services are available in the Counseling Center located on the main floor of the Student Center on the Rutherford campus. Counseling services on campus are free and confidential. Additional information about services provided by the Counseling Center is available on the University website: www.felician.edu/counselingcenter.

Reporting the incident to the police and/or filing a complaint is encouraged, but not necessary for the victim to receive counseling or other support services.

If a victim discloses an incident of sexual assault to a staff or faculty member, a report must be made to the Director of Human Resources.

The new legislation of the SaVE Act requires Universities and Universities to disclose statistics on incidents of domestic violence, dating violence and stalking.

SaVE requires that incidents of domestic violence, dating violence, sexual assault and stalking be disclosed in annual campus crime statistic reports. Additionally, students or employees reporting victimization will be provided with their written rights to:

- Be assisted by campus authorities if reporting a crime to law enforcement
- Change academic, living, transportation or working situations to avoid a hostile environment
- Obtain or enforce a “no contact” directive or restraining order
- Have a clear description of their institution’s disciplinary process and the range of possible sanctions
- Receive contact information about existing counseling, health, mental health, victim advocacy, legal assistance and other services available both on-campus and in the community

The process for investigation and resolution of complaints is outlined in the *Guidelines for Complaints Alleging Sexual Misconduct, Harassment, Discrimination and Retaliation*. The guidelines are available online in the Consumer Information section of the University web site and in the Felician University Employee Handbook.

During interviews or other proceedings that may occur in the course of investigation and resolution of an instance of alleged sexual misconduct, either the complainant or the respondent (the individual(s) about whom the complaint has been made) may be accompanied by an individual of his or her choice for support purposes, such as a spouse, partner, friend, etc. who is not affiliated with the University. This support individual is not permitted to participate in the

process. No attorney, whether accompanying the complainant or the respondent, may be present during interviews or other proceedings. The University attorney may be present at any point to conduct or observe the interviews or other proceedings, but not in a representational (attorney-client) capacity for any party or witness.

The victim should be provided with a copy of the *Sexual Assault Victim's Bill of Rights* noted below:

SEXUAL ASSAULT VICTIM'S BILL OF RIGHTS

Felician University recognizes that sexual violence committed on campus has a profound impact on the campus community and surrounding communities. Accordingly, to ensure the University is free from violence, sexual assault and nonconsensual sexual contact, and to support individual dignity and rights of each person in an academic environment, the University has adopted the New Jersey Campus Assault Victim's Bill of Rights.

The State of New Jersey has established this Bill of Rights which requires that all New Jersey Colleges and universities create and support policies, procedures, and services designed to ensure that the needs of victims are met and to support their wishes and human dignity.

The following rights shall be accorded to victims of sexual assault which occur on the campus of any public or private institution of higher education in the State of New Jersey and where the victim or alleged perpetrator is a student at that institution, and/or when the victim is a student involved in an off-campus sexual assault.

BILL OF RIGHTS

The following rights shall be afforded to victims of sexual assault that occur:

- On the campus of any public or independent institution of higher education in the state of New Jersey
- Where the victim or alleged perpetrator is a student at that institution
- When the victim is a student involved in an off-campus sexual assault

HUMAN DIGNITY RIGHTS

- To be free of any suggestion that victims must report the crimes to be assured of any other right guaranteed under this policy
- To have any allegations of sexual assault treated seriously and the right to be treated with dignity
- To be free from any suggestion that victims are responsible for the commission of crimes against them
- To be free from any pressure from campus personnel to:
 - Report crimes if the victim does not wish to do so
 - Report crimes as lesser offenses than the victim perceives the crime to be
 - Refrain from reporting crimes to avoid unwanted personal publicity

RIGHTS TO RESOURCES ON AND OFF CAMPUS

- To be notified of existing campus and community based medical services, counseling services, mental health and student services for victims of sexual assault whether or not the crime is formally reported to campus or civilian authorities.
- To have access to campus counseling under the same terms and conditions as apply to other students of the institution.
- To be informed of and assisted in exercising:
- Any rights to confidential or anonymous testing for sexually transmitted diseases, human immunodeficiency virus and/or pregnancy
- Any rights that may be provided by law to compel and disclose the results of testing of sexual assault suspects for communicable diseases

CAMPUS JUDICIAL RIGHTS

- To be afforded the same access to legal assistance as the accused
- To be afforded the same opportunity to have others present during any campus disciplinary proceeding that is allowed the accused
- To be notified of the outcome of the sexual assault disciplinary proceeding against the accused

LEGAL RIGHTS

- Have any allegations of sexual assault investigated and adjudicated by the appropriate criminal and civil authorities of the jurisdiction in which the sexual assault is reported
- Receive full and prompt cooperation and assistance of campus personnel in notifying the proper authorities
- Receive full, prompt and victim-sensitive cooperation of campus personnel with regard to obtaining, securing and maintaining evidence, including medical examination when it is necessary to preserve evidence of the assault

CAMPUS INTERVENTION RIGHTS

- To require campus personnel to take reasonable and necessary actions to prevent further unwanted contact of victims by their alleged assailants
- To be notified of the options for and provided assistance in changing academic and living situations if such changes are reasonably available

STATUTORY MANDATES

- Each campus must guarantee that this Bill of Rights is implemented. It is the obligation of each individual campus governing board to examine resources dedicated to services required and to make appropriate requests to increase or reallocate resources where necessary to ensure implementation.
- Each campus shall make every effort to ensure that every student at the institution receives a copy of this document.
- Nothing in this Act or in any “Campus Assault Victim’s Bill of Rights” developed in accordance with the provisions of the Act shall be construed to preclude or in any way restrict any public or independent institution of higher education in the State from reporting any suspected crime or offense to the appropriate law enforcement authorities.

VI. SANCTIONS

Misconduct will be dealt with appropriately. Responsive action may include training, referral to counseling, and disciplinary action such as warnings, reprimands, withholding of a promotion, reassignment, temporary suspension without pay or discharge for cause (for an employee), and expulsion (for a student). Students accused of sexual harassment/misconduct will be referred to the University's judicial officer for appropriate action under the Code of Student Rights, Responsibilities and Conduct.

False charges may result in corrective action or sanctions against the accuser, countercharges, or any other appropriate response.

VII. RETALIATION

Retaliation against an individual who has made a claim of sexual harassment is prohibited. Retaliation will subject an individual to disciplinary action

VIII. STATEMENT ON CONSENSUAL RELATIONSHIPS

The University considers it inappropriate for any member of the community to establish an intimate relationship with a student, subordinate or colleague on whose academic or work performance he or she will be required to make professional judgments. The University requires that the individual cease such conduct and divest himself/herself of the professional responsibility for supervision or oversight, should an intimate relationship develop.