

Appendix B

The following procedure functions in conjunction with the Policy on Relationship Violence and Sexual Misconduct, and will be activated when a mandated reporter or complainant reports an alleged occurrence of relationship violence and/or sexual misconduct. This process is not designed to take the place of making a criminal report to law enforcement, or of a criminal investigation. The procedure as outlined below may take place whether or not a criminal report is made, and is a separate and independent process.

These procedures are carried out by people who care about and are committed to walk with all involved and understand that individuals can experience stress and emotional trauma with such situations. The care and welfare of EMU faculty, staff, and students is of utmost importance.

PROCEDURE

1. Report received: the Title IX coordinator will receive a campus safety incident report by an electronic EMU incident report form: <https://emu.edu/safecampus/> or in-person report or phone call.
 - a. If the case involves a student, the Title IX coordinator will have the individual complete a report.
 - i. A copy of the report must go to the vice president for student life, vice president for finance, and the human resource director. Additional personnel notified may be notified on a need-to-know basis. The reporter will be advised of additional personnel who are notified.
 - b. A case involving employee to employee: the Title IX coordinator will have the individual complete a report.
 - i. A copy of the report must go to vice president for finance, human resource director, and provost. Additional personnel notified on a need-to-know basis. The reporter will be advised of additional personnel who are notified.
 - c. The Title IX coordinator opens a confidential file to be maintained throughout the case.
2. Assessment
 - a. The Title IX coordinator and campus safety officer, and/or administration determine the need for a timely warning. A timely warning may be issued by campus safety and security depending on circumstances of the incident.
 - b. The Title IX coordinator meets/confers with the campus safety team (safety coordinator, vice president for student life, Title IX coordinator or their respective designees) to determine next steps in regards to the 72 hour notice requirement of notifying the Commonwealth's Attorney and local law enforcement. Note: safety officer has final authority.
<http://law.lis.virginia.gov/vacode/title23.1/chapter8/section23.1-806/>
 - i. The safety officer will use an email template to notify the two parties as necessary.
 - c. Concurrently, threat to the complainant and campus safety will be addressed.
 - i. Interim measures may be implemented to maintain safety. Interim measures may include, but are not limited to: removal from campus facilities, no contact orders, adjustment of class, work or teaching schedule depending on the parties involved in the case.
 - d. The Title IX coordinator or human resource director (or their designee) follows up with the author of

the report if not completed by complainant.

3. The Title IX coordinator will meet with the human resource director to coordinate the process for investigation.
 - a. The human resource director will notify the employee that a complaint has been received (if the employee is the respondent) and the Title IX coordinator (or designee) will follow up to schedule a meeting.
 - b. The Title IX investigator and the director of human resources will conduct investigative interviews.
 - c. The respective VP of the employee will be kept apprised of the investigation.
 - d. If a conflict of interest (e.g. family relationship between a member of president's cabinet, Title IX coordinator, human resource director, or Title IX investigators or deputies) exists, the investigation will be completed by an external entity.
 - e. The human resources director will review the case under Title VII of the Civil Rights Act during the Title IX process. Additional investigation and response may occur to respond to Title VII obligations.

4. Title IX coordinator contacts the complainant to set up an initial inquiry and informs the complainant that they may bring an advocate with them. The complainant has the right to decline this meeting. If the meeting is declined, the process may continue without the complainant if the Title IX coordinator determines that there is a safety concern based on Virginia statute.
<http://law.lis.virginia.gov/vacode/title23.1/chapter8/section23.1-806/>

5. Initial inquiry with complainant involves:
 - a. the Title IX coordinator provides general support and listens to the complainant.
 - i. At the discretion of the Title IX coordinator, an additional member of the campus safety team, EMU counseling services counselor and/or HR director may be present, with the permission of the complainant.
 - b. review [Rights of the Complainant](#) document.
 - c. review university policy and procedure with the complainant and inform them of their options and resources, including reporting to local law enforcement. Complainants are encouraged to report to local law enforcement for criminal matters, and will be supported through this process if they choose to make a report.
 - d. determine what complainant chooses to do – depending on the substance of the report, required university responses will be reviewed with the complainant.
 - i. Follow up on all reports is always based on safety.
 - ii. If a complainant chooses not to participate, even in circumstances where investigation is required due to safety issues, the complainant may sign a “statement of release”, indicating they do not wish to be involved in any investigation at the time and/or if they wish to receive any further information regarding the process. The complainant is informed of their right to participate or decline to participate in any investigation to the extent permitted under state or federal law. <http://law.lis.virginia.gov/vacode/title23.1/chapter8/section23.1-806/>
 - iii. If investigation is pursued, the complainant will be offered an advisor to guide them through the relationship violence and sexual misconduct procedures.
 - e. inform the complainant they can choose an advocate and/or advisor to be present during the investigation, noting the difference between the advisor and the advocate as defined in the *Relationship*

Violence and Sexual Misconduct (RVSM) policy.

- f. offer on- and off- campus counseling services, and other resources (see [Appendix D](#)).
 - g. inform the complainant that an investigator, or someone on behalf of the investigator, may be contacting them to set up a time to meet with them.
6. Initial inquiry with respondent (if investigation is pursued, and respondent is known) involves:
- a. the Title IX coordinator provides general support and listens to the respondent.
 - i. At the discretion of the Title IX coordinator, an additional member of the campus safety team and/or an EMU counseling services counselor may be present.
 - b. review [Rights of the Respondent](#) document.
 - c. review university policy and procedure with the respondent, and inform them of their resources, including reporting to local law enforcement.
 - d. the respondent is offered an advisor to guide them through the relationship violence and sexual misconduct procedures.
 - e. inform the respondent may choose to have their advocate and/or advisor present throughout the investigation, noting the difference between the advisor and the advocate as defined in the *Relationship Violence and Sexual Misconduct* (RVSM) policy.
 - f. offer on- and off-campus counseling services, and other resources (see [Appendix D](#)).
 - g. inform the respondent that an investigator, or someone on behalf of the investigator, may be contacting them to set up a time to meet with them.
7. Title IX coordinator informs (in writing) the complainant and respondent of the alleged misconduct and that an investigation has been initiated.
8. Title IX coordinator reconvenes campus safety team and the human resources director to determine if the reported incident requires investigation.
9. Investigation
- a. Title IX coordinator contacts Title IX investigator and the director of human resources to initiate an investigation.
 - b. The Title IX investigator(s) may choose to ask assistance (human resources office assistant and/or the student life operations coordinator) to set up times for interviews.
 - c. The Title IX investigator will keep the Title IX coordinator informed of the times of interviews.
 - d. Interviews
 - i. may include the complainant, respondent, and witnesses.
 1. An advisor or advocate cannot serve as a witness, and will be present only during the interview with the person for whom they are serving as an advocate.
 - ii. will be recorded only by EMU. Recordings are used for reference in compiling the preliminary investigative report, and may not be duplicated.
 1. Verbal permission to record is obtained on the actual recording.
 2. The person being recorded is the only person (outside of the investigator(s)) who may listen to their recording and must listen to the recording in the presence of the investigator.

- a. Discrepancies will be noted by the investigator(s) and the note will be included in the preliminary investigative report.
3. Recordings are stored in a secure location.
4. The recording will be destroyed upon completion of the case, after the deadline for and/or completion of an appeal process. Recordings will be destroyed by the Title IX coordinator.

10. Preliminary investigative report

- a. After all interviews with the complainant, respondent and other witnesses are completed and other information gathered, the investigator(s) will complete a preliminary investigative report that sets out the known facts of the case, disputed facts of the case, and a list of all parties interviewed.
- b. Title IX coordinator receives a copy of the preliminary report.
- c. The Title IX coordinator and the human resource director will meet separately with the complainant and the respondent to review the preliminary report.
 - i. The complainant/respondent may suggest additional witnesses and provide additional information at this time.
 - ii. If additional witnesses or additional information is provided at this time the investigator(s) will follow up with the additional witnesses and review the additional information
 - iii. The complainant and respondent will both be given the opportunity to submit questions for the other party to be asked by the investigator in a follow up inquiry.
 - iv. If changes are made to the preliminary report, these changes will be verified with both complainant and respondent.
 - v. If no additional witnesses or additional information is provided by the complainant and/or the respondent then the investigator(s) prepares the final investigative report

11. Final investigative report

- a. The final investigative report is provided to the Title IX coordinator and the director for finance.
- b. The final investigative report includes known facts of the case, disputed facts of the case, and a list of all parties interviewed.

12. Title IX coordinator and investigator determine, based on the Final Investigative Report, which review process will be used:

- a. staff review
- b. Title IX review panel
- c. Title IX coordinator informs the complainant and respondent which review process will be used.

13. Staff review

- a. A staff review involves a meeting between the respondent and the Title IX coordinator, and the director of human resources (respondent - employee) or the vice president of student life (respondent - student). This type of review is used when the welfare of the complainant or best interests of the community is served by private proceedings, where there are few disputed facts, and would not constitute a violation of civil or criminal law, or the timing of the violation warrants such.

- i. The Title IX coordinator will make a finding to determine whether or not a violation of the RVSM policy has occurred. This finding will be based on the preponderance of evidence.
- ii. Once the Title IX coordinator has determined that there is sufficient evidence, by a preponderance of evidence, to support a finding of responsibility under the policy, any one or more outcomes may be imposed. In determining the appropriate outcome(s), the staff review will be guided by a number of considerations, including: the outcome(s) based on the factual findings outlined in the final investigative report.
 1. the severity, persistence or pervasiveness of the prohibited conduct;
 2. the nature or violence (if applicable) of the prohibited conduct;
 3. the impact of the prohibited conduct on the complainant;
 4. the impact or implications of the prohibited conduct within the university community;
 5. prior misconduct by the respondent, including the respondent's relevant prior disciplinary history, at the university or elsewhere, and any criminal convictions;
 6. whether the respondent has accepted responsibility for the prohibited conduct;
 7. the maintenance of a safe, nondiscriminatory and respectful environment conducive to learning, and
 8. any other mitigating, aggravating, or compelling factors.
- iii. Possible outcomes (*outcomes are effective immediately unless otherwise specified*)
 1. in-school suspension
 2. temporary suspension
 3. indefinite suspension/disciplinary withdrawal*
 4. dismissal*
 5. probation
 6. loss of university employment or volunteer position
 7. change of employment or volunteer position
 8. loss of university resources or services
 9. no contact orders
 10. removal from dorm or other campus buildings
 11. community service
 12. application of a behavioral contract
 13. alcohol and/or drug assessment and recommendations
 14. exclusion from co-curricular or leadership activities
 15. completion of issue-relevant education activities
 16. fines
 17. monetary or other restitution
 18. referral to counseling
 19. transcript notation

* A prominent notation will be placed on the student's academic transcript if the student is suspended from, permanently dismissed from, or who withdraws from the university while under investigation for an offense involving sexual violence, as required by law.

<http://law.lis.virginia.gov/vacode/title23.1/chapter9/section23.1-900/>

- b. The Title IX coordinator provides a letter with the findings and outcomes of the staff review. This letter is provided to both the complainant and respondent.

14. Title IX review panel (*for cases not resolved through a staff review*)

- a. The Title IX coordinator convenes a meeting of the Title IX review panel
 - i. The Title IX review panel consists of the Title IX review panel chair and two additional employees (one faculty member and one staff member) who have received Title IX training. The Title IX coordinator will check for conflicts of interest when selecting additional members for the panel.
 - ii. The Title IX coordinator, director of human resources, and Title IX investigator will be available for questions and clarifications.
 - iii. Complainant and respondent will be separately notified of the composition of the review panel, and have the right to raise any conflicts of interest.
 - 1. The review panel meets separately with the complainant and the respondent. An advisor or advocate may attend the review panel but may not participate in the panel process.
 - 2. The complainant or respondent may choose not to attend the review panel. The review panel process will proceed regardless.
 - iv. The review panel proceedings will be recorded by EMU only. The chair of the panel will inform all persons present that the proceedings are being recorded for reference purposes only. The recording will be destroyed at the conclusion of the case, after the deadline for and/or completion of an appeal process.
- b. The review panel will make a finding to determine whether or not a violation of the RVSM policy has occurred. This finding will be based on the preponderance of evidence.
- c. The review panel will determine the outcome(s) based on the factual findings outlined in the final investigative report and the testimony heard.

15. Once the review panel has determined that there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility under the policy, any one or more outcomes may be imposed. In determining the appropriate outcome(s), the review panel will be guided by a number of considerations, including:

- a. the severity, persistence or pervasiveness of the prohibited conduct;
- b. the nature or violence (if applicable) of the prohibited conduct;
- c. the impact of the prohibited conduct on the complainant;
- d. the impact or implications of the prohibited conduct within the university community;
- e. prior misconduct by the respondent, including the respondent's relevant prior disciplinary history, at the university or elsewhere, and any criminal convictions;
- f. whether the respondent has accepted responsibility for the prohibited conduct;
- g. the maintenance of a safe, nondiscriminatory and respectful environment conducive to learning, and
- h. any other mitigating, aggravating, or compelling factors;

16. Possible outcomes (*outcomes are effective immediately unless otherwise specified*)

- a. in-school suspension
- b. temporary suspension

- c. indefinite suspension/disciplinary withdrawal*
- d. dismissal*
- e. probation
- f. loss of university employment or volunteer position
- g. loss of university resources or services
- h. change of employment or volunteer position
- i. no contact orders
- j. removal from dorm or other campus buildings
- k. community service
- l. application of a behavioral contract
- m. alcohol and/or drug assessment and recommendations
- n. exclusion from co-curricular or leadership activities
- o. completion of issue-relevant education activities
- p. fines
- q. monetary or other restitution
- r. referral to counseling
- s. transcript notation

*a prominent notation will be placed on the student's academic transcript if the student is suspended from, permanently dismissed from, or withdraws from the university while under investigation for an offense involving sexual violence, as required by law.

17. At the conclusion of the review panel, the review panel chair will prepare a summary of the proceedings.

Included in this panel summary will be:

- a. documentation of determination of preponderance of evidence.
- b. documentation of outcomes proposed.
- c. a description of the appeal process.

18. The review panel chair delivers the panel summary to the Title IX coordinator.

19. The Title IX coordinator prepares a letter reflecting the panel's findings and outcomes as well as appeal process information.

20. The Title IX coordinator meets with the complainant and the respondent and shares the letter.

- a. For students, in the case of dismissal, suspension or withdrawal while under investigation, notification will be sent to the parent(s) (per FERPA release), to the director of retention, and any other departments on campus that will be impacted by the consequences.
- b. The student life operations coordinator will ensure that the student's file is properly updated.
- c. The director of human resources or the provost will ensure that the employee's file is properly updated.
- d. If the complainant or respondent does not agree with the findings and/or the consequences they may appeal.

21. Appeals

- a. Either the complainant or the respondent may appeal the outcomes determined.. The appeal must be submitted in writing within three business days following notification and should be directed to the appeal board chair. Reasons for an appeal must be clearly stated and based on one of the following:
 - i. relevant new evidence that was previously unavailable and could significantly affect the outcome.
 - ii. alleged procedural error, which may have materially affected the outcome.
 - iii. outcome is substantially disproportionate to the findings.
- b. The appeal board chair will review the reason for appeal to determine if it meets the above criteria.
 - i. on the basis of this determination, the appeal board will review the appeal. A decision will be made to uphold or modify the action. This decision is final.
- c. The appeal board chair will notify both parties that an appeal has been requested, as well as the grounds for the appeal. Disclosure of the grounds for appeal will include provision of new evidence to the complainant and/or respondent with 48 hours allowed for response.

22. Title IX appeal board

- a. The Title IX appeal board, is a standing board, consisting of three EMU employees appointed by the president. The appeal will be directed to the designated chair of the appeal board.
- b. All persons serving on the appeal board (or as the chair) must be impartial and free from actual bias or conflict of interest.
- c. The appeal board chair along with the student life operations coordinator and/or the assistant to the provost will schedule the appeal board meeting
- d. The appeal board meeting will usually be scheduled within five (5) business days from the date of the request for an appeal, subject to extension for good cause.
- e. The appeal board will have access to the final investigative report and any new information or evidence from the complainant and/or respondent. The appeal board will also have access to the written summary of the review panel as well as the appeal letter.
- f. The appeal board may choose to uphold, modify, or dismiss the findings and/or outcomes of the review panel.
- g. the decision of the appeal board is final.
- h. the findings are communicated to the Title IX coordinator by the appeal board chair.
- i. the appeal board chair prepares a letter reflecting the appeal board's findings and outcomes.
- j. the Title IX coordinator provides the complainant and respondent a copy of the letter of appeal board determination.
- k. A copy of the outcome letter will also become part of the respondent's (employee or student) file.
- l. the Title IX coordinator may nevertheless ensure that remedial measures remain in effect to support the parties.