

Eastern Mennonite University Sexual Violence/Misconduct Policy¹

As an educational institution, Eastern Mennonite University (EMU) values a learning community in which all members feel secure, physically and intellectually. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. Behavior that harms others or threatens campus security falls under the category of sexual misconduct and is prohibited at EMU. Sexual misconduct is a broad range of behavior that includes but is not limited to non-consensual sexual intercourse, non-consensual sexual contact, domestic/relationship violence, sexual exploitation, sexual harassment, and stalking. Faculty, staff, and students of Eastern Mennonite University are expected to commit themselves to be examples of the highest standards of personal and professional conduct. As an educational institution—particularly a Christian university and theological seminary—EMU affirms by this policy statement that sexual misconduct is detrimental to the integrity of the institution and cannot be tolerated in the academic community.

All faculty, staff, students, and administrators will be held accountable for compliance with this policy. Administrators or supervisors will be responsible for informing all employees and students within their departments of this policy. An individual who is found in violation of this policy will be subject to institutional discipline implemented by the university administration. Determinations relative to the merits of a complaint will be within the scope of the policies and/or grievance procedure utilized by the complainant.

Outside contractors, vendors, and others who do business with the university or enter university premises are expected to comply with this policy, and ensure that their agents comply with this policy; the university will take appropriate action if they fail to do so. The university, for example, may suspend or terminate a contract if the contractor fails to correct a sexual harassment problem that we have brought to their attention. Further, if the university determines that a contractor has failed to take appropriate action or has shown tolerance for any activity which in the belief of the university constitutes sexual harassment, the contractor may be debarred from holding future contracts with the university.

The university's legal advisor will serve as a representative for the interests of the institution rather

than as an advocate for either the individual alleging sexual harassment or the respondent. As a recipient of federal funds, EMU complies with Title IX of the Education Amendments of 1972 (Title IX). Title IX provides: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." EMU also complies with Part 1604.11 of Discrimination Because of Sexual Harassment, Title VII, Section 703, of the Civil Rights Act of 1964, as amended, or other applicable state or federal law and shall not tolerate any sexual harassment.

This sexual violence/misconduct policy ("Policy") also applies to sexual misconduct complaints involving applicants for admission, or students aggrieved by third parties such as contractors or vendors serving the university.

For questions about sex discrimination in education, please contact the University's Title IX Coordinator, Marcy Engle at 540-432-4148. Further information about Title IX and sexual discrimination in education is available from the Office of Civil Rights, 400 Maryland Avenue, SW, Washington, DC, 20202-1100; 800-421-3481; OCR@ed.gov.

Eastern Mennonite University's Statement on Non-Discrimination

Eastern Mennonite University does not discriminate on the basis of race, color, national or ethnic origin, sex, disability, age, sexual orientation, gender identity or any legally protected status. As a religious institution, EMU expressly reserves its rights, its understandings of, and its commitments to the history Anabaptist identity and the teachings of Mennonite Church USA, and reserves the legal right to hire and employ individuals who support the values of the university.

The university is committed to preventing and responding to conduct that violates its non-discrimination policy. Any individual whose conduct violates this policy will be subject to disciplinary action in accordance with applicable university policies and procedures.

I. Why Consenting, Amorous Relationships between Employees and Students are Discouraged in the EMU Community

Amorous relationships that might be appropriate in other circumstances are always inappropriate when they occur between a faculty member or officer of the university and any student for whom he or she has a professional responsibility.

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Such relationships may have the effect of undermining the atmosphere of trust on which the educational process depends. Those in positions of authority inherently carry the element of power in their relationships with students. It is imperative that those with authority neither abuse nor appear to abuse this power entrusted to them. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in giving praise or blame, grades, recommendations for further study and future employment, etc., greatly diminish the student's actual freedom of choice should sexual favors be included among the professor's other legitimate demands.

Officers and other members of the teaching staff should be aware that any romantic involvement with their students could make them liable for formal action against them if a complaint is initiated by a student. Even when both parties have consented to such a relationship, it is the officer or faculty member who may be held accountable for unprofessional behavior. Resident directors, community advisors, tutors and undergraduate course assistants who are also professionally responsible for students would be wise to exercise special care in their relationships with students they instruct or evaluate. Therefore, a faculty member who enters into a sexual relationship with a student (or a supervisor with an employee) where a professional power differential exists, must realize that, if a charge of sexual harassment is subsequently lodged, experience has shown that it will be exceedingly difficult to prove immunity on grounds of mutual consent.

Some of the problems inherent in dating a professor or supervisor are:

- A. When he/she has so much power over a student's grade(s) or promotion (and hence, a student's future), it is difficult to have a relationship of equals.
- B. If a student's relationship is known to other people and his/her grades or evaluation are excellent, some students and faculty may question the validity of his/her grades and find it hard to take he/she seriously as a student or colleague.
- C. If the relationship is secret, people could still find out about it and again question the validity of a student's work. Because a personal relationship is likely to influence objectivity, a student may be unsure of his/her own true performance, which can lead to self-doubt.
- D. If the relationship ends badly with a lot of hard feelings on both sides, depending on his/her position.

1. A grade or evaluation could be sabotaged or at least leave a student wondering whether personal feelings influenced the grade.
 2. The faculty member/officer of the university could talk about the student to others and negatively influence how they perceive the student.
 3. It will be difficult to ensure that the faculty member/officer of the university personal feelings wouldn't affect behavior toward the student in class or at evaluation time.
 4. It would be extremely difficult for the student to use the faculty member/officer of the university as a reference for graduate school or for employment.
- E. Even if the relationship ends amicably, it would be difficult to know for sure if the student's grade or evaluations were influenced by personal feelings, and it might still be awkward to be in any of the faculty member/officer of the university's classes in the future.

Sexual Harassment Policy: Consenting Relationships

II. Sexual Violence/Misconduct² Definitions, Procedures

- D. What is *Sexual Violence*?
- The terms sexual assault or sexual violence imply sexual contact without consent and with or without the use or threat of force, regardless of the relationship of the parties. Pursuant to the Code of Virginia, sexual offenses include rape (§18.2-61), forcible sodomy (§18.2-67.1), object sexual penetration (§18.2-67.2), aggravated sexual battery (§18.2-67.3), sexual battery (§18.2-67.4), and attempted sexual offenses (§18.2-67.5). For state crime reporting purposes, the Incident Based Reporting System used by the Virginia Department of State Police defines —forcible sexual offenses as forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. "Non-forcible sexual offenses" include incest and statutory rape. For federal reporting purposes, the Federal Bureau of Investigation's Uniform

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Crime Reporting System defines a forcible rape as “Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” In addition, the National Incident-Based Reporting System (NIBRS) defines rape as, “The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.” Sexual offenses are defined as “offenses against chastity, common decency, morals, and the like” and include incest, statutory rape, indecent exposure, indecent liberties, and attempted sexual offenses.

E. What is *Consent*?³

Words or actions that demonstrate a knowing or voluntary willingness to engage in mutually-agreed-upon sexual activity constitutes consent. Consent cannot be gained by force, by ignoring objections, or by taking advantage of another's incapacitation. Consent may not be inferred from silence or any other lack of active resistance. It may not be implied by attire or inferred from an individual by spending money on that individual (e.g., buying a meal on a date). Prior consent does not imply consent to future sexual acts. In addition, consent to one type of sexual act does not automatically imply consent to another type of sexual act.

Once a person says "no," it does not matter if or what kind of sexual behavior has occurred at an earlier date in time. For example, if one individual says "no" and the other forces penetration, it is sexual misconduct.

Consent may not be given by the following persons:

1. Individuals who are mentally incapacitated at the time of the sexual contact in a manner that prevents him or her from understanding the nature or consequences of the sexual act involved;
2. Individuals who are unconscious or otherwise physically helpless; and

3. Minors.

Incapacitation is defined as the physical and/or mental inability to make informed, rational judgments that voids an individual's ability to give consent. Incapacitation may be caused by a permanent or temporary physical or mental impairment. Incapacitation may also result from the consumption of alcohol or the use of drugs.

The use of alcohol or drugs may, but does not automatically, affect a person's ability to consent to sexual contact. The consumption of alcohol or drugs may create a mental incapacity if the nature and degree of the intoxication go beyond the stage of merely reduced inhibition and reach a point in which the victim does not understand the nature and consequences of the sexual act. In such case, the person cannot consent.

A person violates the sexual misconduct policy if he or she has sexual contact with someone he or she knows or should know is mentally incapacitated or has reached the degree of intoxication that results in incapacitation. The test of whether an individual should know about another's incapacitation is whether a reasonable, sober person would know about the incapacitation. An accused student cannot rebut a sexual misconduct charge merely by arguing that he or she was drunk or otherwise impaired and, as a result did not know that the other person was incapacitated.

A person who is passed out or unconscious as a result of the consumption of alcohol or drugs is physically helpless and is not able to consent.

F. What is *Non-Consensual Sexual Contact*?

Any sexual contact that occurs without consent constitutes non-consensual sexual contact. Examples of sexual contact include but are not limited to: the intentional touching of a person's genitalia, groin, breast, or buttocks or the clothing covering any of those areas, fondling of the described areas or using force to cause the person to touch his/her own genitalia, groin, breast, or buttocks.

G. What is *Non-Consensual Sexual Intercourse*?

The act of sexual intercourse that occurs without consent constitutes non-consensual sexual intercourse. Sexual intercourse is defined by penetration (anal, oral, or vaginal)

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by a penis, tongue, finger, or inanimate object.

H. What is *Sexual Exploitation*?

Taking sexual advantage of another person without effective consent constitutes sexual exploitation. This includes but is not limited to causing the incapacitation of another person for a sexual purpose; causing the prostitution of another person; electronically recording, photographing, or transmitting intimate or sexual utterances, sounds, or images of another person; allowing third parties to observe sexual acts; engaging in voyeurism; distributing intimate or sexual information about another person; and knowingly transmitting a sexually transmitted infection, including HIV, to another person.

I. What is *Stalking*?

Stalking is commonly defined as “a pattern of behavior directed at a specific person that would cause a reasonable person to feel fear”. In Virginia, stalking is defined by the Code as: Any person...who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member. Va. Code Ann. § 18.2-60.3(A)

The conduct may cause the other person reasonable apprehension of imminent physical harm or substantial impairment of the other person's ability to perform the activities of daily life. Contact includes but is not limited to communication (in person, by phone, or by computer), following a person, and watching or remaining in the physical presence of the other person.

J. What is *Sexual Harassment*?

Sexual harassment is defined as unwelcome sexual advances, request for sexual favors, and/or other verbal or physical conduct or written communications of an intimidating, hostile, or offensive nature, or action taken in retaliation for reporting such behavior, regardless of where such conduct might occur, when:

1. Submission to such conduct is made a term or condition of an individual's employment or academic performance.
2. Submission to or rejection of such conduct by an individual is used as

the basis for decisions such as employment, promotion, transfer, selection for training, performance evaluation, or the basis of academic evaluation.

3. Such conduct has the purpose or effect of creating an intimidating, hostile, or offensive working or educational environment or interfering substantially with an employee's work performance or student's academic performance.

It occurs when a person with power abuses power. It is a breach of the trusting relationship that normally exists between students and professors in the academic community. Sexual harassment creates confusion because the boundary between the professional role and personal relationship blurs. The harasser introduces the personal element into what should be a sex-neutral situation.

The difference between voluntary sexual relationships and sexual harassment are the elements of coercion, threat, and/or unwanted attention that exist in a nonreciprocal relationship. Sexual harassment usually is unwelcome and repeated behavior, but in some instances it can be an action that occurs only once. In most normal interpersonal relationships, an individual can exercise freedom of choice in deciding with whom he/she wishes to establish a close, intimate relationship. These choices are based on mutual attraction, caring and a reciprocal interest in pursuing the relationship. These elements are absent in sexual harassment.

What are the Types of Sexual Harassment?⁴

Sexual harassment can take many forms. Most sexual harassment falls into two categories, verbal and physical.

4. Verbal harassment may include, but is not limited to, the following:
 - i. Sexual innuendos, comments and sexual remarks about clothing, body or sexual activities.
 - ii. Suggestive or insulting sounds.
 - iii. Whistling in a suggestive manner.

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- iv. Humor and jokes about sex that denigrate women or men in general.
- v. Sexual propositions, invitations or other pressure for sex.
- vi. Implied or overt threats.
- vii. Making obscene gestures.
- 5. Physical harassment may include, but is not limited to, the following:
 - iv. Patting, pinching and any other inappropriate touching or feeling.
 - v. Brushing against the body.
 - vi. Attempted or actual kissing or fondling.
 - viii. Coerced sexual intercourse.
 - ix. Assault.

Note: Some of the above may, in fact, constitute criminal behavior.

- 6. Some types of sexual harassment are inappropriate behaviors that continue even after the individual makes it clear that it is unwanted. For example, some people may like to be patted or touched on the back as a gesture of support, but it may not be universally liked when done by a teacher. The gesture becomes sexual harassment when a student asks the teacher not to do it or in some way clearly indicates uneasiness or displeasure and the teacher continues to do it.
- 7. Some people also consider insults about women in general or displaying obscene photographs and literature as a form of sexual harassment while others do not. Obscene gestures are another type of sexual harassment.\

Ways to Prevent Sexual Harassment⁵

Ignoring sexual harassment does not make it go away. Indeed, it may make it worse because the harasser may misinterpret no response as approval of the behavior. However, there are ways to prevent it, from informal strategies to formal ones. Here are some of options:

- 8. *Know the law and student policies listed in the Student Handbook (specifically, a student's rights).* Sexual harassment is illegal. EMU has a specific policy prohibiting sexual harassment. Review this policy. Copies of the policy and assistance are available from the student life office and human resources.
- 9. *Speak up at the time.* Be sure to say "NO" clearly, firmly, and without smiling. This is not a time to be polite or vague. (For example, "I don't like what you are doing," or "Please stop--you are making me very uncomfortable.") There is a chance that the harasser did not realize that his/her behavior is offensive. Additionally, if charges are filed at a later date, it is helpful to have objected to the behavior.
- 10. *Seek Advice.* To determine whether a personal level of discomfort is really sexual harassment, students may contact someone at the university's counseling center who can give emotional support, help, and information about informal and formal institutional procedures.
- 11. *Keep records,* such as a journal and any letters or notes received. Note the dates, places, times, witnesses and the nature of the harassment—specifically, what was said and done and the response.
- 12. *Take assertiveness training.* These classes teach a wide range of behaviors in dealing with uncomfortable situations such as sexual harassment.
- 13. *Take a self-defense course.* These courses teach a variety of defenses—physically, and increase participants' self-confidence and self-esteem.
- 14. *Do not accept sexual harassment as "the way things are" or treat it as a joke.* "Silence appears to give consent" when it comes to sexual harassment. The more seriously people treat it, the greater the chances that the harassers will stop

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their behavior. If there are no consequences to their actions, harassers will continue. By knowing the law, sexual harassment can be stopped.

Sexual Harassment Policy: What is Sexual Harassment, What are the Types of Sexual Harassment, What You Can Do About Sexual Harassment

K. What is *Coercion*?⁶

Coercion is an unreasonable amount of pressure to engage in sexual activity. Coercion begins, not when someone makes the sexual advance, but when he/she realizes he/she does not want to be convinced and the other person continues to push.

L. What is *Physical Force*?

Force equated with violence or the use of a weapon constitutes physical force. No matter how slight, any intentional physical impact upon another, use of physical restraint, or the presence of a weapon constitutes the use of force.

M. What are *Threats*?

Threats cause a person to do something that he or she would not have done without the threat (forcible compulsion), e.g., "If you do not have sex with me, I will:

1. harm someone close to you."
2. tell people you are gay."
3. tell people you are a whore."

N. What is *Intimidation*?

Intimidation can be defined as an implied threat, e.g., "If you don't sleep with me, I won't invite you to a party."

O. What is *Domestic Violence*?

§ 2.2-515.2

Domestic violence means an act as defined in § 38.2-508 and includes threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law-enforcement officers. Such threat must be a threat of force which would place any person in reasonable apprehension of death or bodily injury....

§ 38.2-508. Unfair discrimination.

The term *domestic violence* means the occurrence of one or more of the following acts by a current or former family member,

household member as defined in § 16.1-228, person against whom the victim obtained a protective order or caretaker:

1. Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape or sexual assault;
2. Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;
3. Subjecting another person to false imprisonment; or
4. Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

§ 16.1-228. Definitions.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

P. What is *Dating/Relationship Violence*

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship will be determined based on a consideration of the following factors:

1. length of relationship
2. type of relationship

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3. frequency of interaction between the persons involved in the relationship

Q. What is *Hazing*?

The university prohibits hazing. *Hazing* is defined as “actions which are initiated against someone’s will by harassing through force, banter, ridicule or criticism”. In some cases conduct may implicate both policies. Hazing is an act that, as an explicit or implicit condition for initiation to, admission into, affiliation with, or continued membership in a group organization, could be seen by a reasonable person as endangering the physical health of an individual or as causing mental distress to an individual through, for example, humiliating, intimidating, or demeaning treatment; destroys or removes public or private property; involves the consumption of alcohol, other drugs, or other substances; or violates any of the policies of the university. Hazing that involves sexual misconduct will be investigated by the university's Title IX coordinator in addition to other campus officials.

III. University Expectations for Awareness, Education, and Prevention

EMU maintains regular training programs that all faculty, staff and students are expected to view, attend and/or participate in for the purpose of prevention, bystander awareness, intervention and overall campus safety and security. Information on training is located on the Title IX website.

IV. Reporting Sexual Misconduct to University Officials

EMU strongly supports and encourages prompt reporting of sexual misconduct. Reporting provides resources to victims and contributes to keeping the campus safe.

V. Options Available for Resolving Complaints of Sexual Misconduct

Charges of sexual misconduct within the university are sensitive and complex. EMU has defined avenues to resolve complaints and to stop inappropriate behavior. Efforts will be made to protect the rights of both (or all) parties.

VI. How to Make a Formal Complaint of Sexual Misconduct⁷

To seek immediate assistance, please contact the RD on Call at (540) 476-4578 or Security, reachable 24 hours a day at 4911 (from on-campus phones) or (540) 432-4911 (from cell phones or off-campus phones).

Complaints of sexual misconduct can be made to university responsible employees. All reports will be submitted to the Title IX Coordinator for further investigation and review.

You may contact the Title IX Coordinator directly:

Marcy Engle
540-432-4148
Marcy.engle@emu.edu

After immediate assistance or conversation has taken place, all faculty/staff are required to report incidents using the online link www.emu.edu/safecampus. All students are encouraged to use the same reporting link.

Making a formal complaint about an incident is a separate step from choosing to prosecute. When a report is filed, the alleged victim is not required to continue with legal proceedings.

By reporting to the university, it assists in:

1. Warning future victims and the general campus on safety issues if appropriate.
2. Apprehending the respondent.
3. Bringing awareness to the community.
4. Maintaining future options regarding criminal prosecution, university and/or civil action against the respondent.

VII. The Role of the Title IX Coordinator

The Title IX coordinator, or designee, seeks first and foremost to ensure that the victim is safe and that the campus community is protected. They will meet with the victim of the reported sexual misconduct, known as the "complainant." The Title IX coordinator and deputies are trained in college sexual misconduct and will provide expert and empathetic counsel to the complainant.

The Title IX coordinators' responsibilities include but are not limited to:

1. Ensuring the prompt and thorough investigation of any Title IX complaint or question from a student at the university;
2. Establishing processes to identify and address patterns or systemic problems that

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may arise during the investigation of a Title IX complaint from a student;

3. Ensuring that the university has in place policies and procedures reasonably necessary to foster compliance with Title IX, including, but not limited to grievance procedures for Title IX complaints from students;
4. Ensuring that appropriate school officials receive training regarding Title IX, including reporting and responding to possible incidents of discrimination or sexual harassment;
5. Implementing educational programs and communication plans designed to inform students of their rights under Title IX and how to file a Title IX complaint; and
6. Meeting with students who wish to file a Title IX complaint or raise a question relating to Title IX.

VIII. How the Title IX Coordinator Handles a Complaint of Sexual Misconduct

The Title IX coordinator will provide the following to the complainant(s) and the respondent(s):

1. Resources on campus and within the community, including counseling services;
2. The investigation process and university procedures for pursuing a formal complaint against a student, faculty member, staff member, or third party, including the university's protections from retaliation;
3. The university's obligation to treat both the complainant and the respondent fairly;
4. The university's obligation to promptly investigate the reported sexual misconduct;
5. The complainant's right to pursue criminal action in addition to the EMU's student conduct process; and
6. Possible academic and housing accommodations or other measures designed to assure the complainant's well-being, including "no contact" orders.

IX. University Process after a Report is Submitted⁸

Review Committee

When a report of possible sexual misconduct is made, the Title IX coordinator (or designee) will convene a

review committee. The review committee is composed of three individuals: Title IX coordinator (or designee), student life representative, and a member of campus safety. This review committee is required to meet within 72 hours of receiving the Title IX coordinator's report, and thereafter as necessary. The committee has the power to obtain law-enforcement records, criminal history records, health records, available institutional conduct or personnel records and information or evidence known to the institution or law enforcement.

The review committee (or the representative from campus safety) if the committee does not reach a consensus) must determine if disclosure of the information, including personally identifiable information, is necessary to protect the health and safety of the student or other individuals. If so, campus safety representative shall "immediately" disclose such information to the responsible law-enforcement agency. In addition, the Title IX coordinator or designee shall notify the complainant if such a disclosure is made.

As to alleged acts of sexual violence that would constitute a felony under Virginia law, the campus safety representative on the committee will be imposed with the duty to consult with the local Commonwealth's Attorney and provide him or her with the information received by the review committee without disclosing personally identifiable information. If the university security representative *does not* think that alleged acts constitute a felony, yet other members of the committee individually do, then it is that person's duty to provide the same information within 24 hours to the Commonwealth's Attorney.

Investigation

Title IX coordinator or designee will commence an investigation. As part of that investigation, the Title IX coordinator or designee will interview the respondent, and other possible witnesses. The Title IX coordinator or designee will also gather other relevant information or documents. In general, the Title IX coordinators will investigate promptly and the investigation and findings will take no longer than sixty (60) days, unless extenuating circumstances necessitate a longer time frame.

At the conclusion of the investigation, the Title IX coordinator or designee will share his or her findings with the complainant and respondent. The Title IX coordinator or designee will also determine whether a formal complaint is warranted.

If the reported sexual misconduct falls under certain categories defined by the Clery Act and occurred on campus or on any property owned or controlled by the university, the Title IX coordinator will report

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basic information to the campus safety coordinator (or designee) per the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("the Clery Act"). No personal identifiable information will be published as part of the Clery reporting. Basic statistical data will be provided to the Department of Education.

Based on the complainant's report, the campus safety coordinator (or designee) in consultation with threat assessment team may determine that a serious or continuing threat possibly exists and may release either an "emergency notification" or a "timely warning." Emergency notifications must be issued immediately upon confirmation of a significant emergency or dangerous situation and timely warnings must be issued if the crime is considered by the institution to represent a serious or continuing threat. The complainant's name will never be included in emergency notifications or timely warnings.

When conflict of interest exists with a member of the university administration, an external third party will be contracted to conduct the investigation.

X. University Procedures for Sexual Misconduct Behaviors⁹

An individual who is found in violation of this policy will be subject to institutional discipline implemented by the university administration after conferring with persons involved in the investigation and hearings. Discipline could include (but not be limited to):

a. Disciplinary Procedures

The Title IX coordinator, or designee, shall assume responsibility for the preliminary investigation of an alleged sexual misconduct complaint. The appropriate student life official will handle all other alleged standard of conduct violations in consultation with his or her immediate supervisor. All pertinent sources of information are checked, including a discussion with the respondent(s). If there is evidence to support that a violation has occurred, it is the responsibility of the Title IX coordinator, or designee, to determine which of the review bodies should be used. Students who have a class during a scheduled review must notify the Title IX coordinator to make alternative arrangements. Complainants and respondents who fail to attend a scheduled hearing/review may be issued outcomes in absentia.

Complainants may choose to be involved in the disciplinary process. If he or she chooses to be involved in the disciplinary process, the complainant will have the option to bring a support person to be present in these cases with them. In addition, the respondent(s) that is/are accused of the behavior may also have a support person present with them during the disciplinary process.

The university reserves the right to temporarily suspend the respondent(s) prior to formal review if the respondent shows either an extreme (1) behavioral concern or (2) medical concern which poses potential danger to self or others.

NOTE: Violations which are handled during final exam week will result in student removal from the residence halls. A student may be permitted to take exams but will be excluded from all residence hall areas.

b. Review Bodies

1. Title IX Review Board

a. Function

The Title IX Review Board normally will hear serious Title IX disciplinary cases that involve civil or criminal laws or violations that become unusually numerous, seriously disruptive or threatening to the campus community. The RB is called upon to exercise sound objective judgment and to recommend outcomes to the vice president for student life.

b. Membership

The Title IX Review Board consists of two university administrators, two faculty members and one student life staff member. The five member Title IX Review Board will be selected from a pool of trained faculty and administrators appointed by the provost.

A faculty member or administrator shall serve as chair. As much as possible, members of the Title IX Review Board will have

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limited or no direct personal relationship with the respondent or complainant. Direct personal relationship refers to classroom, club, sports, church or community activities in which both engage and have regular contact. Efforts will be made to include fair gender and ethnic representation.

c. Procedures

In order to assure the complainant and respondent's appropriate rights of privacy, Title IX hearings are closed to the public. Both complainant and respondent are permitted to be accompanied by a support person. The support person must remain quiet while present in the Title IX Review Board. Title IX Review Board hearings may be audio and/or videotaped for future reference and clarification purposes only.

d. Outcomes¹⁰

The full range of outcomes, possibly including a letter of dismissal, is available for recommendation by the Title IX Review Board. Considering the recommendations from the Title IX Review Board, the vice president for student life will issue outcomes. Title IX Review Board recommendations may be modified by the vice president for student life in consultation with the provost and the Title IX coordinator.

Possible Outcomes

When appropriate, educational and restorative outcomes may include one or more of the following:

- i. In-school suspension
- ii. Temporary suspension*
- iii. Indefinite suspension/disciplinary withdrawal*
- iv. Dismissal*

- v. Probation
- vi. Loss of university employment or volunteer position
- vii. Loss of university resources or services
- viii. No contact orders
- ix. Removal from dorm or other campus buildings
- x. Community work assignments
- xi. Application of a specific behavioral contract
- xii. Essays
- xiii. Alcohol and/or drug assessment and recommendations
- xiv. Exclusion from co-curricular or leadership activities
- xv. Completion of issue-relevant education activities
- xvi. Fines
- xvii. Monetary or other restitution
- xviii. Re-commitment to the Community Lifestyle Commitment

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

e. Confidentiality

Each member of the Title IX Review Board will maintain strict confidentiality to the fullest extent allowed by law. A breach of confidentiality may result in disciplinary action. In addition, board members may be removed from further service for any such breach.

f. Appeal Procedures

Either the complainant or the respondent may appeal the

¹⁰ Working draft, pending final approval

outcomes issued. The appeal must be submitted in writing within three working days following notification and should be directed to provost.

Reasons for an appeal must be clearly stated and based on one of the following:

- i. Significant and relevant new evidence.
- ii. Alleged procedural error, which may have materially affected the decision.
- iii. Claims that the outcomes issued are unduly harsh and arbitrary.

On the basis of these factors the appropriate individual will review the appeal. A decision will be made to uphold or modify the review board's action. This decision will be communicated in writing within two working days after the receipt of the appeal. This decision is final.

2. Staff Review¹¹

a. Function

These procedures involve a meeting between the respondent and the Title IX coordinator and a member of the student life staff. This type of review is used when the welfare of the student or best interests of the community is served by private and informal proceedings, would not constitute a violation of civil or criminal law, or the timing of the violation warrants such.

b. Outcomes

The full ranges of outcomes, including dismissal, are available. Note education and restorative outcomes as listed

under the Title IX Review Board.

c. Appeal Procedures

Either the complainant or the respondent may appeal the outcomes issued. The appeal must be submitted in writing within three working days following notification and should be directed to provost.

Reasons for an appeal must be clearly stated and based on one of the following:

- i. Significant and relevant new evidence.
- ii. Alleged procedural error, which may have materially affected the decision.
- iii. Claims that the outcomes issued are unduly harsh and arbitrary.

On the basis of these factors the appropriate individual will review the appeal. A decision will be made to uphold or modify the review board's action. This decision will be communicated in writing within two working days after the receipt of the appeal. This decision is final.

d. Confidentiality

The Title IX coordinator and the member of the student life staff will maintain strict confidentiality to the fullest extent allowed by law. A breach of confidentiality may result in disciplinary action. In addition, individuals may be removed from further service for any such breach.

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3. Disciplinary Letters¹²

a. Letter of Reprimand

- i. The student is notified that his/her behavior has constituted a violation of university policies.
- ii. Further violations are expected to result in more serious disciplinary actions.
- iii. Additional outcomes may also be issued.

b. Letter of Probation

- i. The student is notified that his/her status is such that further violations of university policies may result in suspension.
- ii. Further violations are expected to result in more serious disciplinary actions.
- iii. The Community Lifestyle Commitment is reviewed and the student is asked to recommit
- iv. Additional outcomes may also be issued.
- v. Academic advisors, director of retention, athletic coaches (if applicable), and appropriate staff persons are informed of the probationary status.
- vi. A copy of the letter of the probation is generally sent to parents/legal guardians.

c. Letter of In-School Suspension

- i. The student is notified that he/she is separated from co-curricular activities, intercollegiate sports, and/or other on-campus and off-campus activities.
- ii. Additional outcomes may also be issued.

- iii. Further violations are expected to result in more serious disciplinary actions.
- iv. The Community Lifestyle Commitment is reviewed and the student is asked to recommit.
- v. Academic advisors, the director of retention, athletics coaches (if applicable) and appropriate staff persons are informed of the in-school suspension.
- vi. A copy of the letter of in-school suspension is generally sent to parents/legal guardians.

d. Letter of Temporary Suspension

- i. The student is notified that he/she is separated from the university for a specific period of time up to 10 class days.
- ii. Additional educational or restorative outcomes may also be issued.
- iii. The student is required to notify his/her parents or legal guardian and make arrangements for leaving campus within 48 hours of notification (unless the decision is being appealed). Parents must verify arrangements by contacting the student life office prior to the suspension.
- iv. While under suspension, the student is barred from university property. This includes all classes, on-campus work assignments and university related activities (athletic/music/drama practices or performances).
- v. Academic advisors, the director of retention,

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- professors, athletic coaches (if applicable) and appropriate staff persons are informed of the suspension.
- vi. Students are permitted to make up missed quizzes or assignments at the discretion of their professors. In some cases, students may be permitted to postpone a suspension to avoid a major exam/paper conflict if such is verified.
- vii. Following a suspension, the student is placed on probation for two semesters, unless otherwise specified.
- viii. A copy of the letter of suspension is generally sent to the parents/legal guardians.
- ix. Students who have received a temporary suspension outcome may petition to have the suspension purged from their student record after 365 calendar days with no additional disciplinary outcomes on their record. The request must be made between 365 and 465 days after the date of the violation.
- e. Letter of Indefinite¹³Suspension/Disciplinary Withdrawal
 - i. The student is notified that he/she is separated from the university for an indefinite period of time not less than the remainder of the current semester and/or full semester following.
 - ii. The student is required to notify his/her parents or

- legal guardians and make arrangements for leaving the campus within 48 hours of notification (unless the decision is being appealed). Parents must verify arrangements by contacting the student life office prior to the suspension.
- iii. The student is barred from campus property until the vice president for student life grants permission. If the decision to suspend a student is made within the last four weeks of the semester, imposition of the suspension may be delayed until the following semester, depending upon the gravity of the offense.
- iv. Additional outcomes may also be issued.
- v. In some cases a notation is placed on the university transcript: *[Suspended, or Withdrew while under investigation] for a violation of Eastern Mennonite University's code, rules, or set of standards*. This remains until the procedures for expunging the record have been met.
- vi. Academic advisors, the director of retention, professors, athletic coaches (if applicable) and appropriate staff persons are informed of the suspension.
- vii. Re-entry involves reapplication through the admissions.
- viii. A copy of the letter of suspension/disciplinary withdrawal is sent to the parents/legal guardians.

- f. Letter of Dismissal

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- i. The student is notified that he or she is permanently separated from the university.
- ii. A notation is placed on the official transcript
Dismissed for a violation of Eastern Mennonite University's code, rules, or set of standards.
- iii. The student is required to notify his/her parents/legal guardians and make arrangements for leaving the campus within 48 hours of the notification (unless the decision is being appealed). Parents must verify arrangements by contacting the student life office prior to the dismissal.
- iv. Resident students must complete proper checkout procedures with their community advisor before leaving campus.
- v. The student is barred from campus property unless permission is granted by the vice president of student life.
- vi. A copy of the letter of dismissal is sent to the parents/legal guardians.

Regardless of whether a complainant decides to pursue a criminal investigation, the university's Title IX coordinator, or his/her deputy, will take immediate steps to investigate the complaint, to protect the victim, and to ensure the safety of the campus community. If a criminal complaint is filed in addition to the university complaint, the university will continue implementing its own procedures regardless of the timeline of the criminal proceedings or their outcome.

Upon receipt of a complaint of sexual misconduct, the University will take action appropriate to the charge presented by the complainant. This action may take the form of an investigation. Any administrator or supervisor being advised of a charge of sexual harassment shall refer the matter

according to the procedure specified in this policy.

XI. Criminal Investigation and Charges¹⁴

To pursue criminal charges in a case, EMU personnel can help contact the police department and in Virginia will follow up with the Commonwealth's Attorney and Victim/Witness Services to assist in understanding and following through with this process. For the Harrisonburg (VA) location, the case itself will come under the jurisdiction of the court of Harrisonburg/Rockingham County. When offenses occur in other locations the local authorities, in the respective jurisdictions, will be involved. The Commonwealth's Attorney (or similar positions in other states) from the appropriate jurisdiction will handle the criminal proceedings and will need to speak with the alleged victim regarding the case. Persons involved may also speak with their personal or family attorneys for legal advice.

XII. Declining a Formal Complaint

In cases in which the complainant chooses to keep his/her name, the name of the respondent, and other information confidential or decides not to file a formal complaint of sexual misconduct against a student, faculty member, staff member, or other third party, the Title IX coordinator will gather as much information as possible about the sexual misconduct complaint(s). The university will respond to this information in pursuit of protecting the campus community while seeking to respect the complainant's request for confidentiality. The Title IX coordinator will inform the complainant that keeping the complainant's name confidential or declining to identify the respondent may limit the university's ability to thoroughly investigate the sexual misconduct complaint. The Title IX coordinator will also inform the complainant that in some cases it may not be possible to ensure confidentiality. *See University Process after a Report is Submitted*

After gathering information from the complainant and incorporating the complainant's request for confidentiality, the Title IX coordinator will work with university officials to determine whether any of the following actions are appropriate to protect the campus community from any possible ongoing threat:

- A. Take steps to protect the complainant, including interim measures such as issuing a "no contact order" or a "no trespass order" as the investigation is ongoing;
- B. Take steps to prevent or address retaliation, which is prohibited under Title IX and the university's policies; and

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- C. Determine if enough evidence exists to warrant an investigation without the complainant's cooperation.

At the complainant's request and upon review by and approval of the Title IX coordinator, certain complaints of sexual harassment or stalking may be resolved informally through the procedures set forth in the university's policy prohibiting discrimination against students. Informal resolution is not available for misconduct involving non-consensual sexual contact or non-consensual sexual intercourse, or serious incidents of sexual exploitation, sexual harassment, stalking, or other acts of sexual violence. The Title IX coordinator will advise a complainant if the informal resolution procedures are available in a particular matter.

XIII. Retaliation against Someone Who Brings a Complaint of Sexual Misconduct or Participates in the Investigation or Hearing Process¹⁵

All members of the university community, including faculty, staff, and students, who have a good faith concern regarding possible sexual misconduct are expected to report such concerns to the Title IX coordinator.

The university prohibits retaliation or retribution, in any form, against an individual who reports, in good faith, an actual, potential, or suspected violation of this sexual misconduct policy. As used in this policy, reporting "in good faith" means the individual making the report has a reasonable basis to believe that there has been or may have been a violation of this sexual misconduct policy. Individuals who make frivolous or false reports shall not be deemed to be acting in good faith.

Threats, other forms of intimidation, and retaliation against a complainant or any other party involved in implementing the university sexual violence/misconduct policy are violations of the policy and may be grounds for disciplinary action.

XIV. Frivolous Complaints

The sanctions mentioned in this information are in addition to, and not in place of, any appropriate criminal action. Although the preponderance of sexual misconduct complaints are valid, it does happen that occasionally a student will charge a faculty member, or an employee may charge the supervisor, with sexual misconduct without good grounds or even out of spite. The student may want to "get at" the professor because of a bad grade, or, as discussed below, because a relationship went sour. A

false charge is very serious; it is libelous and could result in a libel suit.

XV. Available Legal Remedies

Notwithstanding anything in this policy, a complainant or respondent may seek redress available under federal or state law. If the Title IX coordinator determines that a formal complaint is not warranted, the complainant may still file a complaint directly with the university's president's office in accordance with the university's grievance procedure.

XVI. Getting Help if Assaulted

For a victim of sexual assault, EMU encourages the following:

- A. Get to a safe place as soon as possible. Call 911 if the police or ambulance is needed for immediate security and transport to the hospital to address any injuries.
- B. Get medical attention as soon as possible. A medical examination will provide any necessary treatment and collect important evidence. Injuries may not be immediately apparent.
- C. Contact security by calling 4911 (from a campus phone) or (540) 432-4911.
- D. Try to preserve all physical evidence. Do not wash clothes, take a shower or bath, or use the toilet. Put all clothing that was worn at the time of the attack in a paper bag, not in a plastic bag.
- E. Talk with a counselor who will maintain confidentiality, help explain options, give information, and provide emotional support. On campus, call counseling services at 540-432-4317. When the counseling office is closed, call the RD on Call at 540-476-4578; they will contact a counselor.
- F. In *Harrisonburg, Virginia*, call the Collins Center, a local agency that specializes in providing confidential counseling and support for sexual assault victims. Collins Center phone: 24-hour Sexual Assault Crisis Hotline: 540.434.2272.
In *Lancaster, Pennsylvania*, call the Lancaster Helpline at 717-299-4855, Samaritan Counseling Center at 717-560-9969 or YWCA Sexual Assault Prevention & Counseling Center 717-392-7273.
In *Washington, DC*, call DC Rape Crisis Center 202-232-0789, or Brookland Pastoral Counseling Center 646-852-7404
Violations of Minors: Report Child Abuse Now: 1-800-552-7096.

¹⁵ Working draft, pending final approval

- G. Contact a trusted person such as a family member or a close friend for support.
- H. Contact the university Title IX coordinator or vice president for Student Life. They can discuss options on campus and refer resources in the university community.
- I. If it is uncomfortable to directly contact the above referenced people, the resident director or university counselor may assist with those communications.

XVII. Medical Treatment

Seek immediate and follow-up medical attention for several reasons:

- A. To assess and treat any physical injuries that have been sustained.
- B. To determine the risk of sexually transmitted diseases or pregnancy and take appropriate medical measures.
- C. To gather evidence that may aid criminal prosecution.

Physical evidence should be collected immediately—ideally within the first 24 hours. It may be collected later, but the quality and quantity of evidence may be diminished.

XVIII. Past Abuse¹⁶

Many individuals experience sexual misconduct and don't tell anyone about it at the time of the incident. If a person was victimized weeks ago or even years ago, assistance is still available. Talking with someone now may help coping abilities with abuse from the past. On campus, call EMU counseling services at 540-432-4317 or campus ministries at 540-434-0365. Both counseling services and campus ministries are considered confidential resources.

XIX. Male Victims

Records show that most victims of sexual misconduct are women; however, it is important to know that men can also be victims. Male victims at the university receive the same services and support as do female victims. Emotional support, counseling, and medical treatment are available to assist any individuals recovering from sexual misconduct.

XX. Follow Up and Support

The following campus services and personnel are available for follow up as well as ongoing support:
 Counseling Services: 540-432-4317
 Health Services: 540-432- 4308
 Campus Ministries: 540-432-4115 or 540-432-4273
 Collins Center, 24-hour sexual assault crisis hotline: 540-434-2272 (Harrisonburg, VA)

Lancaster Helpline: 717-299-4855 (Lancaster, PA)
 Samaritan Counseling Center: 717-560-9969 (Lancaster, PA)
 YWCA Sexual Assault Prevention & Counseling Center: 717-392-7273 (Lancaster, PA)
 DC Rape Crisis Center: 202-232-0789 (Washington, DC)
 Brookland Pastoral Counseling Center: 646-852-7404 (Washington, DC)

Pregnancy Policy

EMU strives to create an atmosphere where each student experiences intellectual development and personal growth. It is the responsibility of the faculty, staff and students to foster and protect that atmosphere in order to provide each student with an opportunity for success. When an unmarried, undergraduate student becomes pregnant, she is faced with many difficult decisions. While EMU does not support a student's choice to engage in sexual relationships outside of marriage, we do support the decision to carry the child to full term. In order to provide support, and encourage mental and physical healthcare, unwed pregnant undergraduate students will be referred to meet with the vice president for student life or an appropriate designee. The undergraduate student may be required to sign a wellbeing contract agreeing to engage in pre-natal care and personal counseling in order to remain enrolled at EMU. Identified fathers who are EMU undergraduate students may also be required to engage in parenting classes designed to help them prepare for the new responsibilities they will have, whether they plan to marry the expectant mother or not. If the expectant mother and father are together as a couple, these parenting classes may be done jointly to prepare for possible marriage or co-parenting responsibilities.

Fathers who are not EMU students may be invited to join the expectant mother in couples counseling or parenting classes. Classes and couples counseling at the EMU counseling center will be offered free of charge to both expectant parents, but other services outside EMU will be the responsibility of the expectant parents to pay. A faculty/staff mentor with parenting experience may also be chosen by the expectant parents to aid them in their steps toward parenthood. Additional steps may also be needed as determined by student life personnel on a case-by-case basis.

¹⁶ Working draft, pending final approval