

Sexual Misconduct Policy

Emory & Henry College is a community of trust whose existence depends upon strict adherence to standards of conduct set by its members. The College is committed to being a community free of discrimination and harassment based on race, color, religion, age, gender, national origin, disability, status as a veteran, or any other protected status. Sexual misconduct is a serious violation of these standards and offensive or harassing behavior will not be tolerated. The College encourages all members of the Emory & Henry College community to be aware of both the consequences of sexual misconduct and the options available to victims of sexual misconduct and the accused.

Description of Sexual Misconduct: Sexual misconduct is defined as sexual contact without effective consent and includes: intentional touching, either of the victim or when the victim is forced to touch, directly or through clothing, another person's genitals, breasts, thighs, or buttocks; rape (sexual intercourse without effective consent whether by acquaintance or a stranger); attempted rape; sodomy (oral sex or anal intercourse) without effective consent; or sexual penetration with an object without effective consent. Effective consent is not a passive means of approval and silence cannot be interpreted as a means of consent. Effective consent can be communicated between parties through words or actions, but must be given with the intention of creating a mutual understanding regarding the conditions of sexual activity. Consent cannot be effective if the conditions for sexual activity are manipulated by use of physical force, the threat of force, intimidation, or coercion. Effective consent cannot be given by those who are mentally incapacitated, whether temporarily or permanently, for any cause including but not limited to intoxication, drugs, or other forms of mental incapacitation. Verbal misconduct, without accompanying physical contact as described above, is not defined as sexual misconduct. Verbal misconduct may constitute sexual harassment, which is also prohibited under College regulations and is specifically addressed elsewhere in the code of conduct. Sexual harassment, in particular, may consist of unwelcome sexual advances, requests for sexual favors, or other verbal conduct of a sexual nature. Anyone who believes she or he is the recipient of harassing behavior is encouraged to report it.

Reporting Sexual Misconduct: Immediate Action, Information, and Support Services

The College urges anyone who has been a victim of an act of sexual misconduct to: seek medical attention immediately, seek counseling and support, inform the College of the assault and consider pursuing criminal charges. If you are a victim of sexual misconduct, you are encouraged to use the resources the College provides. While it is your choice whether or not to utilize the College disciplinary process, Emory & Henry is required by federal law to investigate any reports of sexual misconduct. Title IX of the Education Amendments of 1972, 20 U.S.C. Sec.1681, et seq., prohibits discrimination on the basis of sex in any federally funded education program or activity. The requirements of Title IX cover sexual violence and require colleges to take immediate and effective steps to respond to sexual violence. The resolution of these cases should be completed within approximately 60 calendar days following the receipt of the complaint, or in a timely manner given the complexity of the case. The College's Title IX Coordinator is Pamela Gourley and she can be contacted at pgourley@ehc.edu or 276-944-6122 if you need information regarding your Title IX rights.

You may want to report an act of sexual misconduct to both College and criminal authorities. One option is to immediately call 911 for assistance. Another option is to report the assault to the Dean of Students Office (276-944-6122). Allegations of sexual misconduct are taken seriously and are investigated thoroughly. If you need assistance to pursue the option of criminal charges, the Student Life staff can help you. Another option is to report the assault directly to the Emory & Henry Campus Police/Security (276-944-6222). A sworn officer will assist in investigating the complaint and will help you file a criminal report with the Washington County Magistrate's Office. The complainant may report the incident to the Commonwealth Attorney who will consider the case and decide whether or not to prosecute. In this option, the Commonwealth of Virginia accuses the alleged perpetrator and the complainant may serve as a witness for the Commonwealth. If you prefer to report an incident anonymously, call The Campus Conduct Hotline at (866) 943-5787. The College participates in this service and it is available for use around the clock, seven days a week. Because the Hotline is operated by an independent organization, any calls made through this Hotline are completely confidential. The hotline operator will record the complaint or concern and forward it to the appropriate staff member at the College for review and action as appropriate. Callers to the hotline may remain anonymous. Another option for

victims is a civil suit for monetary damages through the legal system. For information about this option, contact an attorney.

Students who are victims may also wish to seek confidential counseling or support from the Powell Resource Center (276-944-6923), College Health Services (276-944-6219) or the Bristol Crisis Center (276-628-7731). Each office has a staff member that is trained in working with the trauma related to acts of sexual misconduct.

College Disciplinary Procedures

A student charged with sexual misconduct can be disciplined under the College's code of conduct and may be prosecuted under Virginia criminal statutes. Even if the criminal justice authorities choose not to prosecute, the campus can pursue disciplinary action. This disciplinary action can result in temporary or permanent dismissal from the College. In the event it is deemed necessary to remove the respondent from College property during the initial investigation, the respondent can be restricted from being on College property at his/her expense. If the respondent is allowed to remain on campus, restrictions may be applied (i.e. moved to another residence hall, assigned times for cafeteria access, no contact orders, etc.).

Emory & Henry College has an obligation to uphold the laws of the community of which it is a part. While activities covered by the laws of the community and those covered by the College's rules may overlap, the community's laws and the College's rules operate independently and do not substitute for each other. The College may pursue enforcement of its own rules whether or not legal proceedings are underway or in prospect, and may use information from third party sources, such as law enforcement agencies and the courts, to determine whether College rules have been broken. Emory & Henry College will make no attempt to shield members in the College community from the law, nor will it intervene in legal proceedings on behalf of a member of the community. Membership in the Emory & Henry College community does not exempt anyone from local, state, or federal laws, but rather imposes the additional obligation to abide by all of the College's regulations.

Emory & Henry College will encourage victims of acts of sexual misconduct to pursue appropriate remedies in the College and state judicial systems. After consultation with the complainant and the respondent, the Dean of Students will select the manner in which the case will be heard.

The Hearing

The Sexual Misconduct Hearing Panel is composed of a student, a faculty member, and a staff member who are members of the Campus Judicial Board system. The case will be heard by these community members and all investigative findings from the Dean of Students Office will be presented at the hearing. Both the complainant and respondent will be given an opportunity to make a statement and be questioned by panel members. These proceedings are not adversarial actions. Any complainant can request to give his or her testimony without being in the physical presence of the person he or she has accused. Screens, teleconference, or closed-circuit broadcasts may be permitted, but not to the disadvantage of the respondent. It will be the hearing officer's responsibility to ensure that all testimonies are presented in a fair and impartial manner. If found responsible, minimum sanction: Three semesters of suspension or until the complainant is no longer enrolled at the College.

In cases regarding sexual misconduct, the Dean of Students or a designee will provide additional training for the Judicial Board before proceeding to a hearing. The standard of evidence is a preponderance of evidence, which means that a reasonable person can conclude that it is more likely than not that a violation has occurred.

- Both the complainant and the respondent have the following rights before and during proceedings of an official judicial hearing and may request to know the status of the case at any point during the judicial process.
- Both the complainant and the respondent have the right to challenge selection of an investigator and the composition of hearing boards based on conflicts of interests.
- All hearings of cases of sexual misconduct are closed. This means that all proceedings will be confidential and only those parties directly involved in the proceedings will be admitted.
- Both the complainant and the respondent have the right to know in advance the names of the witnesses to be called at the hearing and both can request specific witnesses.

- Both the complainant and the respondent have the right to have an advisor present in a hearing. As in all proceedings, this advisor shall be the student's choice from within the College community. If a student needs assistance in finding an advisor, Student Life staff can assist upon request. However, only one such advisor may participate in formal proceedings and outside legal counsel is not permitted within the confines of the hearing.
- The sexual history of either party may not be discussed during the hearing. The Hearing Officer will determine the appropriateness of any evidence of a sexual nature.
- The complainant and the respondent have the right to testify on his or her own behalf or to remain silent during any of the campus proceedings. Such silence will not constitute proof of responsibility.
- The respondent has the right to hear evidence against him or her and to present his or her side of the story.
- Both the complainant and the respondent have the right to remain present during all proceedings.
- The complainant has the right to make a victim impact statement if the accused is found responsible for violating a campus policy against sexual assault/misconduct.
- Both the complainant and the respondent will be informed in a timely manner regarding the outcome of the hearing.

The Appeal

- Both the respondent and the complainant may appeal the decision to the Sexual Misconduct Appeals Panel. The Sexual Misconduct Appeals Panel shall consist of a faculty member and a staff member who are members of the Campus Judicial Board System. Appeals can be made on the grounds of violation of hearing procedures, violation of student rights, introduction of new evidence that was not available at the time of the original hearing, and/or excessive or inconsistent sanctions.
- All appeals must be in writing and submitted to the Dean of Students Office within three (3) academic days of written notification.
- At the end of the appeal filing time, both the respondent and the complainant will be notified if any appeals are received.
- The Sexual Misconduct Appeals Panel will review the appeal within five (5) working days and make recommendations to the Dean of Students the include one of the following:
 - A recommendation of no grounds upon which the appeal should be granted and the recommendation that it is denied.
 - A recommendation of grounds to grant an appeal and suggested revisions to the original finding and/or sanctions.
 - The Panel may make recommendations on the appeal immediately, without hearing additional testimony or evidence or call for both students and the Hearing Officer to attend a hearing for clarification purposes and/or new evidence, and then make a recommendation.
- If the Sexual Misconduct Appeals Panel reviews an appeal, it may recommend overturning the finding of the hearing panel; uphold the findings of the hearing panel, in which case it may recommend keeping the assigned sanction(s), reducing the assigned sanction(s) or increasing the sanctions.
- The Dean of Students will review the recommendations within three (3) working days and notify both students of the outcome of the appeal. This is the conclusion of the formal appeals process.
- All student judicial proceedings are subject to review by the President of the College or his designee. The President reserves the right to convene a panel of community members to review cases.

Sexual Harassment Policy

Emory & Henry College is committed to an atmosphere of human dignity in which effective collegial relationships are based on mutual respect. When an individual's gender or sexuality falls victim to lack of respect, the collegial nature of the institution is threatened. Emory & Henry College recognizes Title VII of the Civil Rights Act, which guarantees individuals the right to freedom from harassment for race, ethnicity, religious preference and gender or sexuality, and will, therefore, not tolerate violations of the Act. The recurrence of such behavior and/or any type of retaliation that creates a hostile environment will not be tolerated and is subject to code of conduct charges.