

Policy on Sexual and Gender-based Harassment and Discrimination and Other Forms of Interpersonal Violence

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I. Title IX Defined

Title IX of the Education Amendments of 1972 is a Federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities. All public and private elementary schools, school districts, colleges, and universities receiving any Federal funding must comply with Title IX. Under Title IX, discrimination on the basis of sex can include sexual harassment, sexual assault, and rape, dating violence, domestic violence, and stalking. Title IX also applies to discrimination of pregnant and parenting students and discrimination in the classroom or in other programs and activities based on sex or gender.

II. Important Definitions

Complainant: the individual who has allegedly been a victim of Prohibited Conduct

Respondent: the individual who is alleged to have violated the policy

Third Party/Reporting Party: an individual who has not experienced but is aware of the occurrence of Prohibited Conduct and reports the violation

Confidential Employee: (1) any Employee that is a licensed medical, clinical, or mental health professional and ordained clergy (e.g., physicians, nurses, physician's assistant, psychologists, psychiatrists, professional counselors) when acting in that professional role in the provision of services to a patient who is a Student

Responsible Employee: any College Employee who is not a Confidential Employee. A Responsible Employee is required by law to report to the College's Title IX Coordinator all relevant details (obtained directly or indirectly) about an incident of Prohibited Conduct that involves any Student as a Complainant, Respondent, and/or witness, including dates, times, locations, and names of parties and witnesses.

Retaliation: any adverse action or threat taken or made against an individual, including through third parties and/or legal counsel, for making a report of Prohibited Conduct or participating in any investigation or proceeding related to this policy. (Applies to both parties.)

Amnesty: All students, acting in good faith, who disclose any incident of Prohibited Conduct under these procedures to a college official or to law enforcement shall not be subject to action under the College's Campus Code of Conduct for violation of alcohol and/or drug use occurring at or near the time of the commission of the Prohibited Conduct. The College will address this by providing support, education, and resources to the student(s).

Advisor: Students involved in a Title IX report and/or investigation are entitled to a support person who can be present with them during meetings and interviews and provide moral support. The person chosen can be a College Employee or someone not affiliated with the College. These individuals can attend the hearing but are prohibited to participate in the hearing. **For more information see: VI- How to Make a Report and Resources**

Interim Measures: are those services, accommodations, or other assistance that the College puts in place for Complainants after receiving notice of alleged sexual misconduct but before any final outcomes – investigatory, disciplinary, or remedial – have been determined. (e.g. changes to class schedules, work schedule, living arrangements, etc.)

No Contact Order: prohibits a person from being in physical or verbal contact with someone and includes contact through Third Parties or through the use of technology (text messages, social media, etc.)

III. Statement of 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 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 a lack of respect, the collegial nature of the institution is threatened. Sexual misconduct is a serious violation of these standards and threatening, offensive, violent, 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. Sexual misconduct includes, but is not limited to, discrimination, sexual assault, sexual harassment, domestic violence, dating violence, and stalking. Emory & Henry College also formally forbids retaliation against an individual for making a report of Prohibited Conduct under this policy or for participating in an investigation of an alleged violation of this policy.

This policy is in compliance with applicable legal requirements including Title IX of the Education Amendments of 1972; relevant provisions of the Violence Against Women Reauthorization Act of 2013; Title VII of the Civil Rights Act of 1964; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act; and other applicable federal and Virginia state laws.

IV. To Whom this Policy Applies

This policy applies broadly to the entire College community, including undergraduate and graduate students; those employed by Emory & Henry College (E&H) including faculty, affiliates, visiting faculty and all staff (including all exempt and non-exempt, and senior administrative), as well as those physicians and health scientists who are not employed by E&H but have E&H affiliation with the School of Health Sciences; contractors, vendors, or other third parties contractually obligated to E&H ("Third Parties"), and visitors or guests of E&H (Invitees); all collectively together known as "Covered Persons". This policy pertains to acts of Prohibited Conduct committed by or against Covered Persons when:

- i. When conduct occurs on Emory & Henry College premises and/or
- ii. the conduct occurs in the context of a Emory & Henry College employment, education, or research program or activity, including but not limited to E&H-sponsored study abroad, research, internship, mentorship, summer session, or other affiliated programs or premises; and/or
- iii. the conduct occurs outside the context of Emory & Henry College employment, education, or research program or activity, but (i) has continuing adverse effects on E&H premises or in any E&H employment, education, or research program or activity or (ii) occurs in close proximity to E&H premises and is connected to hostile conduct on E&H premises.

To implement this policy, the College has developed specific processes to investigate an allegation that a Covered Person has committed or been subject to an act of Prohibited

Conduct that could implicate this policy. The College will select the appropriate process to use in a given situation based on the identity of the person alleged to have violated the policy (i.e., the “Respondent”).

Emory & Henry College administers a separate policy that addresses other forms of discrimination and harassment: the **Title VI** policy. This Title IX policy supersedes any conflicting provisions contained in the **Title VI** policy. Where Prohibited Conduct violates this policy and also violates the **Title VI** policy, the College’s response will be governed by the procedures referenced in this policy. Questions about which policy applies in a specific instance should be directed to the College’s Title IX Coordinator at 276-944-6112.

V. Prohibited Conduct Under this Policy

Conduct under this policy is prohibited regardless of the sex, sexual orientation and/or gender identity/expression of the Complainant or Respondent. Prohibited Conduct includes the following forms of behavior: Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Domestic Violence, Stalking, Sexual or Gender-Based Harassment and/or Discrimination, Complicity, and Retaliation.

For more detailed information and specific definitions of these behaviors please reference:

- Student Resource Guide (Appendix A- 1)

VI. How to make a Report and Available Resources

The College urges anyone who has been a victim of an act of sexual assault or rape to seek care immediately to address any medical concerns including those related to sexually transmitted infections, diseases, and pregnancy.

Amnesty: All students, acting in good faith, who disclose any incident of Prohibited Conduct under these procedures to a college official or to law enforcement shall not be subject to action under the college’s Campus Code of Conduct for violation of alcohol and/or drug use occurring at or near the time of the commission of the Prohibited Conduct. The College will address this by providing support, education, and resources to the student(s).

Advisor: All students involved in a Title IX case are entitled to a support person of their choice. This person may be a College Employee or someone not affiliated with the College. A student may choose outside legal counsel (retained at the student’s expense), or a family member or friend.

An advisor is someone who will help the student navigate the student conduct process and is a silent participant during all official meetings. This means that the advisor may provide advice to the student outside of these meetings but may not advocate on behalf of a student, speak on behalf or instead of a student, or act in opposition to College policy during the course of the resolution of a complaint. The advisor may not question witnesses, undertake their own investigations, make statements, provide testimony or otherwise intercede in the student conduct process. The College advises that students select an individual who they feel comfortable with and who will be able to spend the time required to be an effective advisor.

If outside legal counsel is chosen by a party as an Advisor, the Attorney must send a letter of representation to the Title IX Coordinator, Kim Steiner, at earliest convenience. Please contact the College's Title IX office at 276-944-6112, or by email at ksteiner@ehc.edu. All Advisors must complete the Advisor Designation and Authorization form and submit it to the Title IX Coordinator. Contact the Title IX Coordinator or the Institutional Equity Officer for location of form.

Title IX Deputy Coordinators: The College has appointed Title IX Deputy Coordinators who can activate the Title IX process in the absence of the Title IX Coordinator. Listed below are those appointed as such on the E&H campus:

Ryan Bowyer

Wiley Hall

276-944-6528

rbowyer@ehc.edu

Tracy Meek

2nd floor, Kelly Library

276-944-6793

tmeek@ehc.edu

The College recognizes that deciding whether to make a report of Prohibited Conduct and/or choosing how to proceed, including but not limited to filing a Complaint, are personal decisions. The following principles and values will guide Emory & Henry College as facts and circumstances permit:

- Emory & Henry respects a Complainant's autonomy in making the determination regarding how to proceed, including whether to make a report and/or file a Complaint.
- In limited circumstances, typically where a risk of imminent harm to an individual or others or a threat to the health and safety of the campus is determined to exist, the College may be required to take immediate actions upon receipt of Prohibited Conduct.
- Emory & Henry is committed to educating and informing individual(s) regarding the choices and options available to them, including resources and processes inside and outside the College.
- An individual may choose to seek assistance, support or guidance from a Confidential Resource on campus or in the community. A disclosure to a Confidential Resource does not constitute a report to the College.
- Making a Report of Prohibited Conduct involves: telling a Responsible Employee, verbally or in writing, about what occurred. An individual may choose to make a report: (1) to Emory & Henry College and/or (2) to external law enforcement. Reporting conduct is different from filing a Complaint. While reported conduct will be conveyed to the Title IX Office, individuals who wish to directly file a Complaint should speak with the Title IX Coordinator.

The College offers various resources for all Students and Employees to provide support and guidance in response to any incident of Prohibited Conduct. For comprehensive information on accessing College and community resources, including emergency and ongoing assistance; health, mental health, and victim-advocacy services; options for reporting Prohibited Conduct to the College and/or law enforcement; and available support with academics, housing and employment:

- **Students should refer to the:** Student Resource Guide (Appendix A-2)

Accommodations/Interim Measures- Services, accommodations, or other assistance that the College puts in place for victims after receiving notice of alleged sexual misconduct but before any final outcomes – investigatory, disciplinary, or remedial – have been determined. The College wants students to be safe, to receive appropriate medical attention, and to get the help they need to heal and to continue to access their educational opportunities. The College wants students to understand their reporting options and how to access available interim measures. The College encourages victims of sexual misconduct to report those incidents to the College’s Title IX Coordinator or any Confidential Employee or Responsible Employee with whom the victim feels comfortable. The College recognizes that sexual violence is traumatic and may leave victims feeling overwhelmed and confused. This policy seeks to provide clear guidance regarding available resources and who can help in securing them.

Both the Complainant & Respondent have the right to reasonable accommodations/interim measures. An individual may request reasonable accommodations or assistance during these procedures at any time. Accommodations include: a language interpreter, verbal, visual, or technology aids, adjusted class schedules and/or living arrangements, or behavior management support. (This is a non-exhaustive list. All requests for accommodations will be considered.)

Confidential Disclosure Options- Students can seek support and report information to the following individuals within the College community who are licensed medical, clinical, or mental health professionals and who are working in that licensed capacity (e.g. physicians, nurses, physicians’ assistants, psychologists, psychiatrists, social workers, and professional counselors) and ordained ministers. These employees are Confidential Employees and will not disclose detailed information about Prohibited Conduct to the College without the Student’s permission. **Note:** Confidential Employees are expected to report that they are aware of an incident but will not disclose the identity of those involved or details of the report. This allows the College to maintain an accurate account of violations, as required by the Clery Act, which occur while also preserving the privacy of the students who are survivors of assault or misconduct. Below is a list of Confidential Employees at E&H:

- Powell Resource Counselors
Location: Wiley Hall, 220
Phone: 276-944-6144
After hours: 276-944-6222 and ask for the counselor on-call
Todd Stanley, LPC: toddstanley@ehc.edu
Emily Lockhart, LCSW: elockhart@ehc.edu

- Director of Health Services
Location: Health Center
Phone: 276-944-6538
Susan Stanley, RN: sstanley@ehc.edu
- E&H Chaplains
Location: Memorial Chapel
Mary K. Briggs
Phone: 276-944-6836
mkbriggs@ehc.edu
Sharon Wright
Phone: 276-944-6197
swright@ehc.edu
- E&H UMC Pastor
Location: Memorial Chapel
David Jackson
Phone: 276-944-6841
djackson@ehc.edu
- Assistant Athletic Director for Athletic Performance & Head Athletic Trainer
- Assistant Athletic Trainers

Non-Confidential Reporting Options –Students may seek support and report information to the following individuals who are required to report the incident and the identity of those involved to the Title IX Coordinator which will activate a community response:

- Campus Police
Office: 276-944-6222
Cell: 276-356-7783
- Title IX Coordinator
- Kim Steiner: 276-944-6112
ksteiner@ehc.edu
- Campus Confidential Conduct Line: 1-866-943-5787
Note: This Conduct Line allows individuals to report Prohibited Conduct **anonymously**. The information provided to this Conduct Line will be assessed by the Title IX Coordinator to determine how to proceed.
- All E&H Employees including faculty and coaching staff (Responsible Employees)
- Local Law Enforcement
911
Abingdon Town Police: 276-628-3111
Marion Town Police: 276-783-8145
Smyth County Sheriff's Office: 276-783-7204
Washington County Sheriff's Office: 276-676-6000

Time Frame for Reporting

There is no time limit on reporting or filing Complaints of violations of this policy, although the College's ability to respond fully may be limited with the passage of time.

If the Respondent is no longer affiliated with Emory & Henry (e.g., a report is made after a student has left or graduated or an employee no longer works for Emory & Henry), the College will still provide reasonably available remedial measures, assist the Complainant in identifying external reporting options, and may take other appropriate action.

VII. Title IX Coordinator

Under Title IX:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

The Title IX Coordinator is charged with monitoring the College's compliance with Title IX; ensuring appropriate education and training; coordinating the College's investigation, response, and resolution of all reports under this policy; and ensuring appropriate actions to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator is available to meet with any Student, Employee, or Third Party to discuss this policy or the accompanying procedures. The College has also designated Deputy Title IX Coordinators who may assist the Title IX Coordinator in the discharge of these responsibilities. The Title IX Coordinator and Deputy Title IX Coordinators receive appropriate training to discharge their responsibilities.

VIII. Applicable Procedures Under this Policy

- A. Informal Resolution Process: provides an effective means of communicating about the effects of behavior that can lead to resolving some disputes. The Complainant, Respondent, or a College Official may terminate an Informal Resolution Process at any time to initiate a Formal Resolution Process.
- B. Formal Resolution Process: the Title IX office initiates an investigation of the reported sexual misconduct and will determine if a hearing is merited.

Preponderance of the Evidence. Emory & Henry College uses the standard of Preponderance of the Evidence to make determinations in Title IX cases. This means that there is a requirement that 50.01% of the evidence supports either that the Respondent is responsible or that the Respondent is not responsible; "What is more likely than not."

Appeals. Upon receipt of the determination, the Complainant and Respondent shall each have the right to submit a written appeal of the outcome of the Review. This shall be submitted to the College's Dean of Students or their designee within three (3) business days. Complainants and Respondents seeking an appeal must specify the grounds for the request.

- i. New evidence and/or
- ii. There was a breach of the College's process.

Any party who fails to file an appropriate written request for an appeal within three (3) business days waives their right to appeal. As this is an administrative educational process, the College strongly encourages Complainant and Respondent involved to author their own appeals/responses.

Transcript Notations. Pursuant to Virginia law (23.1-900), Emory & Henry College will request that the Registrar places a hold and/or notation on the academic transcript of any student who has been (1) suspended, (2) dismissed, or (3) who has withdrawn from the College while under investigation for an offense involving sexual violence under the institution's code of Conduct. This notation will be removed if (a) a Student is subsequently found not responsible or (b) a Student who has been suspended for prohibited conduct pursuant to policy, has (i) completed the term and conditions of a suspension and (ii) has been determined by the College to be in good standing pursuant to all applicable academic and non-academic standards. Emory & Henry will notify each student that any such suspension, dismissal, or withdrawal will be documented on the student's academic transcript.

Accommodations. It should be noted that if the College deems it necessary to remove the Respondent from College property during the initial investigation, the Respondent can be restricted from being on College property at their own expense.

For more detailed information regarding these procedures please reference:

- Student Resource Guide Appendix A-3

IX. Privacy and Confidentiality

The College is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report under this policy. The College also is committed to providing assistance to help Students, Employees, and Third Parties make informed choices. With respect to any report under this policy, the College will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the report and to take steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

Privacy and confidentiality have distinct meanings under this policy:

Privacy: information related to a report of Prohibited Conduct will be shared with a limited circle of College Employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All Employees involved in the College's response to reports of Prohibited Conduct receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law.

Confidentiality: Confidentiality exists in the context of laws that protect certain relationships, including medical and clinical care providers (and those who provide administrative services related to the provision of medical and clinical care), mental health providers, counselors, and ordained clergy, all of whom may engage in confidential communications under Virginia law. The College has designated individuals who have the ability to have privileged communications as “Confidential Employees”. When information is shared by an individual with a Confidential Employee or a community professional with the same legal protections, the Confidential Employee (and/or such community professional) cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18.

X. Violations of Law

Behavior that violates this policy may also constitute a crime under the laws of the jurisdiction in which the incident occurred. For example, the Commonwealth of Virginia criminalizes and punishes some forms of Sexual Assault, Intimate Partner Violence, Sexual Exploitation, Stalking, and Physical Assault. The criminal statutes that may apply in cases of Physical Assault and Intimate Partner Violence are found in various sections of Chapter 4, Articles 1 (Homicide) and 4 (Assaults and Bodily Woundings), of Title 18.2 of the Code of Virginia. The criminal statutes relating to Sexual Assault are found in Sections 18.2-61 to 18.2-67.10 of the Code of Virginia. Section 18.2-60.3 of the Code of Virginia defines and identifies the penalty for criminal stalking. Finally, Sections 18.2-386.1 and 18.2-386.2 of the Code of Virginia provide for criminal penalties in some cases of Sexual Exploitation. This compilation of criminal statutes is not exhaustive, but is offered to notify the College community that, some forms of Prohibited Conduct may also constitute crimes under Virginia law, which may subject a person to criminal prosecution and punishment in addition to any sanctions under this policy.

XI. Prevention & Awareness Programming

Emory & Henry College was awarded a \$300,000 grant from the Justice Department’s Office on Violence Against Women (OVW) that has enabled the College to provide new resources to help students who are victims and provide prevention programming to the entire campus. Through this grant, the College established the E&H CARES program. Dr. Alana Simmons, E&H CARES Project Coordinator, coordinates the grant and develops and provides prevention programming for both the E&H campus and the School of Health Sciences.

Emory & Henry College has adopted a new training, “Bringing in the Bystander”, that students will participate in beginning fall, 2018. “Bringing in the Bystander” is an interactive, researched, and evaluated curriculum that uses a community of responsibility approach. It teaches bystanders how to safely intervene before, during, and after an incident of sexual abuse, relationship violence, and stalking. The College previously used a training model, Step Up, to educate students on bystander intervention.

Various programs are offered on campus to individual students, clubs and organizations throughout the year. Prevention and awareness information, in addition to Title IX guidance, is provided to all new faculty and staff during employee orientation periods. This information is also covered at the first faculty meeting each academic year. The Institutional Equity Officer provides Title IX guidance and training throughout the year to faculty, staff, and students.

As a matter of informing the entire campus community, this Annual Safety Report and other safety information is included in the campus newsletter, The Scoop. The Scoop is published each weekday during the fall and spring semesters and the information is highlighted during the first few weeks of each semester.

In addition, Peer Educators offer the Red Flag Campaign annually. This program is a public awareness campaign designed to address dating violence and to promote the prevention of dating violence on college campuses. Other prevention and awareness campaigns are provided throughout the year for all students, faculty, and staff.

XII. Training

The College provides training to Students and Employees to ensure they understand this policy and the topics and issues related to maintaining an education and employment environment free from harassment, discrimination, and violence. The College provides this training to Employees during orientation of new employees, during the first faculty meeting of each academic year, and on-going training is provided by the Compliance and Training Coordinator and the E&H CARES Project Coordinator throughout the academic year to Students and Employees.

APPENDIX A: STUDENT RESOURCE GUIDE TO TITLE IX

A-1: PROHIBITED CONDUCT UNDER THIS POLICY & SANCTIONS

Conduct under this policy is prohibited regardless of the sex, sexual orientation and/or gender identity/expression of the Complainant or Respondent. Prohibited Conduct includes the following specifically defined forms of behavior: Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Sexual or Gender-Based Harassment, Complicity, and Retaliation.

SANCTIONS

Below represents the range of sanctions that may be applied when this policy has been violated. Please, reference the specific definitions of violations and the sanctions that will be applied to those violations.



SEXUAL ASSAULT

Sexual Assault consists of (1) Sexual Contact and/or (2) Sexual Intercourse that occurs without (3) Consent.

(1) Sexual Contact is:

Any intentional sexual touching

However slight

With any object or body part (as described below)

Performed by a person upon another person

Sexual Contact includes (a) intentional touching of the breasts, buttocks, groin or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts; and (b) making another touch you or themselves with or on any of these body parts.

(2) Sexual Intercourse is:

Any penetration

However slight

With any object or body part (as described below)

Performed by a person upon another person

Sexual Intercourse includes (a) vaginal penetration by a penis, object, tongue, or finger; (b) anal penetration by a penis, object, tongue, or finger; and (c) any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

(3) Consent is:

Informed (knowing)

Voluntary (freely given)

Active (not passive), meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexual activity

Consent cannot be obtained by Force. Force includes (a) the use of physical violence, (b) threats, (c) intimidation, and/or (d) coercion.

(a) **Physical violence** means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.

(b) **Threats** are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.

(c) **Intimidation** is an implied threat that menaces or causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).

(d) **Coercion** is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular form of Sexual Contact or Sexual Intercourse, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the College will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

Diminished capacity means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity. Consent cannot be gained by taking advantage of the diminished capacity of another, where the person initiating sexual activity knew or reasonably should have known that the other person's capacity was diminished. A person may have diminished capacity as a result of the consumption of alcohol or other drugs.

Incapacitation means that a person is unable, temporarily or permanently, to give Consent because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

Emory & Henry College offers the following guidance on Consent and assessing diminished capacity and incapacitation:

A person who wants to engage in a specific sexual activity is responsible for obtaining Consent for that activity.

Lack of protest does not constitute Consent.

Lack of resistance does not constitute Consent. Silence and/or passivity also do not constitute Consent.

Relying solely on non-verbal communication before or during sexual activity can lead to misunderstanding and may result in a violation of this Policy. It is important not to make assumptions about whether a potential partner is consenting. In order to avoid confusion or ambiguity, participants are encouraged to talk with one another before engaging in sexual activity. If confusion or ambiguity arises during sexual activity, participants are encouraged to stop and clarify a mutual willingness to continue that activity.

Consent to one form of sexual activity does not, by itself, constitute Consent to another form of sexual activity. For example, one should not presume that Consent to oral genital contact constitutes Consent to vaginal or anal penetration. Consent to sexual activity on a prior occasion does not, by itself, constitute Consent to future sexual activity. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may have a bearing on the presence of Consent.

Consent may be withdrawn at any time. An individual who seeks to withdraw Consent must communicate, through clear words or actions, a decision to cease the sexual activity. Once Consent is withdrawn, the sexual activity must cease immediately.

In evaluating Consent in cases of alleged diminished capacity or incapacitation, the College asks two questions: (1) Did the person initiating sexual activity know that the other party had diminished capacity or was incapacitated? and if not, (2) Should a sober, reasonable person in the same situation have known

that the other party had diminished capacity or was incapacitated? If the answer to either of these questions is “YES,” Consent was absent and the conduct is likely a violation of this policy.

One is not expected to be a medical expert in assessing incapacitation and diminished capacity. One must look for the common and obvious warning signs that show that a person has diminished capacity or is approaching diminished capacity or is incapacitated. Although every individual may manifest signs of diminished capacity differently, typical signs include slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence. A person who has diminished capacity may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know whom you are with?”

One should be cautious before engaging in Sexual Contact or Sexual Intercourse when either party has been drinking alcohol or using other drugs. The introduction of alcohol or other drugs may create ambiguity for either party as to whether Consent has been sought or given. **If one has doubt about either party’s level of intoxication, the safe thing to do is to forego all sexual activity.**

Being impaired by alcohol or other drugs is no defense to any violation of this policy.

SANCTIONS FOR SEXUAL ASSAULT



SEXUAL EXPLOITATION

Sexual Exploitation is purposely or knowingly doing any of the following:

Causing the diminished capacity or incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give Consent to sexual activity;

Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or live-streaming of images);

Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person’s intimate parts (including genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy;

Recording or photographing private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts or buttocks) without consent;

Disseminating or posting images of private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts or buttocks) without consent;

Prostituting another person; or

Exposing another person to a sexually transmitted infection or virus without the other’s knowledge.

SANCTIONS FOR SEXUAL EXPLOITATION



INTIMATE PARTNER VIOLENCE

Intimate Partner Violence includes “dating violence” and “domestic violence,” as defined by Violence Against Women Act (VAWA). Consistent with VAWA, the College will evaluate the existence of an intimate relationship based upon the Complainant’s statement and taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Intimate Partner Violence includes any act of violence or threatened act of violence and a pattern of psychological abuse and/or financial abuse that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. Intimate Partner Violence may include any form of Prohibited Conduct under this policy, including Sexual Assault, Stalking, and Physical Assault (as defined below).

Physical Assault is threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person. Physical Assault will be addressed under this policy if it involves Sexual or Gender-Based Harassment, Intimate Partner Violence, or is part of a course of conduct under the Stalking definition.

SANCTIONS FOR INTIMATE PARTNER VIOLENCE



STALKING

Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear bodily injury or to experience substantial emotional distress.

Course of conduct means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property. Substantial emotional distress means significant mental suffering or anguish.

Stalking includes “cyber-stalking,” a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

SANCTIONS FOR STALKING



SEXUAL OR GENDER-BASED HARASSMENT

Sexual Harassment is any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise, when the conditions outlined in (1) and/or (2), below, are present.

Gender-based Harassment includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (1) and/or (2), below, are present.

(1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any College programs and/or activities or is used as the basis for College decisions affecting the individual (often referred to as "quid pro quo" harassment); or

(2) Such conduct creates a hostile environment. A "hostile environment" exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the College's education or employment programs and/or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the College will consider the totality of known circumstances, including, but not limited to:

The frequency, nature and severity of the conduct;

Whether the conduct was physically threatening;

The effect of the conduct on the Complainant's mental or emotional state;

Whether the conduct was directed at more than one person;

Whether the conduct arose in the context of other discriminatory conduct;

Whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or College programs or activities; and

Whether the conduct implicates concerns related to academic freedom or protected speech.

A **hostile environment** can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of Sexual Assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

SANCTIONS FOR GENDER-BASED HARASSMENT



RETALIATION

Retaliation means any adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of Prohibited Conduct. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct.

SANCTIONS FOR RETALIATION



COMPLICITY

Complicity is any act taken with the purpose of aiding, facilitating, promoting or encouraging the commission of an act of Prohibited Conduct by another person.

SANCTIONS FOR COMPLICITY



A-2: COLLEGE AND COMMUNITY RESOURCES

On-Campus Confidential Resources

Powell Resource Counselors

Location: Powell Resource Center, Wiley Hall, 220

Phone: 276-944-6144

After hours: 276-944-6222 and ask for the counselor on-call

Todd Stanley, LPC: toddstanley@ehc.edu

Emily Lockhart, LCSW: elockhart@ehc.edu

Director of Health Services

Location: Health Center

Susan Stanley, RN: sstanley@ehc.edu

Phone: 276-944-6538

E&H Chaplains

Location: Memorial Chapel

Mary K. Briggs

Phone: 276-944-6836

mkbriggs@ehc.edu

Sharon Wright

Phone: 276-944-6197

swright@ehc.edu

E&H UMC Pastor

Location: Memorial Chapel

David Jackson

Phone: 276-944-6841

djackson@ehc.edu

Assistant Athletic Director for Athletic Performance & Head Athletic Trainer

Assistant Athletic Trainers

On-Campus Accommodation Resource

Director of Disability Support Services

Location: Powell Resource Center, Wiley 220

Jennifer Condon

276-944-6144

jcondon@ehc.edu

On-Campus Non-Confidential Resources

Campus Police

Location: Martin Brock

Office: 276-944-6222

Cell: 276-356-7783

Dean of Students

Ryan Bowyer: 276-944-6528

Location: Wiley Hall

rbowyer@ehc.edu

Title IX Coordinator

Location: 2nd floor, Kelly Library

Kim Steiner: 276-944-6112

ksteiner@ehc.edu

Campus Confidential Conduct Line: 1-866-943-5787

Note: This Conduct Line allows individuals to report Prohibited Conduct **anonymously**. The Prohibited Conduct that is reported via this line will be investigated.

All E&H Employees including faculty and coaching staff (Responsible Employees)

Local Law Enforcement

911

Abingdon Town Police: 276-628-3111

Marion Town Police: 276-783-8145

Smyth County Sheriff's Office: 276-783-7204

Washington County Sheriff's Office: 276-676-6000

On-Campus Prevention & Education Resources

E&H CARES: <https://ehc.edu/inclusion-dialogue-center/eh-cares/index.php>

Title IX: <https://ehc.edu/title-ix/>

Community Resources

24 Hour Hotlines

Abuse Alternatives: 1-800-987-6499 This # includes linkage to language-line interpreting service for non-English speaking callers. TTY: 1-423-652-9750 (Washington County)

Family Resource Center: 1-800-613-6145 (Smyth County)

RAINN National Sexual Assault Hotline: 1-800-656-4673 (www.rainn.org —Provides a list of national resources.)

National Suicide Hotline: 1-800-273-8255

loveisrespect.org: 24 hour chat, 1-866-331-9947, TTY 1-866-331-8453 OR Text: "loveis" to 22522

GLBT National Help Center: 1-888-843-4564 OR email: help@LGBT hotline.org

National Center for Transgender Equality: transequality.org (great resource guide)

Non-24 Hour Resources

Bristol Crisis Center (support groups available): 276-466-2218

Project Jane - Highlands Community Services: 1-855-426-5263

Domestic Violence Officer Washington County, VA: 276-676-6031

Victim Witness Assistance Washington County, VA: 276-676-4200

Washington County Commonwealth Attorney: 276-676-6291

Smyth County Commonwealth Attorney: 276-782-4042

Legal Aid: 1-888-201-2722

Virginia Victims Fund: 1-800-552-4007 The Virginia Victims Fund (VVF) is a state program created to help victims of violent crime with out of pocket expenses. These can include medical bills, prescriptions, funeral expenses, and many other expenses.

A-3: TITLE IX PROCEDURES

Virginia law requires any college Employee who becomes aware of a sexual assault accusation to report to the school's Title IX Coordinator as soon as possible. This enables the College to have accurate reporting information for the Clery Act Report.

AFTER A REPORT IS RECEIVED

If an initial report necessitates, Virginia law, SB712, requires the Title IX Coordinator to convene a review committee that includes the Title IX Coordinator, the Dean of Students, and the Chief of Police within 72 hours to determine if the safety of the campus is compromised. If so, the review committee must disclose information regarding the alleged assault to the law-enforcement agency responsible for investigating the alleged act. The Chief of Police is also permitted to disclose the name of the alleged victim to the Commonwealth Attorney.

If a student reports that they are a victim of domestic violence, dating violence, sexual assault, or stalking – regardless of where the offense occurred – they will be provided with a written explanation of their rights and options that the College can provide, by the Title IX Coordinator or their designee.

STEPS IN THE TITLE IX PROCESS

- Title IX Coordinator is notified of an alleged violation: sexual assault, dating or domestic violence, stalking, harassment, discrimination
- Title IX Coordinator will contact the person(s) who has been reported to be a victim of a Title IX violation (Complainant) to set up a time to meet.

During this initial meeting:

- Assess what happened & determine if it is a Title IX violation
- Provide the person a copy of the Title IX policy
- Provide information on available support
- Explain options in pursuing the matter (including contacting the local police)
- Discuss interim measures and accommodations (academic studies, housing, employment, language interpreters)
- Determine how the person wishes to proceed

In all reports of alleged sexual misconduct, regardless of whether the Complainant wishes to pursue the disciplinary process, Emory & Henry will undertake a review to determine what happened and to assess whether any action need be taken to end the misconduct, prevent its recurrence, and address its effects per the College's obligation to comply with state law SB 712.

If report is merited:

Title IX Coordinator or their designee will meet with the Respondent to provide them with a copy of the applicable policy, explain their rights, and provide information on the available forms of support.

The Title IX Coordinator will then:

1. Assign up to 2 Title IX investigators.
2. Review the investigative report.
3. Determine if there will be a sexual misconduct hearing

HEARING PANEL MAKE-UP & PROCESS & APPEALS

Hearing Panel Make-up

Hearing Officer: Facilitates the hearing

3 Panel Members: Faculty and/or Staff who have been trained in the process

1 Investigator: There to answer questions and only present when students are present

Hearing Process

Title IX Coordinator contacts Complainant & Respondent: Provides them each with a copy of the Investigative Report, Advisor Guidelines, Sexual Misconduct Policy

Hearing Officer meets with the Complainant & Respondent to review: Rights, Process, and alleged Violation of Sexual Misconduct

Hearing Officer selects Panel Members

Complainant & Respondent review Panel Members & have the right to challenge the composition of the Panel

When Panel is determined, Hearing Officer will establish a date and time for the hearing.

Hearings are recorded

Deliberations are not recorded. After deliberation and a majority vote, Determination is made. Both students will be notified, simultaneously, by the Hearing Officer of the outcome within 24 hours.

All student conduct proceedings involving sexual misconduct are subject to review by the Title IX Coordinator or their designee.

Basis for Appeal

Individuals may appeal the outcome of their case when:

- i. There is new evidence and/or
- ii. There was a breach of the College's process.

Appeals

Both the Respondent and the Complainant may appeal the decision of the Hearing Panel.

Appeals may be made within 3 academic days of written notification of outcome.

Sexual Misconduct Appeals Panel will review appeal within 5 working days and make a recommendation to the Vice President of Student Life, Student Success & Inclusion.

The Vice President of Student Life, Student Success & Inclusion and the Title IX Coordinator or designee will review the recommendations within 3 working days & notify both students, simultaneously, of the outcome of the appeal. **This is the conclusion of the Formal Appeals Process.**

All student conduct proceedings involving sexual misconduct are subject to review by the Title IX Coordinator or their designee.

Rights of Complainant & Respondent

Right to be treated with dignity and respect.

Right to request a No Contact Order.

Right to interim measures and accommodations.

Right to choose how much or how little they want to participate in the process; can choose not to participate.

Right to challenge the selection of investigators and the composition of hearing boards based on conflict of interest or demonstrated bias.

Right to know in advance the names of witnesses to be called at the hearing and both can request specific witnesses.

Right to an advisor. An advisor is an individual that can be available to the Student for moral support during the Title IX process. An advisor can be an Employee of the College or someone not affiliated with the College. When choosing an advisor, the College recommends identifying someone that the Student feels comfortable with and whom they believe they will receive healthy support from and who will have the time to be an effective advisor. An advisor is allowed to attend meetings and the hearing but is prohibited from participating in meetings and the hearing.

Right to testify on their own behalf or to remain silent during any of the campus proceedings/process. Such silence will not constitute proof of responsibility.

Right to remain present during all proceedings.

Complainant has the right to request to give their testimony without being in the physical presence of the Respondent. Screens, teleconference, or closed-circuit broadcasts may be permitted, but not to the disadvantage of the Respondent.

Right to be informed of outcome, simultaneously, in a timely manner.

The Complainant has the right to make a victim impact statement if the accused is found to be responsible for violating the sexual misconduct policy.

The Respondent has the right to hear evidence against themselves and to present testimony.

OFFICE OF CIVIL RIGHTS

Students can file an external appeal with the Office of Civil Rights.

<https://www2.ed.gov/about/offices/list/ocr/index.html>