

# SECTION 2: DEFINITIONS

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The following terms are used throughout the course of this policy. Definitions of specific acts and behaviors related to relationship violence, sexual misconduct, and other forms of conduct prohibited under this policy can be found in Section 4 of the policy.

## BEYOND A REASONABLE DOUBT

The standard of proof used in a court of law, which means that no other logical explanation can be derived from the facts except that a defendant committed a crime, thereby overcoming the presumption that a person is innocent until proven guilty. If a reporting party chooses to pursue legal action in a court of law, the beyond a reasonable doubt standard will be used, in contrast with the preponderance of evidence standard that is used by the university to determine responsibility in Title IX processes.

## CAMPUS PASTOR

In the context of EMU's Relationship Violence and Sexual Misconduct Policy, pastors are considered those persons who are licensed and/or credentialed and whose official university responsibilities are to provide pastoral services to members of the university community.

Pastors working in their official capacity on EMU campus are considered confidential employees and therefore are not required under [Title IX](#) to report any information regarding an incident of relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy. Those pastors who are licensed and/or credentialed but who are not serving in an official campus pastoral role at the time of a disclosure are not considered confidential employees and are required under [Title IX](#) to report any incidents of relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy that are disclosed to them.

## CAMPUS SECURITY AUTHORITY

A campus security authority (CSA) is a [Clery Act](#)-specific role that includes any individual who works as a campus security officer or in the Office of Campus Safety and Security; any individual who has responsibility for aspects of campus security, even on an ad hoc basis (for example, those providing security at sporting events); any individual or department to whom EMU directs students and employees to report criminal offenses in addition to campus security officers or the Office of Campus Safety and Security; and any employee who has significant responsibility for student and campus activities including, but not limited to, student housing, student discipline, and campus judicial proceedings.

At EMU, the following groups or roles are defined as CSAs: Admiral Security officers; the Coordinator of Campus Safety and Security; the Title IX Coordinator; members of President's Cabinet; the Director of Athletics, all coaches, assistant coaches, and graduate assistants in the Athletics department; all employees of the Student Life division, including all residence directors (RDs) and community assistants (CAs); the Director of Facilities Management; the Director of Counseling Services; and representatives from the graduate programs, Lancaster campus, and Washington Community Scholars' Center.

## CLERY ACT

The [Clery Act](#) is a consumer protection law that aims to provide clarity around campus crime policy and statistics. The Clery Act requires all post-secondary institutions participating in the [Higher Education Act's \(HEA\) Title IV](#) student financial assistance programs to disclose campus crime statistics and security information. The Clery Act offers specific rights and options to students and employees who experience sexual assault, domestic violence, dating violence, and/or stalking.

## CONFIDENTIAL EMPLOYEE

Confidential employees are those employees of EMU who are exempt from reporting incidents of conduct prohibited under this policy that is disclosed to them by students or employees while in particular confidential roles. Confidential employees include licensed mental health clinicians, auxiliary staff working in Counseling Services, licensed medical health professionals, and licensed /credentialed campus pastors acting in their roles. Disclosures that occur when the confidential employee is not acting in their official capacity must be reported.

Confidential employees are prohibited from breaching confidentiality unless there is an imminent threat of harm to self or others or the disclosure is otherwise legally required or is expressly permitted by the disclosing party. Non personally identifying, aggregate data will be shared with EMU by confidential employees for statistical purposes consistent with the [Clery Act](#).

## CONFIDENTIALITY

Confidentiality means that information shared by an individual with designated confidential campus or community professionals cannot be revealed to any other individual without the express permission of the disclosing party. For more information about confidentiality, refer to Section 3.4.

## DEPUTY TITLE IX COORDINATOR

On EMU's Harrisonburg campus, the deputy Title IX coordinators fulfill the duties of the Title IX coordinator when the Title IX coordinator is unavailable or as duties are assigned to them by the Title IX coordinator. At EMU's Lancaster campus and Washington Community Scholars' Center site, deputy Title IX coordinators serve as the point person for reports of relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy, and they work with the Title IX coordinator to meet the needs of involved parties in the absence of the Title IX coordinator. Deputy Title IX coordinators are eligible to serve as members of the Assessment Team.

## TITLE IX INVESTIGATOR

Title IX investigators serve as designees for the [Title IX coordinator](#) to carry out the investigation of cases and prepare a written preliminary investigation report and/or a final investigation report after the investigation is completed in cases which move through the formal investigation process or where there may be conflict of interest in relation to the Title IX coordinator and various parties involved in a given situation. Title IX investigators conduct thorough and impartial investigations into the facts of a case, including interviewing the reporting party(s), the responding party(s), witnesses, or others who may have relevant information, and collecting any other evidence deemed relevant to a case.

## EMPLOYEE

An employee is any individual who receives compensation from EMU for the performance of their duties.

## FERPA / FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

The [Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g; 34 C.F.R. Part 99](#), or FERPA, is a federal law designed to protect the privacy of student education records. Under FERPA, universities must receive explicit consent from a student (or a student's guardian if the student is under age 18) in order to release a student's education records or the personally identifiable information contained therein. FERPA also allows a student (or their guardian, if under age 18) to report and have fixed any inaccuracies in the student's records.

FERPA protects all documentation related to a student's report, investigation, and resolution of cases of relationship violence, sexual misconduct, and/or other forms of misconduct prohibited under this policy, except as required by law.

## FREEZING

A known response to trauma, evidenced by emotional and/or physical immobility (not speaking, not participating, lack of eye contact, confusion, etc.).

## GENDER EXPRESSION

A person's outward expression of their gender through clothing, grooming, speech, hairstyle, body language, social interactions, and other behaviors. A person's gender expression may not conform with societal expectations of how a person of a perceived gender should present.

## GENDER IDENTITY

A person's internal sense of being male, female, neither, both, or another gender. The internal sense of a person's gender may be different than the sex assigned to the person at birth.

## GENDER IDENTITY BIAS / GENDER BIAS

A pre-formed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender nonconforming individuals.

## **GENDER NONCONFORMING**

The act of not conforming to the gender-based expectations of society, e.g., a woman dressed in traditionally male clothing or a man wearing makeup.

## **GROOMING**

A technique used by an individual to coerce another person. Grooming is a patterned behavior designed to increase opportunities for sexual assault, minimize resistance or withdrawal, and reduce disclosure or belief. The goal of grooming is to affiliate in the social circle of the individual being groomed, generate acceptance of the abusive behavior, and assure that the individual being groomed stays in the relationship. Grooming can target both the intended individual and others in the individual's life.

## **HOSTILE ENVIRONMENT**

A hostile environment is created when unwelcome conduct of a sexual or gender-based nature that affects an individual's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening or abusive educational and/or living environment and is the standard by which a Title IX violation will be determined to have occurred. It will be necessary, but not enough, that the conduct was unwelcome to the person who was harassed. The university will also need to find that a reasonable person in the individual's position would have perceived the conduct as undesirable or offensive in order for that conduct to create or contribute to a hostile environment. To make the ultimate determination of whether a hostile environment exists for an individual, the university considers a variety of factors related to the severity, persistence, and pervasiveness of the sex-based harassment, including:

- a. the type, frequency, and duration of the conduct;
- b. the identity and relationships of persons involved;
- c. the number of individuals involved;
- d. the location of the conduct and the context in which it occurred; and,
- e. the degree to which the conduct affected one or more student's education.

A single, isolated incident of sexual or gender-based harassment may, based on the facts and circumstances, be sufficient to create a hostile environment. Likewise, a series of incidents, whether occurring close in time or not to each other, may be sufficient to create a hostile environment even if each of the incidents is not particularly severe.

## **LICENSED MENTAL HEALTH CLINICIAN**

EMU considers mental health clinicians licensed with the Commonwealth of Virginia and those clinicians in training whose official university responsibilities include providing mental health counseling to members of the Harrisonburg campus community to be licensed mental health clinicians.

Licensed mental health clinicians available to students on EMU Harrisonburg campus include counselors and interns in the Counseling Services center and the campus psychiatrist, located in EMU Health Services. The director of Counseling Services can provide Harrisonburg-based employees with referrals to outside licensed mental health clinicians in EMU's Employee Assistance Program (EAP) or in the community.

Licensed mental health clinicians and any auxiliary staff working on EMU's Harrisonburg campus are considered confidential employees and therefore are not required under [Title IX](#) to report any information regarding an incident of relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy. No licensed mental health clinicians are assigned official university responsibilities at EMU's Lancaster, or Washington DC sites.

## **PERK KIT / PHYSICAL EVIDENCE RECOVERY KIT**

A Physical Evidence Recovery Kit (PERK kit) is collected during a sexual assault forensic exam at a local hospital. Individuals who experience an incident of sexual assault, domestic violence, dating violence, intimate partner violence, or any other instance of sexual or physical abuse may opt to have a PERK kit collected at their local hospital.

PERK kits may be collected even if the individual from whom the PERK kit is collected does not wish to notify local law enforcement or file a report with them. These “anonymous PERK kits” are stored for two years and can be used to prosecute a case if an individual decides to file charges at a later date.

More information about PERK kits can be found in Section 7.4.

## PREPONDERANCE OF THE EVIDENCE

A standard of proof in which the totality of the evidence offered in support of a fact is greater or more convincing than the evidence which is offered in opposition to it, given the totality of information the version of events that is more likely than not. Preponderance of the evidence is understood to require more than 50 percent certainty to determine responsibility for violating university policy (51% or greater). Preponderance of the evidence is the standard of proof used in university Title IX processes, in contrast with the beyond a reasonable doubt standard used in the legal system.

## PRIVACY

Privacy means that information related to a report of relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy will be shared with a limited circle of university employees who have a legitimate need to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the university’s response to reports of relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with federal and state law.

The university will privately maintain any accommodations or protective measures provided to the reporting or responding party(s) to the extent that maintaining such privacy would not impair the university’s ability to provide the accommodations or protective measures. For more information about privacy, refer to Section 3.4.

## RELATIONSHIP VIOLENCE

Relationship violence is a broad term used by EMU to categorize types of violence other than sexual violence that occur in the context of an intimate relationship, often including emotional, psychological, physical, or fiscal abuse. Relationship violence encompasses domestic violence, dating violence, and intimate partner violence. An incident of relationship violence can consist of a single act of violence or a pattern of violent acts. Incidents of relationship violence can occur separate from or in tandem with incidents of sexual misconduct.

## REPORTING PARTY

Any member of the university community who alleges relationship violence, sexual misconduct, and/or any other conduct prohibited under the Relationship Violence and Sexual Misconduct Policy. A reporting party does not have to seek formal disciplinary action to receive the support services outlined for reporting parties in this policy. Rights of a reporting party can be found in Appendix C.

## RESPONDING PARTY

Any member of the university community who has been alleged to have carried out an incident of relationship violence, sexual misconduct, or any other conduct prohibited under the Relationship Violence and Sexual Misconduct Policy. Rights of a responding party can be found in Appendix D.

## RESPONSIBLE EMPLOYEE

A responsible employee is every faculty, staff, and volunteer on campus who works with students or minors (with the exception of confidential employees, defined above). All responsible employees and every person identified as a campus security authority (defined above) under the [Clery Act](#) must immediately report to the [Title IX coordinator](#) any relationship violence, sexual misconduct, or other form of conduct prohibited under this policy reported to them or observed by them, including the name of the reporting and the responding party(s), if known, and all known details. This reporting can be done by emailing [titleixcoordinator@emu.edu](mailto:titleixcoordinator@emu.edu), calling (540) 432-4849, or completing a campus incident form at <https://emu.edu/safecampus/>. The university requires everyone in the campus community, including confidential employees, to report the suspected abuse of those under the age of 18.

## SANE NURSE

A Sexual Assault Nurse Examiner (SANE nurse) administers PERK kits and related exams in a hospital setting. Local hospitals have SANE nurses on call to respond when someone presents at the hospital following an incident of sexual assault, domestic violence, dating violence, intimate partner violence, or any other instance of sexual or physical abuse. SANE nurses may also serve as expert witnesses in cases where charges are filed and a case goes to court.

## SEXUAL MISCONDUCT

Sexual misconduct is a broad term used by EMU to refer to violence of a sexual nature. Sexual misconduct encompasses sexual harassment, sexual violence, sexual exploitation, and nonconsensual sexual contact. Sexual misconduct may occur through physical violence, the threat of violence, and/or coercion. An incident of sexual misconduct can consist of a single act or a pattern of acts. Incidents of sexual misconduct can occur separate from or in tandem with incidents of relationship violence.

## STUDENT

A student will be considered enrolled if the student is pre-registered for courses in any term (fall, spring, or summer) and the student's attendance in at least one class has been verified. After classes begin, students need to be attending classes to continue their enrollment status. Students are considered continuously enrolled when they are registered for consecutive fall and spring terms. Please note that those who arrive to campus prior to the start of classes for official university functions, including but not limited to student employment, trainings, athletics, orientation, etc., are considered Eastern Mennonite University students.

## SUPPORT PERSON

A person chosen by the reporting and/or responding party(s) who serves as an emotional support person through the Title IX process. An advocate cannot be a participant or witness in the investigation.

## THIRD PARTY

A third party is any person on campus that is not directly employed by the university but is contracted to provide services to the university community. For example, employees of Pioneer Catering, EMU's bookstore, and construction workers are third parties on campus.

## TIMELY WARNING

A timely warning is a warning required by the [Clery Act](#) that alerts the campus community to potentially dangerous circumstances. The need for a timely warning is determined by considering the nature of the act reported and the likelihood that continuing danger exists for the campus community. In cases of relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy, the Title IX safety team will meet to determine the need for a timely warning. If warranted, a timely warning will be issued by the Coordinator of Campus Safety and Security, who has the final authority to make the determination according to [Virginia law](#).

## TITLE IX

Title IX is a federal regulation that prohibits sex discrimination in educational institutions that receive federal funding. 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.

## TITLE IX ADVOCATE

Title IX advocates are EMU faculty and staff members whose role is to be a process support person for any party involved in any part of a Title IX process (reporting, investigating, adjudicating, etc.). Title IX advocates are trained and are aware of the Relationship Violence and Sexual Misconduct Policy, including the procedures. The advocate cannot be a witness in the proceedings. At the discretion of the reporting or responding party(s), the advocate may accompany the responding or reporting party(s) to any meeting/hearing related to these procedures.

## TITLE IX ASSESSMENT TEAM

The Title IX assessment team consists of the [Title IX coordinator](#) and one or more Deputy Title IX coordinators, identified by the Title IX coordinator for assistance according to their primary role in

the university system. The Title IX assessment team conducts the staff review to determine disciplinary outcomes for the responding party(s) in an informal RVSM policy or Title IX issue resolution process and refers cases on to a formal process if there is any question of a hostile environment. See Appendix A, Section A.3.2.2. for more information.

## TITLE IX COORDINATOR

The [Title IX coordinator](#) is responsible for overseeing and resolving all reports of sex discrimination covered by the Relationship Violence and Sexual Misconduct Policy, including possible Title IX reports, and identifying and addressing any patterns or systemic concerns that arise during the review of such reports. The coordinator's responsibilities include oversight of a prompt, fair, equitable investigation and resolution process for reports of relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy. The [Title IX coordinator](#) also evaluates trends on campus by using information reported to them and makes recommendations for campus-wide training and education programs and other remedial actions designed to eliminate relationship violence and sexual misconduct, prevent its recurrence, and address its effects.

In addition to the Title IX coordinator's core responsibilities, additional services to the university community include working with campus resources to provide ongoing training to new and current students, faculty, and staff on Title IX issues and procedures. The university will ensure that responsible employees with the authority to address sexual violence, including sexual harassment, know how to respond appropriately to reports of prohibited conduct, that they are obligated to report relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy to the [Title IX coordinator](#), and that all employees understand how to respond to such reports.

Title IX Coordinator: 540-432-4849; [titleixcoordinator@emu.edu](mailto:titleixcoordinator@emu.edu)

## TITLE IX REVIEW PANEL

The Title IX review panel reviews the final report written by the Title IX investigator and makes a finding to determine whether or not a Title IX violation of the Relationship Violence and Sexual Misconduct Policy has occurred. The Title IX review panel is composed of three EMU employees appointed by the Title IX coordinator. For more information on the role of the Title IX review panel, see Appendix A Section A.4.

## TITLE IX SAFETY TEAM

The Title IX safety team consists of the [Title IX coordinator](#), the [coordinator of campus safety and security](#), and the head of the student life division. The Title IX safety team reviews each reported incident of relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy to determine whether a timely warning needs to be sent to the campus community in response to the reported incident.

## TITLE VII

[Title VII of the Civil Rights Act of 1964](#) is a federal law that prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion. Particularly of relevance to EMU's Relationship Violence and Sexual Misconduct Policy are the prohibitions that Title VII establishes towards sex-based discrimination, including discrimination on the basis of pregnancy, childbirth, related medical conditions, or sexual harassment in the workplace carried out by either the institution or other coworkers.

In addition to bringing a case under EMU's Relationship Violence and Sexual Misconduct Policy, employees may also file a complaint directly with the [Equal Employment Opportunity Commission](#) (EEOC). Complaints must be [filed with the EEOC](#) within 180 days of the discriminatory act in order to preserve the rights of the reporting party in a court of law.