

SECTION 3: SCOPE OF POLICY

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Eastern Mennonite University prohibits harassment of, and discrimination against any and all community members. This policy applies to students who are registered or enrolled in credit- or non-credit-bearing coursework (students); all university employees, consisting of full-time and part-time faculty and staff, including temporary and adjunct roles (employees); and contractors, vendors, visitors, volunteers, guests, or other third parties (third parties) on any EMU campus or site.

This policy pertains to acts of relationship violence and sexual misconduct or other forms of prohibited conduct that may be based on sex or gender and are committed by or against students, employees, and third parties. This policy applies when:

1. The conduct occurs on university property or other property owned or controlled by the university;
2. The conduct occurs in the context of a university employment or educational program or activity including, but not limited to, university-sponsored cross-cultural, research, online, or internship /practicum programs;
3. The conduct occurs off-campus but is likely to have a substantial adverse effect on a member of the EMU community; or
4. The conduct occurs outside the context of a university employment or educational program or activity but has continuing adverse effects on, or has the propensity to create a hostile environment for students, employees, or third parties while on university property, other property owned or controlled by the university, or in any university employment or education program /activity.

Some conduct prohibited under the Relationship Violence and Sexual Misconduct Policy, if not a form of sex discrimination (e.g., stalking or hazing) and/or not done in retaliation for acts or reports of relationship violence or sexual misconduct (e.g., bullying and intimidation) will be adjudicated under EMU's student conduct policy or, in the case of an employee, under processes administered by EMU's human resources office.

3.1. NOTICE OF NON-DISCRIMINATION

The university is committed to maintaining an environment free from harassment and discrimination for everyone. EMU does not discriminate on the basis of race, sex, national origin, religion, sexual orientation, gender identity or expression, or any other protected status in any of its education or employment programs and activities. This policy prohibits specific forms of behavior that may violate [Title IX of the Education Amendments of 1972](#) (Title IX); relevant provisions of the [Violence Against Women Reauthorization Act of 2013](#) (VAWA); [Title VII of the Civil Rights Act of 1964](#) (Title VII); the [Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act](#) (Clery Act); and corresponding state regulations in Virginia, Pennsylvania, and Washington, DC.

The university recognizes that it is important to coordinate this policy with other existing policies related to harassment and discrimination, knowing that sex discrimination can occur in conjunction with discrimination and misconduct related to a person's race, ethnicity, national origin, religion, age, disability, and/or other protected status. Reports that include both sex discrimination and discrimination related to another protected status may be adjudicated under this policy and any university policies related to the other protected status(es) (for example, EMU's bias policy). Questions about which policy applies in a specific instance should be directed to the Title IX coordinator.

This policy covers relationship violence and sexual misconduct. Employees should seek further information regarding equal opportunity, disability, harassment, discrimination, and retaliation that is not based on sex or gender discrimination with the director of human resources at (540) 432-4148 or hr@emu.edu.

3.2. BIAS

Bias is prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair. EMU makes every effort to recognize and mitigate the impacts of bias. The university strongly encourages all parties involved to identify, name, and work to address the various forms of bias that may impact the campus community.

3.3. CONFLICT OF INTEREST

Conflict of interest means that a person may have the potential to undermine the impartiality of a process due to the possibility of a conflict between the person's self-interest and/or professional or public interest. The university makes every effort to identify and prevent conflicts of interest at any and every level. Should a conflict of interest be identified, the university will identify and utilize alternative (up to and including external) resources.

3.4. PRIVACY AND CONFIDENTIALITY

The university is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report under this policy. The university will provide assistance to help students, employees, and third parties make informed choices. With respect to any report under this policy, the university 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 relationship violence and sexual misconduct; prevent its recurrence; and remedy its effects. Privacy and confidentiality have distinct meanings under this policy.

3.4.1. 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 legitimate need to assist in the assessment, investigation, and adjudication 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 guidance about sharing and safeguarding private information in accordance with federal and state law.

Further, 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.

The privacy of student education records will be protected in accordance with the [Family Educational Rights and Privacy Act \(FERPA\)](#). All documentation related to a student's report, investigation, and resolution are protected by [FERPA](#) and will not be released, except as required by law. Non-identifying information about a report will be shared with Campus Safety and Security to comply with the [Clery Act](#). All publicly available record keeping, including those required under Clery such as the daily crime log, annual security report, and timely warnings, are maintained without the inclusion of personally identifiable information about reporting parties. In addition, any person involved in a case of relationship violence, sexual misconduct, and/or any other form of conduct prohibited under this policy may request that their directory information on file be removed from public sources by contacting the Title IX coordinator at titleixcoordinator@emu.edu or by calling 540-432-4849.

The privacy of an individual's medical and related records is generally protected by the [Health Insurance Portability and Accountability Act \(HIPAA\)](#), except health records protected by [FERPA](#) and by [Virginia's Health Records Privacy Act, Va. Code § 32.1-127.1:03](#). Access to an employee's personnel records may be restricted in accordance with the [Virginia Freedom of Information Act \(FOIA\)](#).

The university respects the privacy interests of students and employees. Information reported to the Title IX coordinator will only be shared with the university officials who will assist in responding, investigating, and/or resolving a report. The university will document non-identifying information in the campus incident log as required by the [Clery Act](#). Should the university determine there is a serious or imminent threat, a timely warning notice will be shared with the community.

3.4.2. 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. The university has designated groups of individuals who can have privileged communications as confidential employees and are therefore exempt from reporting incidents of relationship violence, sexual misconduct, and/or other forms of conduct prohibited under this policy that are disclosed to them while they are serving in particular confidential roles.

Disclosures must occur when confidential employees are in their role as a confidential employee in order for the disclosure to remain confidential. Disclosures that occur when the confidential employee is not acting in this official capacity must be reported on the [Campus Safety Incident Form](#) or directly to the Title IX coordinator.

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](#).

The following classifications of individuals are confidential employees under university policy when serving in these official capacities:

1. Licensed mental health clinicians and those working in auxiliary roles within EMU's Counseling Services. Mental health clinicians licensed by the state in which they practice and those clinicians in training whose official university responsibilities include providing mental health counseling to members of the campus community.
2. Medical health professionals who are registered with the state in which they practice with the and whose official university responsibilities include providing health services to members of the campus community.
3. Pastors who are licensed and/or credentialed and whose official university responsibilities are to provide pastoral services to members of the university community. For example, students may disclose sexual abuse to a pastor who is their faculty member. If this disclosure is received in the context of the pastor's role as a faculty member, the incident must be reported.

The university will document non-identifying information in the campus incident log as required by the [Clery Act](#). Should the university determine there is a serious or imminent threat, a timely warning notice will be shared with the community.

3.5. EMPLOYEE REPORTING RESPONSIBILITIES

[Title IX](#) uses the concept of notice, and imposes obligations for a “prompt and effective remedy” on colleges and universities when notice of sex and/or gender discrimination or harassment is given to a responsible employee. A school has notice if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. A responsible employee is every faculty, staff, and volunteer on campus who works with students or minors (with the exception of the confidential employees named above).

All responsible employees must immediately report to the Title IX coordinator any relationship violence, sexual misconduct, or other forms 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 calling (540) 432-4849, emailing titleixcoordinator@emu.edu, or completing a campus safety incident form at <https://emu.edu/safecampus/>. The university requires everyone in the campus community, including confidential employees, to report suspected abuse of children.

Faculty and staff who receive disclosures through classroom discussions or assignments are not under obligation to report to the Title IX coordinator if the intent of the individual was not to seek support services or make an official report to the university. The determination as to intent may be made in conversation between the employee and student, and/or in consultation with the Title IX coordinator.

Public awareness events, open forums or disclosures made during formal Institutional Review Board projects are not considered a report of relationship violence, sexual misconduct and therefore will not initiate the university’s obligation to investigate these particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts.

Reporting parties who wish to make a confidential disclosure have multiple confidential resources available to them. For a full listing see Appendix F.

3.6. REQUEST FOR ANONYMITY BY A REPORTING PARTY

Reporting parties who experience relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy may request anonymity, including that their name not be shared with the responding party(s), that the responding party(s) not be notified of the report, and/or that no investigation occur. Where the reporting party(s) requests that their identity not be shared with the responding party(s) or that the university not pursue an investigation, the university will balance this request with the university’s responsibility to provide a safe and non-discriminatory environment for all university community members as required under the [Clery Act](#).

The university, through the Title IX coordinator, will take all reasonable steps to investigate and respond to the report consistent with the request not to share identifying information or pursue an investigation, but their ability to do so may be limited. If the reporting party wants to tell the Title IX coordinator what happened, but also wants to maintain anonymity, the Title IX coordinator will tell the reporting party that the university will consider the request but cannot guarantee anonymity. Requests for anonymity are balanced against the following factors:

1. The respective ages and roles of the reporting and the responding parties;
2. Whether there have been other reports of relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy involving the responding party(s);
3. Whether the circumstances suggest there is a risk of the responding party(s) committing additional acts of relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy;
4. Whether the responding party(s) has a history of arrests or records indicating a history of violence;
5. Whether the report indicates the responding party(s) threatened further sexual violence or other violence against the reporting party(s) and other individuals involved;
6. Whether the reported conduct was committed by multiple individuals;
7. Whether the circumstances suggest there is a risk of future acts of relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy under similar circumstances;
8. Whether the reported conduct was perpetrated with a weapon;
9. Whether the university possesses other means to obtain relevant evidence (e.g., security cameras or security personnel, physical evidence).

Where the university is unable to act consistent with the request of the reporting party(s), the Title IX coordinator will inform the reporting party(s) about the chosen course of action, which may include the university seeking disciplinary action against the responding party(s). Alternatively, the course of action may also include steps to eliminate the effects of the relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy and prevent its recurrence that do not involve formal disciplinary action against a responding party(s) or revealing the identity of the reporting party(s).

Where the university determines that it must move forward with an investigation despite a reporting party's request for anonymity, the university will notify the reporting party(s) and will make reasonable efforts to protect the privacy of the reporting party(s) to the extent possible. However, certain actions that may be required as part of the university's response, including an investigation and disciplinary resolution, will involve speaking with the responding party(s) and others who may have relevant information, in which case the responding party's identity may have to be disclosed only to those individuals who need to know in order to protect the safety of the campus community. In such cases, the university will notify the reporting party(s) that it intends to move forward with an investigation, but in no event will the reporting party(s) be required to participate in any such actions undertaken by the university.