



## **Title IX and Sexual Misconduct Policy and Complaint Procedure**

### **I. Overview**

Title IX of the Education Amendments of 1972 protects individuals from discrimination based on sex in any educational program or activity operated by recipients of federal financial assistance. Title IX states:

*"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." (20 U.S.C. Sec. 1681).*

This Title IX and Sexual Misconduct Policy and Complaint Procedure prohibits sex discrimination and provides an avenue for those who have been the target of or who witness Sex-Based Misconduct to report such Sex-Based Misconduct, without fear of Retaliation.

### **II. Policy Statement**

As a Christian institution of higher learning, Emmaus University ("Emmaus") seeks to provide an atmosphere of respect for all members of the Emmaus community and an educational and work environment free from Sex-Based Misconduct. To this end, Emmaus expects members of the Emmaus community to comply with legal requirements as well as higher standards of conduct consistent with our belief in Jesus Christ which elevates our view of human worth, dignity and interpersonal communication. This Policy describes the prohibition of unlawful discrimination, harassment, and sexual misconduct and has been developed in order to honor biblical principles, comply with federal and state law, and follow best practices for campus safety. Emmaus prohibits Sex-Based Misconduct as well as Retaliation against any individual who reports a Title IX Complaint (see "Definition" section below, "Formal Complaint").

### **III. Notice of Non-Discrimination**

Emmaus University is non-discriminatory and admits students who are personally committed to faith in Jesus Christ of any race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the University. Emmaus University does not discriminate on the basis of sex, race, color, national or ethnic origin in administration of its educational and admission policies and other University-administered programs.

### **IV. Application (Scope) of Policy**

This Policy applies to all members of the Emmaus community—students (enrolled for

credit or non-credit bearing coursework), faculty (full or part-time), administrators, and staff (full or part-time); and vendors, contractors, and third parties who visit the Emmaus campus. This Policy also applies to persons conducting business with or visiting Emmaus.

Title IX jurisdiction includes conduct occurring on the Emmaus campus as well as in all of Emmaus's programs and activities in the United States including locations, events, or circumstances in which the school exercises substantial control over both the Respondent (see "Definition" section below) and the context in which the Sexual Misconduct occurred. This may include programs and activities that are academic, educational, extra-curricular, or athletic.

This Policy also refers to conduct that does not fall within Title IX jurisdiction but falls under the definition of sex-based discrimination or sexual harassment when the school exercises substantial control over the Respondent; this prohibited conduct includes Sexual Misconduct that occurs off-campus, when the conduct adversely impacts the education or employment of a member of the University community or otherwise threatens the health or safety of a member of the University community.

Conduct that is beyond the scope of this Policy, including sexual conduct disallowed by the Emmaus student lifestyle covenant but that is not under the definition of sex-based discrimination or sexual harassment (e.g., consensual sexual activities), may be subject to other Emmaus policies including, but not limited to, student conduct policies (see Student Handbook) or employee conduct policies (see Employee Handbook).

This Policy sets forth the exclusive means of resolving sex-based discrimination or sexual harassment complaints. To the extent there are any inconsistencies between the procedures set forth herein and other Emmaus grievance, complaint, or discipline procedures, this Sexual Misconduct Policy will control.

#### **V. Title IX and Sexual Misconduct Officials**

Emmaus's Title IX and Sexual Misconduct Officials, including Title IX Coordinator(s), Investigator(s), Decision-Maker(s), and any person designated to facilitate an Informal Resolution process must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. Emmaus will ensure that these Officials receive training on the definition of Sexual Harassment, the scope of Emmaus's education program or activity, how to conduct an Investigation and grievance process including Hearings, Appeals, and Informal Resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Emmaus will ensure that Decision-Makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence.

Emmaus will also ensure that Investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an Informal Resolution process, will not rely on sex stereotypes and will

promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.

**A. Title IX Coordinator:** Emmaus's Title IX Coordinator(s) and Deputy Coordinator(s) are responsible for implementing and monitoring Title IX Compliance on behalf of the University. This includes coordination of training, education, communications, and administration of the Complaint Resolution Procedures for the handling of suspected or alleged violations of this Policy. The Title IX Coordinator(s) and contact information are below:

- Becky Perkins, Title IX Coordinator/Administrative Coordinator/Advancement Manager  
Phone Number: 563-588-8000 ext. 1123  
Mailing Address: 2570 Asbury Road, Dubuque, IA 52001  
Email Address: bperkins@emmaus.edu  
Office Location: Main Building, first floor, rm 102
- Chad Cunningham, Vice President for Advancement/Title IX Deputy Coordinator  
Phone Number: 563-588-8000 ext. 1124  
Email Address: ccunningham@emmaus.edu

**B. Title IX and Sexual Misconduct Team:** The University has identified members of the staff who have undergone training to investigate Sexual Misconduct reports and determine outcomes. These officials receive annual training on issues related to: domestic violence, dating violence, sexual assault, and stalking, as well as other forms of sexual misconduct, as outlined in this policy and how to conduct an investigation and grievance process which protects the safety of all parties and promotes transparency and accountability. Contact the Title IX Coordinator for information regarding members of the Title IX and Sexual Misconduct Team.

## **VI. Prohibited Conduct**

This Policy prohibits Sexual Misconduct which, for the purposes of this Policy, includes Sex-Based Discrimination and Sexual Harassment, as defined below, by any employee, student, or third party.

### **A. Sex-Based Discrimination**

Discrimination is unequal, adverse treatment of an individual because of his or her protected class status. For instance, giving two similarly situated individuals different pay, opportunities for advancement, or educational opportunities may constitute discrimination if the reason for the different treatment is the protected status of one of the individuals. This Policy prohibits discrimination on the basis of sex. Discrimination on the basis of sex also encompasses Sexual Harassment, as defined below.

### **B. Sexual Harassment**

For the purposes of Title IX law, Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (quid pro quo harassment by an Emmaus employee);

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Emmaus's education program or activity; or
3. Any instance of one or more of the following:
  - a. "Sexual Assault" as defined in the Clery Act: an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
  - b. "Dating Violence" as defined in the Violence Against Women Act (VAWA): violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - (i) The length of the relationship.
    - (ii) The type of relationship.
    - (iii) The frequency of interaction between the persons involved in the relationship.
  - c. "Domestic Violence" as defined in VAWA: includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime occurred.
  - d. "Stalking" as defined in VAWA: engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

For the purposes of this Policy, prohibited Sexual Harassment includes the above definition of Sexual Harassment under Title IX, as well as any instance of the following (defined in "Definitions" section below):

- a) Dating Violence
- b) Domestic Violence
- c) Hostile Environment Sexual Harassment
- d) Intimidation
- e) Non-Consensual Sexual Conduct
- f) Non-Consensual Sexual Intercourse
- g) Quid Pro Quo Sexual Harassment
- h) Sexual Assault
- i) Sexual Exploitation
- j) Stalking

### **C. Violations of Iowa State Law**

Behavior that violates this Policy also may violate the laws of the local jurisdiction in which the incident occurred and subject a respondent to criminal prosecution by the presiding authority. An individual can choose to make a report to external law enforcement at any time and doing so does not preclude the individual from making a report to the University. Both processes can be pursued if an individual chooses to do so. Emmaus encourages individuals to report an incident which may be a violation of Iowa State Law to external law enforcement. Prompt reporting to external law enforcement is important in a criminal prosecution. Below is a definition of sexual abuse in the third degree from Iowa Code Law 709.4. See Iowa Code Law for additional definitions of criminal acts.

Iowa Code Law 709.4 Sexual abuse in the third degree:

1. A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:
  - a. The act is done by force or against the will of the other person, whether or not the other person is the person's spouse or is cohabiting with the person.
  - b. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:
    - (1) The other person is suffering from a mental defect or incapacity which precludes giving consent.
    - (2) The other person is twelve or thirteen years of age.
    - (3) The other person is fourteen or fifteen years of age and any of the following are true:
      - (a) The person is a member of the same household as the other person.
      - (b) The person is related to the other person by blood or affinity to the fourth degree.
      - (c) The person is in a position of authority over the other person and uses that authority to coerce the other person to submit.
      - (d) The person is four or more years older than the other person.
  - c. The act is performed while the other person is under the influence of a controlled substance, which may include but is not limited to flunitrazepam, and all of the following are true:
    - (1) The controlled substance, which may include but is not limited to flunitrazepam, prevents the other person from consenting to the act.
    - (2) The person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance, which may include but is not limited to flunitrazepam.
  - d. The act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless.
2. Sexual abuse in the third degree is a class "C" felony.

### **VII. Definitions**

- A. Abuse:** For the purposes of this Policy, abuse includes Emotional Abuse, Physical Abuse, Psychological Abuse, and Sexual Abuse, as defined below:
  - a) Emotional Abuse:** Includes hurting another person's feelings by saying cruel, unfair comments or by name calling, and may include but is not limited to:
    - Cursing, swearing, and/or screaming

- Repeated harassment, interrogation, or degradation
- Attacks on self-esteem and/or insults to personhood (name-calling, put-downs, ridicule)
- Attacks on and/or insults about people the complainant cares for
- Controlling or limiting complainant's behavior (e.g. keeping him/her from using the phone or seeing friends, not letting him/her leave the room, following him/her, checking mileage on his/her car)
- Forcing the complainant to do degrading things
- Using physical size to intimidate
- Using money to control

**b) Physical Abuse:** Is any forceful or violent physical behavior including but not limited to:

- Slapping
- Tripping
- Choking
- Spanking
- Punching
- Scratching
- Kicking
- Grabbing
- Pinching
- Burning
- Pushing
- Restraining by force
- Strangling
- Throwing objects at partner
- Shoving
- Using or threatening to use any weapon
- Biting
- Pulling hair

**c) Psychological Abuse:** Is any threat to do bodily harm to a partner, a child, a family member, friends, pets, or one's self (suicide). Psychological abuse involves not only hurt and anger, but also intimidation and fear. The purpose of psychological abuse is to make the complainant emotionally insecure about her own self-worth and to cause her to feel helpless and/or not able to escape further physical, sexual, emotional, or psychological abuse.

Examples include but are not limited to:

- Threatening to punch, hit, slap, or kick
- Threatening to use a weapon
- Threatening to harm one's self/commit suicide if the victim leaves
- Threatening to harm or kill beloved pets
- Making vague threats such as "You're going to get it!"
- Minimizing abuse, saying it didn't happen or that the complainant

caused it

- Smashing or breaking things

**d) Sexual Abuse:** any non-consenting sexual act as outlined in the sexual assault portion of this policy and/or other examples including, but not limited to, when the abuser:

- Insists that the complainant dress in a more sexual way than they wish to dress
- Makes demeaning remarks about how the complainant is dressed
- Makes insulting comments about the complainant's body and/or body parts
- Accuses the complainant of sexual activity with others

**B. Actual Knowledge:** For the purposes of this Policy, Actual Knowledge means notice of Sex-Based Misconduct or allegations of Sex-Based Misconduct to Emmaus's Title IX Coordinator or any Responsible Employee of Emmaus (see below for "Responsible Employee" definition). This "notice" includes, but is not limited to, a report of Sex-Based Misconduct to the Title IX Coordinator.

**C. Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment or other sex-based misconduct.

**D. Consent:** The University believes that consent is essential in matters involving sexual activity. Consent is informed, through mutually understandable words that indicate a willingness to participate in a mutually agreed upon sexual activity. Talking with a partner about sexual activity may seem awkward, but such conversations serve as the basis for sexual experiences in the context of mutual willingness and respect. Silence cannot be understood as consent. Furthermore, at any time during consensual sexual activity, a person may refuse to continue further with any sexual activity. Consensual sexual activity recognizes sober, verbal communication, free of threats or other coercion.

**a)** Consent is a voluntary agreement to engage in sexual activity that may be withdrawn at any time. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent.

**b)** If coercion, intimidation, threats, and/or physical force are used, there is no consent.

**c)** If a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature or extent of the sexual situation, there is no consent.

- i. Warning signs of when a person may be incapacitated due to drug and/or alcohol use may include: slurred speech, falling down, passing out, and vomiting.

**d)** If a person is asleep or unconscious, or otherwise incapacitated, there is no consent.

**e)** If a person is below the minimum age of consent in the applicable jurisdiction, there cannot be consent. The Iowa age of consent is 16 years old.

**f)** Consent to one form of sexual activity does not imply consent to other forms of sexual activity.

- g) Being in a romantic relationship with someone does not imply consent to any form of sexual activity.
  - h) Effective consent may not exist when there is a disparity in power between parties (e.g., faculty/student, supervisor/employee).
- E. Dating Violence:** Dating Violence means violence committed by a person—
  - (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - (i) The length of the relationship.
    - (ii) The type of relationship.
    - (iii) The frequency of interaction between the persons involved in the relationship.
 This violence could include, but is not limited to, emotional, physical, psychological, or sexual abuse or the threat of such abuse.
- F. Domestic Violence:** “Domestic Violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime occurred.  
 This violence could include, but is not limited to:
  - a) causing or attempting to cause physical or mental harm to a Family or Household Member;
  - b) interference with personal liberty or willful deprivation of a Family or Household Member;
  - c) placing a Family or Household Member in fear of physical or mental harm;
  - d) causing or attempting to cause a Family or Household Member to engage in involuntary sexual activity by force, threat of force, or duress; or
  - e) engaging in activity toward a Family or Household Member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
- G. Formal Complaint:** A document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a respondent and requesting that the institution investigate the allegation of Sexual Harassment.
- H. Hostile Environment:** A Hostile Environment is created if the Sex Based Misconduct is sufficiently serious that it denies or limits a student or employee’s ability to participate in or benefit from programs, services, or activities that Emmaus offers; or has the purpose or effect of interfering with an individual’s employment.
- I. Incapacitation:** The physical and/or mental inability to make informed, rational judgements such as: (1) due to the use of drugs or alcohol; and/or (2) when a person is sleeping or unconscious; and/or (3) due to an intellectual or other disability that prevents the person from having the capacity to give consent.
- J. Intimidation:** Intimidation is created through coercion and manipulation, including threats of harm, used to force the targeted individual(s) to behave as directed;



exhibiting extreme possessiveness or jealousy to control or compel the targeted partner(s) behavior; threatening to share information which could damage the target's reputation or relationships with others to compel the targeted partner's behavior; threatening to harm the target's family, friends, pets, or property; or threatening the target with physical or sexual harm.

- K. Non-Consensual Sexual Contact:** Any intentional sexual touching without effective consent. This includes any contact with the breasts, buttocks, groin, genitals, mouth or other bodily orifice of another person; the touching of another with any of these body parts; or any other intentional contact of a sexual nature without consent.
- L. Non-Consensual Sexual Intercourse:** Any sexual intercourse or penetration (anal, oral, or vaginal), however slight, with any object or body part, upon another person without effective consent.
- M. Quid Pro Quo Sexual Harassment:** Sexual Harassment that conditions the terms or conditions of employment, educational benefits, academic grades, living environment, participation in activities at Emmaus, or the provision of any other aid, benefit, or service of the University, either explicitly or implicitly, on an individual's participation in unwelcome sexual conduct.
- N. Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or other sex-based misconduct.
- O. Responsible Employee:** any Emmaus employee who is either a) a non-student full-time or part-time employee, or b) a student-employee in the Residence Life department (e.g. a Resident Assistant (RA)). Responsible Employees are required to report allegations of sex and gender-based discrimination, including sexual misconduct, to the Title IX Coordinator.
- P. Retaliation:** Taking any adverse or hostile act, engaging in harassment, or making an adverse employment or academic decision against an Emmaus employee or student or a third party because that employee, student, or third party has opposed a violation of this Policy, filed a Title IX Complaint, assisted or participated in a Title IX Investigation, proceeding, or hearing.
- Q. Sexual Assault:** Sexual Assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. This includes, but is not limited to, one or more of the following:
  - a) **Offensive Touching Sexual Assault:** The touching of an unwilling or non-consensual person's genitals, breasts, thighs, buttocks, or mouth either directly or through one's clothing with one's own hands or other intimate parts (such as genitalia; buttocks or mouth). This may also include forcing an unwilling person to touch another's intimate parts.
  - b) **Non-consensual Sexual Assault:** The unwilling or non-consensual penetration of a person's intimate parts (such as genitalia, buttocks, or mouth) with any object or body part. This includes, but is not limited to penetration of such body parts without consent through the use of coercion. Coercion is defined as unwanted sexual contact with the threat of non-physical punishment, promise of reward, or pestering/verbal pressure. Note: If a person says "no" once, it counts; he or she does not have to say it more than once or prove resistance.

- c) **Forced Sexual Assault:** The unwilling or non-consensual penetration of a person's intimate parts (such as genitalia, buttocks, or mouth) with any object or body part that is committed either by force, threat, intimidation, or through exploitation of another's mental or physical condition of which the assailant was aware or should have been aware. The use of alcohol and/or other types of drugs (e.g. GHB, rohypnol, etc.) by either party, in conjunction with an incident of sexual assault, does not mitigate accountability for the commission of this offense or diminish the seriousness of the offense. If the complainant is incapacitated to the point that they cannot give their consent, this is considered to be an act of forced sexual assault. Note: A person who is drunk or has passed out cannot be assumed to give consent. A person who is not of age under jurisdictional law cannot give consent.

**R. Sexual Exploitation:** Sexual exploitation occurs when an individual takes non-consensual, unfair, or abusive advantage of another for his/her own benefit, even though the behavior may not meet the definition of one of the other sexual misconduct definitions set forth herein. Examples include, but are not limited to:

- a) Stalking with a sexual component. Stalking may take many forms, including persistent calling, texting, or posting on a social networking site as well as physical stalking. When the content of the messages or the purpose or nature of the physical stalking is of a sexual nature, sexual misconduct has occurred.
- b) Voyeurism is a form of sexual exploitation in which one individual engages in secretive observation of another for personal sexual pleasure, or engages in non-consensual video or audiotaping of sexual acts. Although the subject of the secretive viewing or taping may be unaware of the observation, this behavior is a form of sexual misconduct and violates the integrity of the victim.
- c) Disrobing or exposure in the presence of another person without consent.
- d) Disrobing or exposing another person without his or her consent.
- e) Inter-personal or intimate partner violence (relationship violence).

**S. Stalking:** The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

Stalking refers to behaviors which include, but are not limited to:

- a) Abusive or excessive telephone calls, email messages, phone messages, or text messages to the complainant's home and/or work
- b) Trespassing or vandalizing the complainant's property
- c) Following and/or threatening the victim and the complainant's friends and family
- d) Observing the complainant from a distance
- e) Driving by the complainant's home, school, and/or work
- f) Mailing or leaving cyber or written messages that would cause a reasonable person to feel substantial emotional, physical, or psychological stress
- g) Leaving objects with the intent to frighten or control, or that would cause a reasonable person to feel substantial emotional, physical, or psychological stress

- T. Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to Emmaus's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Emmaus's educational environment, or deter sexual harassment.

## **VIII. Reporting Policies and Protocols**

A guiding principle in the reporting of domestic violence, dating violence, sexual assault, and stalking is to avoid possible re-victimizing of the complainant by forcing the individual into any plan of action. Title IX and Student Conduct officials receive training so that they have the specialized skill and understanding to conduct prompt and effective sexual and gender-based harassment investigations.

### **A. Amnesty for Student Misconduct**

Emmaus recognizes that victims and individuals with information about Sex-Based Misconduct may hesitate to come forward out of fear that their own actions are violations of Emmaus's student conduct policies, including without limitation policies related to the use of drugs and alcohol and/or sexual activity. While Emmaus does not condone violations of such policies, it considers reporting incidents of Sex-Based Misconduct to be of principal importance.

Therefore, in order to facilitate reporting and resolution of Sex-Based Misconduct, Emmaus will extend immunity for violation of Emmaus's student conduct policies for conduct in which any victim or witness of Sex-Based Misconduct might have engaged in connection with the reported Sex-Based Misconduct incident. This includes policies concerning drug or alcohol possession or consumption or sexual activity. However, such immunity will not be extended to the extent Emmaus determines that the violation of Emmaus's student conduct policies involved illegal activity or involved violations that did, do, or may place the health or safety of any other person at risk.

Emmaus reserves the right to charge an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith; this type of charge does not constitute Retaliation (see "Retaliation" section below).

### **B. Confidential Resources and Confidential Advisors**

People on campus have different reporting responsibilities and different expectations regarding confidentiality, depending on their roles at the University and upon University policy. All parties should be aware of confidentiality, privacy and mandatory reporting, when consulting campus resources, in order to make informed choices. Emmaus provides students with confidential resources listed below. These resources can share options and advice without any obligation to report the offense.

All other employees are there to report crimes and policy violations, and will take

action when you report your victimization to them (see definition of “Responsible Employee” in Definitions section). Some people can speak with you without having to divulge private information you share with them except under certain circumstances, some of which are described below. A victim may seek assistance from these campus community members without starting a formal process that is beyond the victim’s control, or violates his/her privacy. Please note that the University will submit anonymous statistical information for Clery Act purposes. The following explains each of these types of reporting.

If you have suffered or witnessed Sex-Based Misconduct, you may wish to speak with someone confidentially about what happened to you. The resources listed below can provide confidential counseling and support, and, except in limited circumstances, will not share information with either law enforcement or Emmaus without an individual’s consent. These resources are permitted by the nature of their profession to maintain your confidentiality. A Title IX Complaint or police report is not necessary to utilize these resources.

### **Confidential Resources**

- Heath Munson, Campus Mental Health Professional  
563-588-8000 extension 1115  
hmunson@emmaus.edu  
2570 Asbury Road, Dubuque, IA 52001
- Dr. Yiyong Yuk, Education Faculty  
563-588-8000 ext. 3103  
yyuk@emmaus.edu
- Roy Kosin, Bible Faculty  
563-588-8000 ext. 1209  
rkosin@emmaus.edu
- Riverview Center Sexual Assault and Domestic Violence Services  
o Hotline 1-888-557-0310, 2600 Dodge St, Dubuque, IA 52003
- Mercy Hospital (563) 589-9666, 250 Mercy Dr.
- Iowa Victim Service 1-800-770-1650
- Finley Hospital (563) 582-1881, 350 N Grandview Ave
- National Sexual Assault Hotline 1-800-656-HOPE (4673)

In addition to the resources above, community services are available, even if a Title IX Formal Complaint is not made. Emmaus strongly encourages anyone who feels he or she is, or has been, the victim of Sex-Based Misconduct to seek assistance to care for himself or herself emotionally and physically through confidential crisis intervention, healthcare, and/or counseling.

### **External Agencies**

At any time during the pendency of Investigation and/or Appeal described below, students and employees with questions about Title IX or those who believe they have been subject to Sex-Based Misconduct or Retaliation may file a Title IX Complaint with the Office for Civil Rights (OCR):

- **Office for Civil Rights (OCR)**  
Office for Civil Rights U.S. Department of Education  
Citigroup Center  
500 W. Madison Street, Suite 1475  
Chicago, IL 60661-4544  
Telephone: 312-730-1560  
FAX: 312-730-1576; TDD: 877-521-2172  
Email: OCR.Chicago@ed.gov  
<http://www.ed.gov/>
- **Dubuque Human Rights Commission**  
1300 Main Street, Dubuque, IA 52001  
(563) 589-4190

Likewise, at any time during the pendency of the Investigation and/or Appeal described below, employees who believe they have been subject to Sex-Based Misconduct or Retaliation in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq., may file a complaint with the state agency listed below or the appropriate Equal Employment Opportunity Commission ("EEOC") office:

- **Iowa Civil Rights Commission (FEPA)**  
211 East Maple Street, 2<sup>nd</sup> Floor  
Des Moines, IA 50309-1858  
1-800-457-4416
- **United States Equal Employment Opportunity Commission (EEOC)**  
Reuss Federal Plaza  
310 West Wisconsin Avenue, Suite 500  
Milwaukee, WI 53203  
414-662-3680

### **C. Reporting Sexual Misconduct**

Emmaus students and employees who experience or witness Sex-Based Misconduct of any kind are likely to have concerns and questions, including what options are available for reporting and responding to Sex-Based Misconduct. There are a number of reporting options available. It is important to understand that choosing one option does not preclude you from pursuing another option now or in the future. It is also important to understand that reporting Sex-Based Misconduct does not require a Formal Complaint to be made and that the grievance process is initiated by a Formal Complaint, not by a report (see "Filing a Formal Complaint" section below for more information).

The contact information for the Title IX Coordinator is listed above. Any person may report Sex-Based Misconduct using any of the following avenues:

- Report misconduct to the Title IX Coordinator in person.
- Report to the Title IX Coordinator by mail, email, or phone at any time.
- Report to another trusted Emmaus official, including any Title IX team member, Resident Assistant (RA), Resident Director (RD), Coach, Faculty Advisor, or Administration who will provide information as required under the policy to the Title IX Coordinator.

If a report of Sex-Based Misconduct is made or if Emmaus has Actual Knowledge (see “Definitions” section above) of Sex-Based Misconduct, the Title IX Coordinator will promptly contact the Complainant to discuss availability of Supportive Measures (with or without filing a Formal Complaint) and to explain the process for filing a Formal Complaint. The Title IX Coordinator will consider the Complainant’s wishes with respect to the Supportive Measures. Prior to filing a Formal Complaint, or if no Formal Complaint is made, the identity of the Complainant may be kept confidential from the Respondent.

Victims or witnesses of Sex-Based Misconduct or Retaliation should immediately report the misconduct. They should not wait to report the Sex-Based Misconduct until it becomes sufficiently serious (*i.e.*, severe, pervasive, or persistent) to create a Hostile Environment (see “Definitions” section above).

- a) **Students.** A student who has experienced and/or witnessed what he or she believes is a form of Sex-Based Misconduct is encouraged to: (1) File a formal Title IX Complaint; and/or (2) file a police report; and/or (3) seek confidential counseling and/or assistance as described above.
- b) **Employees.** All Emmaus employees are required to report to the Title IX Coordinator all relevant details about any alleged Sex-Based Misconduct that a student or another person has shared with such employee, unless such employee is listed as a Confidential Resource above or is statutorily prohibited from reporting such information, such as counseling and health care professionals. Relevant information includes the name of the alleged perpetrator (the “Respondent,” see “Definitions” section above) (if known), the student or other person who experienced the alleged Sex-Based Misconduct, any others involved in the Sex-Based Misconduct, as well as relevant facts, including the date, time, and location of the Misconduct. Employees who hear about an incident of Sex-Based Misconduct should not promise confidentiality to the person who shares this information with the employee. Employees should tell the person sharing the information that: (1) the employee has an obligation to report the name of the Respondent and persons involved in the alleged Sex-Based Misconduct, as well as any relevant facts regarding the incident (including date, time, and location), to the Title IX Coordinator; (2) that the person has an option to request that Emmaus maintain his or her confidentiality, which the Title IX Coordinator will consider; (3) that the person may share the information confidentially with the confidential resources described in this policy; (4) that the person has a right to file a Title IX Complaint with Emmaus; and (5) that the person has a right to report a crime to local law enforcement.

**Important:** Please note that all Emmaus employees must report suspected or known child abuse (including any suspected Sex-Based Misconduct perpetrated against those under the age of 18) to the applicable state children and family service department:

- **Iowa**

Iowa Department of Human Services (IDHS).  
Hotline: 1-800-362-2178

#### **D. Filing a Title IX or Sexual Misconduct Formal Complaint**

Title IX or other Sexual Misconduct Complaints by or against Emmaus students, Emmaus employees, or third parties, can be filed with the Title IX Coordinator at Emmaus. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail using the contact information listed above (see “Title IX Officials” section).

At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of Emmaus.

The filing of a Formal Complaint will initiate the grievance process. A Formal Complaint cannot be filed anonymously. It must include the Complainant’s physical or digital signature, or otherwise indicate the Complainant is the person filing the Complaint. During the grievance process, the Complainant’s identity, if known, will be revealed to the Respondent.

Victims or witnesses of Sex-Based Misconduct or Retaliation who wish to file a Formal Complaint should do so as soon as possible after an incident. The Title IX Coordinator coordinates and tracks all Title IX and Sexual Misconduct Complaints.

Emmaus may, in its discretion, consolidate Formal Complaints where the allegations arise out of the same facts.

If there is a Title IX Complaint about the Title IX Coordinator, or if a direct report of the Title IX Coordinator would like to submit a Title IX Complaint, that Title IX Complaint should be filed with the President of Emmaus by either delivering or mailing a letter to the President of Emmaus. The President will appoint another trained individual to take the place of the Title IX Coordinator for purposes of the Title IX Complaint.

#### **E. Reporting to Law Enforcement Authorities**

Please call 911 as soon as possible if someone is in immediate danger or needs immediate medical attention. If you believe that you have experienced or witnessed Sex-Based Misconduct, you may file a police report directly with your local police department, you may seek assistance from the Title IX Coordinator at Emmaus to make a police report, or you may decline to notify authorities. A police report may be filed utilizing the contact information listed below:

- **Dubuque, IA Police Department**  
770 Iowa St. Dubuque, IA 52001  
563-589-4410  
Call 911 for Emergencies  
Call 563-589-4415 for Non-Emergencies

Some forms of Sex-Based Misconduct may also be crimes. For example, Sexual Assault (see “Definitions” section above) and Stalking (see “Definitions” section above) are crimes. Please contact local law enforcement if you would like to pursue criminal charges. Local

law enforcement can help a victim obtain emergency and non-emergency medical care; get immediate law enforcement response for the victim's protection; understand how to provide assistance in a situation that may escalate to more serious criminal behavior; arrange a meeting with victim advocate services; find counseling support; initiate a criminal investigation; and answer questions about the criminal process.

**F. Anonymous Reporting**

The Title IX Coordinator accepts anonymous reports of Sex-Based Misconduct and will follow up on such reports. The individual making the report is encouraged to provide as much detailed information as possible to the Title IX Coordinator. The Title IX Coordinator may be limited in the ability to investigate and respond to an anonymous report unless sufficient information is available to enable the conduct of a meaningful and fair investigation.

**G. Confidentiality**

To the extent permitted under applicable laws, the Title IX Coordinator and other Title IX Officials will keep confidential the Title IX Complaint, written reports, witness statements, and any other information provided by the Complainant (see "Definitions" section above), the Respondent, or the witnesses, and will disclose this information only to the Complainant, Respondent, witnesses, or to Emmaus personnel and counsel as necessary to give fair notice of the allegations and to conduct the investigation; to law enforcement consistent with state and federal law; to Emmaus officials as necessary for coordinating interim measures; for health, welfare, and safety reasons; and to government agencies who review Emmaus's compliance with federal law.

The factual Findings and Sanctions from Title IX Officials may be disclosed only to the Complainant, Respondent, and Emmaus officials as necessary to determine whether Sanctions are necessary and to implement Sanctions, and to prepare for any subsequent proceedings (e.g. committee or person handling Appeals).

These Emmaus officials have the same strict obligations to keep all information they learn confidential, subject to the limited exceptions that they may reveal such information when necessary to protect health, welfare, or safety. Information about Title IX Complaints and reports, absent personally identifiable information, may be reported to Emmaus officials and external entities for statistical and analysis purposes pursuant to federal and state law and Emmaus policy.

**IX. Retaliation**

It is a violation of this Policy to retaliate (including intimidation, threats, coercion, or discrimination for the purpose of interfering with any right or privilege secured by law or this policy) against any individual who makes or assists in making a report or complaint, testifies, assists, or participates or refuses to participate in any manner in an investigation, proceeding, or hearing. Persons who believe they have been retaliated against in violation of this Policy should file a Complaint with the Title IX Coordinator. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination.



## **X. Investigation Procedures and Protocols**

### **A. Preservation of Evidence**

It is important for victims or witnesses of Sex-Based Misconduct to preserve evidence as may be necessary to the proof of the Sex-Based Misconduct. Because some evidence, particularly evidence that may be located on the body, dissipates quickly (within 48-96 hours), victims of Sexual Violence who wish to preserve evidence should go to a hospital or medical facility immediately to seek a medical examination and/or forensic evidence collection. The closest hospital to the Emmaus campus is as follows:

- |                          |                               |
|--------------------------|-------------------------------|
| ● <b>Finley Hospital</b> | ● <b>Mercy Medical Center</b> |
| 350 N Grandview Ave.     | 250 Mercy Dr.                 |
| Dubuque, IA              | Dubuque, IA                   |
| 52001                    | 52001                         |
| (563) 582-1881           | (563) 589-8000                |

### **B. Immediate Action and Supportive Measures**

Supportive Measures will be available to the Complainant and the Respondent before or after filing the filing of a Formal Complaint or where no Formal Complaint has been filed.

The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to Emmaus's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Emmaus's educational environment, or deter sexual harassment.

Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Emmaus will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair Emmaus's ability to provide the Supportive Measures.

Emmaus may remove a Respondent from Emmaus's education program or activity on an emergency basis, provided that Emmaus:

- undertakes an individualized safety and risk analysis,
- determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and

- provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

*(This provision does not modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.)*

Emmaus may place a non-student employee Respondent on administrative leave during the pendency of a grievance process. *(This provision does not modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.)*

### **C. Resolution through the Formal Process**

After a Formal Complaint is filed, the following process (“Formal Process”) will be followed. The Formal Process is designed to provide a prompt, fair, and impartial investigation and resolution, treat the Complainant and Respondent equitably, protect the safety of victims and promote accountability. Complainants have the right to request that the Formal Process begin promptly and proceed in a timely manner.

It will be Emmaus’s presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. *(This will not preclude Emmaus from offering Supportive Measures for the Complainant or from performing an Emergency Removal, as described in the “Immediate Action and Supportive Measures” section above.)*

The Formal Process will be conducted by Emmaus employees (see “Title IX and Sexual Misconduct Officials” section above); when circumstances dictate, such as instances of conflict of interest, Emmaus may hire external officials to conduct, advise, or participate in the formal process. Fairness to all individuals involved with a Title IX Complaint is a priority. Emmaus’s designated Title IX Coordinator(s), Investigator(s), Decision-Maker(s), and any person designated to facilitate an Informal Resolution process must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. Both the Complainant and Respondent will be given a copy of this Policy and Complaint Procedure and have the opportunity to respond to all allegations.

The Complainant and Respondent will also receive notice of the Investigators, Decision-Maker(s), and Appeals person/committee members before being contacted by such persons (or, in the case of an Appeals person/committee, before the Appeals person/committee renders a written decision on Appeal), and will have the opportunity to request substitution of Investigator(s), the Decision-Maker(s) or Appeals Committee member(s) if any such person’s participation in the Formal Process poses a conflict of interest.

Such request for substitution must be accompanied by a detailed explanation of the basis for the purported conflict of interest. If the Title IX Coordinator determines a conflict of interest exists, the Coordinator will make such substitutions of Investigators, Decision-Makers or Appeals Committee members as the Title IX Coordinator determines is necessary. Emmaus shall maintain a sufficient number of Investigators, Decision-Makers and Appeals Committee members so that a substitution can occur in the event of a conflict of interest or recusal, and so that no Appeals Committee member will be involved in the Formal Process for a Title IX Complaint prior to the appeal of such Title IX Complaint.

Both the Complainant and Respondent will have the option to be accompanied to any meeting or proceeding related to the Formal Process by a single advisor of their choice, who may be, but is not required to be, an attorney. The role of the advisor is to provide support and counsel to the advisee in the Investigation, determination, and appeals processes; at the Live Hearing, questions will be asked by the party's advisor and never by the party personally (see "Step 4: Live Hearing and Cross-Examination" section below). If the advisor violates the foregoing rules or engages in behavior or advocacy that harasses, abuses, or intimidates the other party, a witness, or an individual resolving the Title IX or other Sexual Misconduct Complaint, that advisor may be prohibited from further participation in the Formal Process. If a party does not have an advisor present at the live hearing, Emmaus will provide without fee or charge to that party, an advisor of Emmaus's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

Maintaining the privacy of all individuals involved with a Complaint, including participating parties and witnesses, is also a priority, and any proceeding or meeting held to resolve a Complaint shall protect the privacy of such individuals. Specifically, Emmaus will not disclose the identity of the Complainant or Respondent, except as necessary to resolve the Complaint, or to comply with State or federal law.

Reasonably prompt time frames will be used in carrying out this grievance process, as noted below. Temporary delay of the grievance process or the limited extension of time frames will be allowed with good cause. Written notice of a delay or extension and the reasons for the action will be provided to the Complainant and Respondent. Good cause may include, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

#### **D. Step 1 - Written Notice of Allegations**

Upon receipt of a Formal Complaint, Emmaus will provide the following written notice to the parties who are known:

- a. Notice of Emmaus's grievance process, including the Informal Resolution process.
- b. Notice of the allegations of Sexual Harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident, if known.
- c. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- d. Notice that the parties may have an advisor of their choice and may inspect and review evidence.
- e. Notice of Emmaus's reservation of the right to charge an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding (provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith).

If, in the course of an Investigation, Emmaus decides to Investigate allegations about the Complainant or Respondent that were not included in the Notice of Allegations

provided directly following the Formal Complaint, Emmaus will provide notice of the additional allegations to the parties whose identities are known.

**E. Step 2 - Implementation of Supportive Measures and Preliminary Investigation:**

After a Complaint is filed, Supportive Measures will continue to be available for the Complainant and the Respondent and will be implemented by the Title IX Coordinator. Title IX Officials will determine whether involvement of other Emmaus offices is appropriate. The Title IX Coordinator or an Investigator will then conduct a preliminary investigation in order to determine whether Title IX Officials have jurisdiction over the matter with regard to Title IX law, this Policy, or other student or employee conduct policies. The findings of the preliminary investigation are then reviewed by the Title IX Coordinator.

**a) No Title IX Jurisdiction:** If the Title IX Coordinator determines that:

- the conduct alleged in the Formal Complaint would not constitute sexual harassment as defined by Title IX law even if proved,
- did not occur in Emmaus's education program or activity,
- or did not occur against a person in the United States,

then the Formal Process will conclude and Emmaus will dismiss the Formal Complaint with regard to Title IX law; however, such a dismissal does not preclude action under this Policy.

For Complaints dismissed with regard to Title IX law:

1. If Title IX and Student Conduct officials determine that the conduct alleged in the Formal Complaint would not violate Title IX law but would violate this Policy if proved, the Complaint will be dismissed with regard to Title IX law but the parties will proceed to Step 3 below (Investigation) and will complete the grievance process outlined in this Policy.
2. If Title IX and Student Conduct officials determine that the conduct alleged in the Formal Complaint would not violate this Policy in any way, the Formal Complaint will be dismissed with regard to both Title IX law and this Policy's grievance process; however, such a dismissal does not preclude action under Emmaus's Student Code of Conduct, Employee Handbook, or other Emmaus Policies.

Title IX Officials may offer to assist the Complainant and, as appropriate, the Respondent, in finding appropriate campus and off-campus resources for addressing the issue of concern.

**b) Title IX and Sexual Misconduct Jurisdiction:** If the Title IX Coordinator determines that there is Title IX and/or Sexual Misconduct jurisdiction based on the preliminary investigation findings, the parties will proceed to Step 3 below.

Emmaus may, in its discretion, dismiss a Formal Complaint or allegations therein if:

- (a) the Complainant informs the Title IX Coordinator in writing that the Complainant desires to withdraw the Formal Complaint or allegations therein,
- (b) if the Respondent is no longer enrolled or employed by the school (the opportunity to re-open the case may be given if the Respondent returns to Emmaus for enrollment or employment), or

(c) if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.

In the event of dismissal of a Formal Complaint, both parties will promptly be given written notice of a dismissal (whether mandatory or discretionary) and the reasons for the dismissal.

**F. Step 3 - Formal Investigation:**

As described above, if there is a finding of Title IX jurisdiction, the Title IX Coordinator will appoint two or more Title IX Investigators to conduct a fair and impartial Investigation ("Formal Investigation") of the alleged Sex-Based Misconduct or Retaliation. Only Investigators who receive annual training on issues related to Sex-Based Misconduct will conduct a Formal Investigation. The Title IX Coordinator is responsible for the oversight and coordination of a prompt and equitable investigation and may consult with and advise investigators during the process.

The Complainant and Respondent may each have one adviser of their own choosing (see "Resolution through the Formal Process" section above) present for support and consultation during the investigation at any time the respective party is meeting with the Title IX Coordinator or the Investigators.

At the start of the Formal Investigation, the Complainant and Respondent may each have a meeting with the Title IX Coordinator and/or Investigator(s) during which the Formal Process and tentative timeline for the Formal Investigation will be explained and any preliminary questions answered.

As part of the Formal Investigation, Investigators will make reasonable efforts to interview the Complainant and the Respondent, and to identify, locate, and interview any witnesses of the alleged Sex-Based Misconduct or Retaliation identified to Emmaus by the Complainant or Respondent. Written notice of any investigative interviews, meetings, or hearings will be sent to the corresponding party, including the date, time, location, participants, and purpose of the meeting, with sufficient time for the party to prepare to participate. The burden of gathering evidence and burden of proof will remain on Emmaus, not on either the Complainant or Respondent. However, Emmaus will not restrict the ability of either party to discuss the allegations or gather evidence. Emmaus will not seek, access, or use a party's information protected under a legally recognized privilege, such as medical, psychological, and similar treatment records, unless voluntary, written consent by the party is obtained.

Typically, a Formal Investigation will be completed within sixty (60) calendar days of the Title IX Coordinator's receipt of the Title IX or Sexual Misconduct Complaint, unless there are extenuating circumstances. Emmaus reserves the right to extend this period if necessary, due to circumstances including, but not limited to, uncooperative witness, break periods, and periods when Emmaus is closed. If it becomes necessary to extend the process, both parties will be notified of a revised expected resolution time frame.

During the Formal Investigation, the Complainant and Respondent will have the opportunity to review and respond to the evidence presented and to present evidence and witnesses on their behalf. Prior to the completion of the investigative report, evidence directly related to the allegations will be sent, in electronic format or hard copy,

to the parties with at least 10 days to inspect, review, and respond to the evidence. Additionally, the investigative report, fairly summarizing relevant evidence, will be sent, in electronic format or hard copy, to the parties and their advisors with at least 10 days for the parties to respond. The rules of evidence used in civil or criminal trials are not applicable to these Complaint Procedures.

To the extent permitted by applicable law, the Title IX Coordinator will comply with law enforcement requests for cooperation and such cooperation may require the Title IX Coordinator to temporarily suspend the fact-finding aspect of the Investigation while law enforcement is in the process of gathering evidence. Emmaus promptly will resume its Formal Investigation as soon as it is notified by the law enforcement agency that it has completed the evidence gathering process.

**G. Step 4 - Live Hearing and Cross-Examination:**

After the investigation process is complete, a Live Hearing will be held. At the live hearing, the decision-maker(s) will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. The Decision-Maker(s) may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. The Title IX Coordinator can assist in the oversight, process, and procedures during the hearing and decision-making process and may consult with and advise decision-makers.

At the request of either party, Emmaus will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

Only relevant cross examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-Maker(s) will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If a party does not have an advisor present at the live hearing, Emmaus will provide without fee or charge to that party, an advisor of Emmaus's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's and Respondent's prior physical history.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker may consider statements of that party or witness in reaching a determination regarding responsibility. Refusal to answer question(s) or appear at a hearing may be considered in determining how much weight to give a party's or witness's account or the credibility of their account; provided, however, that the decision-maker(s) cannot draw an

inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Live hearings pursuant to this section may be conducted with all parties physically present in the same geographic location or, at Emmaus's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Emmaus will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

#### **H. Step 5 - Determination:**

The Decision-Maker(s) will determine whether there is a preponderance of the evidence to believe that the Respondent engaged in Sex-Based Misconduct or Retaliation. This means that a Respondent is presumed not to have engaged in the alleged Sex-Based Misconduct or Retaliation unless a "preponderance of the evidence" supports a finding that such misconduct has occurred. This "preponderance of the evidence" standard requires that the evidence supporting each finding be more convincing than the evidence in opposition to it.

The Decision-Maker(s) will issue a written determination regarding responsibility ("Notice of Outcome") simultaneously to the Complainant, Respondent, and Emmaus administrators as deemed necessary and lawful by the Title IX Coordinator. The Notice of Outcome will include:

- (a) identification of the allegations potentially constituting Sexual Harassment or Sex-Based Misconduct;
- (b) a description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- (c) findings of fact supporting the determination;
- (d) conclusions regarding the application of Emmaus's code of conduct to the facts;
- (e) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary Sanctions Emmaus imposes on the Respondent, and whether remedies designed to restore or preserve equal access to Emmaus's education program or activity will be provided by Emmaus to the Complainant; and
- (f) Emmaus's procedures and permissible bases for the Complainant and Respondent to Appeal.

**a) No Finding of Sex-Based Misconduct or Retaliation:** If following completion of the Investigation, Live Hearing, and Cross-Examination, the Decision-Maker(s) find that Sex-Based Misconduct or Retaliation did not occur, the Formal Process concludes. If a party would like to make an Appeal, they may do so with the Title IX Coordinator (see "Appeals" section below).

**b) Finding of Sex-Based Misconduct or Retaliation:** If the Decision-Maker(s)

make a Finding that Sex-Based Misconduct or Retaliation did occur, the Findings are communicated to the Complainant and Respondent simultaneously and in writing (Notice of Outcome), as is any information concerning when the Findings become Final. If a party would like to make an Appeal, they may do so with the Title IX Coordinator (see “Appeals” section below).

The written determination will be provided to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the parties are provided the written determination of the result of the Appeal, if an Appeal is filed, or if an Appeal is not filed, the date on which an Appeal would no longer be considered timely (see “Appeals” section below for information on filing an Appeal).

- I. Sanctions:** The Decision-Maker(s) will impose sanctions on those who are found to have violated this Policy; following the determination of responsibility, any Sanctions to be imposed will be stated in the Notice of Outcome. The following will guide the Decision-Maker(s) in determining sanctions (collectively, “Sanctions”) and provide notice to the Emmaus community of the possible Sanctions for an individual found responsible for a violation of this Policy. The discussion below only provides guidance and is not meant to be exclusive as to the other Sanctions that can be imposed.

Sanctions imposed on a student who is found to have violated this Policy may include eviction from campus housing, disciplinary/character probation(s), warning(s), community service, fines, formal reprimand, withdrawal, loss of privilege, confrontation/counseling, write-ups, suspension, dismissal, person non grata, restitution/reconciliation, developmental/educational assignments, referral for counseling and/or assessment, or other measures.

Sanctions imposed on an employee who is found to have violated this Policy may include a letter of warning, official reprimand, probation, referral to a required counseling program, suspension from employment with pay, suspension from employment without pay, termination from employment, or training on Sex-Based Misconduct.

Sanctions imposed on any third party (visitor, guest, contractor, subcontractor, vendor, partner, or business affiliate) who is found responsible for violating this Policy may range from a written warning to being banned from any Emmaus property, activities, and/or programs, including the termination of any business contract with Emmaus.

## **XI. Remedies**

One or more of the following remedies may be provided, if reasonably available and requested by the Complainant or Respondent, at the conclusion of the Formal Process for which there is Title IX jurisdiction or jurisdiction under this Policy, whether or not a Respondent is found to be responsible, and whether or not the Complainant chooses to report the alleged Sex-Based Misconduct to local law enforcement:

- Providing an effective escort to ensure that the Complainant or Respondent can move safely between classes and activities



- Ensuring that the Complainant and Respondent do not share classes, extracurricular activities or work space
- Moving the Respondent or Complainant to a different residence hall
- Referring the Complainant or Respondent to medical, counseling and academic support services, such as tutoring
- Arranging for the Complainant or Respondent to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty
- Training or retraining Emmaus employees on responsibilities concerning allegations of Sex-Based Misconduct, and
- Any other remedy that the Title IX Coordinator may consider appropriate

## **XII. Appeals**

A party aggrieved by a decision of the Title IX Coordinator or by the Sanctions imposed may file a Petition for Appeal within five (5) business days of notification of the final outcome of the Investigation. The appeal must be in writing and state clearly the grounds that justify reconsideration. The appeal must be received by the Title IX Coordinator within five (5) business days of notification of the final outcome of the Investigation. General dissatisfaction with the outcome of the Investigation or related proceedings is not a basis for appeal. The written appeal may be made only on one or more of the following grounds:

- There was a significant procedural error or irregularity of a nature sufficient to have materially and detrimentally affected the outcome.
- There is significant new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter. A summary of this new evidence and its potential impact must be included with the notice of appeal.
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter. (Throughout the Formal Complaint process, opportunity will be given for a Complainant or Respondent to discuss with the Title IX Coordinator whether any of the assigned Title IX and Sexual Misconduct Officials has a conflict of interest or bias, and to request to have an Official replaced. This grounds for appeal is only applicable if this opportunity was not given or if a request for a replacement was not sufficiently handled during the Formal Complaint process.)
- The Sanctions imposed are grossly disproportionate to the violations found to have occurred and would result in substantial injustice.

An appeal which is not based on one of these criteria will be dismissed without further consideration. If no appeal is received by the Title IX Coordinator within the five (5) business day period, the Findings, conclusions of the Decision-Maker(s) and/or any Sanctions imposed will be final.

If the appeal is received within the five (5) business day period, the Title IX Coordinator will select and notify an Appeals Committee or Appeals Person. The Appeals Committee/Person will then review the Investigators' Findings, the conclusions of the Decision-Maker(s), and/or any Sanctions imposed, and obtain any additional information deemed necessary by the Appeals Committee/Person for resolution of the Appeal. No

member of the Appeals Committee will have participated previously in the Formal Process or have a conflict of interest with either the Complainant or Respondent.

Within twenty-one (21) business days of the date of the filing of the appeal and within seven (7) days after concluding its review of the applicable Findings and/or Sanctions, unless there are extenuating circumstances (i.e., unavailability of Appeals Committee member(s), uncooperative witness, school break periods and periods when Emmaus is closed), the Appeals Committee/Person will render a written decision on Appeal, which will be communicated to the Complainant and Respondent simultaneously and in writing. The Appeals Committee/Person's decision on all Appeal requests is final.

The submission of an Appeal does not by itself prevent or defer implementation of the Sanctions imposed. However, at the request of the Appellant, the Decision-Maker(s) may, in their sole discretion and for good cause, defer implementation of some or all of those consequences during the pendency of the Appeal.

### **XIII. Informal Resolution**

After a Formal Complaint has been filed, the Title IX Coordinator may offer to both parties the option of an Informal Resolution. Emmaus will allow for voluntary participation in an Informal Resolution as a method of resolving the allegations in Formal Complaints without completing the investigation and adjudication. Emmaus will not require waiving of the right to an investigation and adjudication of a Formal Complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right. Similarly, Emmaus will not require the parties to participate in an Informal Resolution process and will not offer an Informal Resolution process unless a Formal Complaint is filed.

However, at any time prior to reaching a determination regarding responsibility Emmaus's Title IX Team may facilitate an Informal Resolution process, such as mediation, that does not involve a full investigation and adjudication. Before beginning an Informal Resolution process, Emmaus will:

- (a) provide to the parties a written notice disclosing: the allegations, the requirements of the Informal Resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and resume the grievance process with respect to the Formal Complaint, and any consequences resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared; and
- (b) obtains the parties' voluntary, written consent to the Informal Resolution process.

Emmaus will not offer or facilitate an Informal Resolution process to resolve allegations that an employee sexually harassed a student.

### **XIV. Prevention and Education**

Emmaus offers a number of educational programs over the course of the academic year addressing sexual assault, domestic/dating violence, stalking, and related topics. A specific program is presented to all new incoming students during new and returning student orientation. Further programming is offered by various offices and student

organizations including residence life, counseling services, and campus safety and security. Outside agencies may also contribute to educational programming for the campus.

Pursuant to federal law, students and employees will be educated and updated about security procedures, personal safety, crime prevention, sexual assault, domestic/dating violence, and stalking in ways that are deemed appropriate for the campus community. This may include: primary prevention strategies, posting appropriate flyers, mass e-mail messages, classroom announcements, and emergency meetings.

This University policy is compliant with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (The Clery Act) as amended in 1998, which requires all postsecondary institutions to publish and distribute certain information regarding campus crimes, including reports of campus sexual assault, sexual assault policies and security programming to all current students, employees, and to any applicant who so requests.

*\*This Policy was revised in August 2020, except as noted below.*

*\*This Policy has been reviewed and edited, with EBC permission, by Riverview Center advocates in July 2020.*

*\*August 2022 update reflected new Title IX Coordinator contact information and policy change to Section X.G Step 4 - Live Hearing and Cross-Examination, paragraph 4 cross examination rule.*

*\*August 2023 updated Section X.C Resolution through the Formal Process, to include option to use external officials when circumstance dictate and Sections X.F & G to explicitly include the Title IX Coordinator's role in advising Investigators and Decision-makers.*

*\*August 2025 to update the name of Emmaus University and to clarify policy jurisdiction in matters of sexual conduct disallowed by the Emmaus student lifestyle covenant that is not under the definition of sex-based discrimination or sexual harassment.*