



EMMANUEL COLLEGE

Title IX Policy

I. PURPOSE

- A. Emmanuel College is committed to providing its students, faculty and staff with a working and learning environment in which all people are treated with respect and dignity. The Title IX Policy (the “Policy”) prohibits a broad continuum of behaviors, some of which are not prohibited under Title IX or other laws. This reflects the College’s commitment to ensuring that each person has the right to work and be educated in an atmosphere that is free from discrimination on the basis of sex, including sexual assault and sexual harassment.
- B. This policy prohibits sex discrimination and sexual harassment in the workplace, the classroom, or in any other settings in which students, faculty and staff may find themselves in connection with their education or employment at Emmanuel College.
- C. This policy also outlines Federal laws, like [Title IX](#) (prohibiting sex discrimination), the [Clery Act](#) (mandating reporting of crimes on campus), and the 2013 [Campus Save Act](#) (broadening the scope of responsibility to include dating violence, domestic violence and stalking), that make clear the obligations of colleges and universities to provide a safe and secure educational environment free from discrimination, harassment and violence.
- D. Any retaliation against an individual who has filed a complaint or retaliation against individuals for cooperating with an investigation of a complaint is similarly unlawful and will not be tolerated. To achieve our goal of providing a working and learning environment free from sex discrimination and sexual harassment, which is unlawful, the conduct that is described in this policy will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by students, faculty, or staff.
- E. Because Emmanuel College takes allegations of sex discrimination and sexual harassment seriously, we will respond promptly to complaints and when it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including

disciplinary action as appropriate.

- F. Please note that while this policy sets forth the College's goals of promoting a working and learning environment that is free of sexual harassment, the Policy is not designed or intended to limit our authority to discipline or take remedial action for conduct which we deem unacceptable, regardless of whether that conduct satisfies the legal definition of sexual harassment. If a claim of violation of the Student Code of Conduct is predicated on common set of operating facts, or if the facts alleged in a Title IX complaint could also constitute a claimed violation of the Student Code of Conduct, the Title IX and Student Code of Conduct cases will be combined and processed together under this Policy including, where applicable, in a single consolidated hearing.

II. APPLICABLE LEGISLATION

- A. As provided for in Title IX of the Higher Education Amendments of 1972, the College prohibits discrimination and discriminatory harassment in all of its educational and employment programs and activities on the basis of any individual's sex, including admission and employment. Additionally, this Policy complies with the regulations provided for in the [Violence Against Women Reauthorization Act of 2013](#) ("VAWA") and the [Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act](#) ("Clery Act").
- B. This Policy prohibits discrimination and discriminatory harassment that occurs within the educational programs and activities that is based on sex, including sexual harassment (including *quid pro quo* and hostile environment), as well as sexual assault, dating violence, domestic violence, and stalking. While there is a presumption that a Respondent is not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the grievance process, an employee or student who is determined to have engaged in these behaviors is subject to disciplinary action, including but not limited to separation or suspension from Emmanuel College.

III. RELATED POLICIES

- A. Students:
[Family Education and Privacy Act \(FERPA\)](#)
[Student Code of Conduct \(page 20 of Student Handbook\)](#)
- B. Employees:
[Sexual Harassment](#)
[Other Forms of Harassment & Discrimination](#)
[Protection of Minors on Campus](#)
[Consensual Relationships](#)

IV. SCOPE

- A. This Policy applies to all Emmanuel College employees and students.
- B. This Policy is only initiated if at the time of filing a Formal Complaint, the Complainant was participating in or attempting to participate in the education program or activity of the College.
- C. Additionally, this Policy only applies to “sexual harassment” as defined pursuant to [34 CFR Part 106](#). The alleged conduct must have occurred in the United States within an Emmanuel College education program or activity, which includes locations, events or circumstances over which the school exercises substantial control over both the accused perpetrator of sexual harassment and the context in which the sexual harassment occurred.

V. REPORTING SEXUAL HARASSMENT

- A. The College has Actual Knowledge of a potential Title IX violation when verbal or written notification is given to the Title IX Coordinator or any official who has the authority to institute corrective measures.
- B. Upon notification of a potential Title IX violation, the Title IX Coordinator will promptly contact the Complainant (who may be someone other than the person who experienced sexual harassment) to discuss supportive measures; to consider the Complainant's wishes with respect to supportive measures; to inform the Complainant of availability of these measures with or without the filing of a Formal Complaint; and to explain the grievance process and the procedure for filing a Formal Complaint.

VI. GRIEVANCE PROCEDURE AND REFERRALS FOR FORMAL COMPLAINTS

- A. To initiate a Formal Complaint, the Complainant or Title IX Coordinator must file a document alleging sexual harassment against a Respondent and requesting that the College investigate the allegation of sexual harassment. A Complainant may only file a Formal Complaint under this policy if the Complainant is participating in or attempting to participate in an education program or activity of the College.
- B. The College will treat the Complainant and Respondent equitably throughout the grievance process. All College officials involved in the grievance process must be free of conflicts of interest or bias for or specifically against either Party or generally against Complainants or Respondents.

- C. The Respondent is presumed not to be responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- D. The Parties are advised as to the range of possible disciplinary sanctions and remedies that the College may implement following any determination of responsibility. Both Parties have equal opportunity to appeal the final decision.
- E. The College will offer an informal resolution process such as mediation after the filing of a Formal Complaint. Informal resolution does not involve a full investigation and adjudication. The informal resolution process may begin at any time prior to a determination regarding responsibility. The College must provide the Parties with the written notice as to the allegations and the requirements of the informal resolution process.

The Parties must voluntarily agree and provide written consent to the informal resolution process. The Parties have the right to withdraw from the informal process and participate in the formal grievance process any time prior to a determination regarding responsibility. Informal resolution is not permitted in cases of sexual harassment of a student by an employee.

VII. **TITLE IX INVESTIGATION**

- A. Upon receipt of a Formal Complaint, the Title IX Coordinator will provide written notice to the Parties of the allegations of sexual harassment, including sufficient details known at the time of filing and allowing sufficient time to prepare a response before the initial interview. The details, if known, include the identity of the Parties, the alleged conduct constituting sexual harassment, the date and location of the alleged conduct. The written notice must contain 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. The notice must inform the Parties that they may have an Advisor of their choice, who may be, but is not required to be, an attorney.

If one Party's Advisor is an attorney, the College will provide limited scope representation typically through a vendor at no charge to the student. The notice must inform the Parties of the section of the Student Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. Where applicable, the notice will inform the Parties that issues arising under the Student Code of Conduct will be processed together with the Title IX matter as a consolidated case.

- B. **Timeframe:** The College will endeavor to complete its administrative investigation within sixty (60 days) of the College's receipt of the Formal Complaint. However, there may be reasonable delays or extensions as circumstances arise. When applicable, the formal hearing will be scheduled following due notice to the parties, and with due regard to the availability of those who will participate. Postponements or extensions may be granted by the Title IX Coordinator or, when applicable, the Decision Maker (hearing officer).
- C. **Standard of Proof:** The "preponderance of the evidence" standard shall be applied to sexual harassment complaints. This standard requires a finding that it is more likely than not that sexual harassment occurred in order to assign responsibility to the Respondent.
- D. **Gathering Information:** The College will conduct prompt and thorough interviews of the Complainant, the Respondent, and any Witnesses. Both Parties will have an opportunity to suggest Witnesses. The investigator will interview the suggested Witnesses unless the investigator determines that the information that the Party claims the Witness will share is not relevant.

The burden of gathering both inculpatory and exculpatory evidence and proof sufficient to reach a determination of responsibility is on the College. The College will not restrict the ability of either Party to discuss the allegations under investigation or gather and present relevant evidence. The College is prohibited from disclosing the identity of any individual involved in the reporting or investigation of sexual harassment except the College may disclose individuals' identities to carry out the purpose of this policy or as required by law.

- E. **Advisors:** Both Parties are allowed to have their Advisor of choice present during any grievance proceeding. The College may restrict the extent to which the Advisor may participate in the proceedings as long as the restrictions apply equally to both Parties, but may not restrict an Advisor from (1) conducting cross-examinations or (2) submitting a response to the Investigative Report discussed below. If a Party does not have an Advisor present at a hearing, and wishes to have an Advisor, the College will provide an Advisor of the Party's choosing, without fee.
- F. **Notices of Proceedings:** Written notice of the date, time, location, participants, and purpose of all hearings, interviews or meetings must be provided to a Party whose participation is invited or expected with sufficient time for the Party to prepare to participate.

- G. Investigative Report and Responses: An investigative report will be generated at the end of the investigation. Prior to completion of the investigative report, the Title IX Coordinator will send each Party and their Advisors all evidence gathered that is directly related to the allegations for their inspection and review with ten (10) days-notice to submit a written response, prior to completion of the final investigative report. The final investigative report is then sent to the Parties and their Advisors ten (10) days prior to the live hearing.
- H. Mandatory Dismissal: If the conduct alleged in the Formal Complaint would not constitute sexual harassment as defined above if proved, or did not occur in a College education program or activity, or did not occur against a person in the United States, then the Title IX Coordinator must dismiss the Formal Complaint. Such dismissal does not preclude action under another policy or provision of the College's Student Code of Conduct. Upon dismissal, the Title IX Coordinator must promptly send written notice of the dismissal and reason for the dismissal simultaneously to the Parties. Both Parties will have a right to appeal the dismissal pursuant to the appeal procedures described below.
- I. Discretionary Dismissal: The Title IX Coordinator may dismiss the Formal Complaint, if at any time during the investigation or hearing: The Complainant notifies the Title IX Coordinator in writing that the Complainant wishes to withdraw the Formal Complaint; the Respondent is no longer enrolled or employed by the College; or circumstances prevent the gathering of evidence sufficient to reach a determination regarding responsibility. Both Parties will have a right to appeal the dismissal pursuant to the appeal procedures described below.

VIII. **LIVE HEARING**

- A. The Decision Maker (hearing officer) will notify both parties that the purpose of the hearing is to review and receive relevant information concerning alleged violations of the Emmanuel College Title IX Policy where applicable and the Student Code of Conduct.
- B. The Parties (through their Advisors) may make opening statements and the Decision Maker(s) may question the Parties and their Witnesses prior to and after any cross-examination. Either Party may request to make their own opening statement.
- C. Questioning Witnesses: The Decision Maker(s) presides over the live hearing, and must permit each Party or the Party's Advisor to ask the other Party, and Witnesses all relevant questions. Witnesses may be accompanied by legal counsel, who will have no speaking role except as determined by the Decision Maker(s). The cross-examination must be conducted directly, orally, and in real time by the Advisor and not the Party. Either Party can request that the live hearing occur virtually with the Parties in separate rooms. If the hearing proceeds with the Parties in separate rooms, audiovisual technology will be used to allow the Decision Maker(s) and Parties to simultaneously

see and hear the cross-examination of the Party or Witness.

- D. **Relevance of Certain Evidence:** Only relevant questions will be answered. The Decision Makers decide of relevancy after the question is asked and before the answer given. 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 prior sexual behavior with respect to the respondent and are offered to prove consent.
- E. **Refusal to Testify:** Parties or Witnesses who do not submit to cross-examination will preclude the Decision Makers from relying on their statements in determining responsibility. However, a Decision Maker cannot rely solely on a Party or Witness's absence or refusal to answer questions in determining responsibility.
- F. **Recording or Transcript:** The College will create an audiovisual recording or transcript of the live hearing and make it available to the Parties for inspection and review.
- G. **Determination Regarding Responsibility:** The Decision Makers will issue a written determination regarding responsibility simultaneously to the Parties using the preponderance of the evidence standard. The written statement will include the allegations constituting sexual harassment, describe the procedural steps taken, the findings of fact supporting the determination, conclusions regarding the application of this Policy and a statement the findings and the rationale, as well as the procedures and basis for appeal.

IX. APPEAL

Following all hearings under this Policy (including, where applicable, hearings in which issues under the Student Code of Conduct have been consolidated), the Respondent and Complainant may appeal a determination regarding responsibility and from a dismissal of a Formal Complaint based on: (1) procedural irregularity that affected the outcome; (2) new evidence not previously available that could affect the outcome; and (3) bias or conflict of interest on the part of a Title IX official that affected the outcome. In the event of an appeal(s), the Title IX Coordinator may allow a submission(s) by the counterparty(ies), and a reply by the appellant(s), on such terms and timelines as the Title IX Coordinator shall determine. The Title IX Coordinator may also grant extensions of time as the Title IX Coordinator determines to be appropriate.

X. TITLE IX COORDINATOR

The College's Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Title IX Coordinator reports directly to the President of the College, and is housed in the Office of Human Resources. Questions about

this Policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the Title IX Coordinator:

Erin Farmer Noonan
Vice President of Human Resource and Title IX Coordinator
Emmanuel College
400 The Fenway
Boston, MA 02115
farmer@emmanuel.edu
617-735-9991

XI. EMPLOYEE RESPONSIBILITIES

- A. Title IX uses the concept of actual notice and requires that the College must “respond promptly” when the Title IX Coordinator and other employees are notified of a report of sexual harassment. This response includes contacting a Complainant and notifying them of the policy and procedures, availability of supportive measures, and ability to file a Formal Complaint. Reports do not automatically trigger the initiation of a formal grievance procedure.
- B. Mandated Reporter
The “mandated reporters” (formally referred to as Responsible Employees) must report all relevant details of the incident including the name of the Complainant and Respondent, if known, dates, times, locations, and the names of Witnesses. Reporting must take place regardless of the location of the incident (on- or off-campus) as it assists the Title IX Coordinator in tracking patterns, evaluating the scope of the problem, formulating appropriate campus-wide responses, and ensuring that impacted students are provided with information about reporting options and resources. All employees including faculty and staff are considered mandated reporters.
- C. Reports Involving Children and Vulnerable Populations
The College is committed to safeguarding all children, young people, and vulnerable adults involved in our programs, or on our campus.
- D. Confidential Employees
The College has designated employees on campus to whom individuals may make confidential reports. Confidential Employees cannot reveal information to any third party unless one or more of the following conditions are present: the individual has provided written consent to disclose information; there is a concern about imminent harm to self or others; the information concerns the neglect or abuse of someone who is a minor, elderly, or disabled; or an employee has been charged with providing non-identifiable aggregate information for purposes of the Clery Act.

- E. **Campus Security Authorities (CSA)**
Campus Security Authorities (CSAs) are individuals who by virtue of their College responsibilities and under the Clery Act, are designated to receive complaints of and report criminal incidents to the Emmanuel College Department of Campus Safety so that they may be included and published in the College's Annual Security and Fire Safety Report.
- F. **Employees' Duty to Cooperate**
Every Emmanuel College employee has a duty to cooperate fully and unconditionally in an investigation conducted pursuant to this Policy. This duty includes, among other things, speaking with the Title IX Coordinator, Investigator, hearing panel or appellate body, and voluntarily providing all documentation that relates to the claim being investigated. The failure and/or refusal of any employee to cooperate in an investigation may result in separate disciplinary action, up to and including termination.

XII. DEFINITIONS

- A. **Actual Knowledge** means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official who has the authority to institute corrective measures.
- B. **Advisor** means any person who accompanies a Respondent or Complainant in any meeting or grievance proceeding. An Advisor may not have any additional role, such as a Witness, in the College process. Advisors are allowed to be present, but are not allowed to actively participate in any meetings throughout the grievance process, except during live hearings.

Requests to have more than one Advisor will be considered on a case-by-case basis, and the final decision is the sole discretion of the Title IX Coordinator. No faculty or staff member is required to accept a request from a Party to serve as an Advisor. The Parties must inform the Title IX Coordinator of the name of the Advisor prior to any meeting or panel.

- C. **Appellate Administrator** annually trained and authorized by the Title IX Coordinator or Designee to conduct a review of a decision made regarding an emergency removal, dismissal of a complaint, or reached by a panel.
- D. **Business Day** means any day, Monday through Friday, that the College is open.
- E. **Complainant** means the individual who is alleged to be the victim of sexual harassment.
- F. **Conduct File** means the printed, written, or electronic file which may include, but is not limited to, all information obtained as part of an investigation, including any determination regarding responsibility and any audio or audiovisual recording or

transcript; any disciplinary sanctions and/or remedies; any appeal, including the result of the appeal; and any informal resolution and the result therefrom.

- G. **Decision Maker** means those annually trained who participate in the Panel process and private deliberations. Decision Makers determine the relevancy of proposed questions, findings of responsibility, and sanctions.
- H. **Discipline File** means the Conduct File, but limited to findings of the disciplinary sanctions resulting from a determination of responsibility.
- I. **Designee** means any employee who has responsibility for implementing or administering this Policy.
- J. **Employee** means all full- or part-time staff.
- K. **Evidence**
 - i. Inculpatory evidence means information that suggests a Respondent is in violation
 - ii. Exculpatory evidence means information that suggests a Respondent is not in violation
- L. **Formal Complaint** means a document filed and signed by a Complainant or the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the College investigate the allegation of sexual harassment.
- M. **Incident Database** means the electronic database used to track an incident and the response taken.
- N. **Party** means a Complainant or a Respondent.
- O. **Personnel File** means the employee file which contains the history of employment.
- P. **Preponderance of the Evidence** means a standard of proof in which the totality of the evidence offered in support of a fact is greater or more convincing than the evidence which is offered in opposition to it; given the totality of information the version of events that is more likely than not. Preponderance of the evidence is understood to require more than 50 percent certainty to determine responsibility for a policy violation (i.e. over 50%).
- Q. **Relevancy** means information tends to support or disprove a fact in contention that bears on the outcome of the disputed fact. Investigators and Decision Makers make relevancy determinations.

- R. **Respondent** means an individual who has allegedly engaged in sexual harassment
- S. **Student** means any person who attends or is seeking admission to the College. Persons admitted but never matriculated are not considered students. For purposes of this Policy, the Title IX Coordinator will make the final determination as to whether or not an individual is a student.
- T. **Support Person** means any person who attends a meeting associated with this Policy. Support Persons who are not also Advisors may not play an active role in the process, and may not ask questions, present evidence, or make statements. A Support Person may not have any additional role, such as a Witness, in the College process. Only reasonable requests to change proposed meetings to accommodate a Support Person's schedule will be considered. Requests to have more than one Support Person will be considered on a case-by-case basis, and the final decision is the sole discretion of the Title IX Coordinator. No faculty or staff member is required to accept a request from a Party to serve as a Support Person. The Parties must inform the Title IX Coordinator of the name of the Support Person prior to any meeting.
- U. **Witness** means any individual who has relevant knowledge of an incident.

XIII. **AMNESTY**

Sometimes students are reluctant to report an incident of sexual misconduct as alcohol or other drugs may be involved. In cases of sexual assault, the College will grant amnesty from violations of alcohol or drug policies to students who file a report and/or who were victimized by an act of sexual misconduct. While amnesty is typically limited to violations involving the use of alcohol and drugs, determinations regarding amnesty are made on a case-by-case basis.

XIV. **SEXUAL MISCONDUCT**

A. **Sexual Harassment**

In accordance with the Department of Education, to initiate a grievance procedure outlined in Section IV of the [Sexual Harassment Policy](#), the definition of sexual harassment listed below must be met. In appropriate cases, sexual misconduct complaints are consolidated with a related Title IX complaint proceeding, as authorized in the College's Title IX Policy. If the alleged prohibited conduct does not meet this standard, a referral will be made to the appropriate office by the Title IX Coordinator.

- i. Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:
 - a. An employee conditioning the provision of an aid, benefit, or service on the individual's participation in unwelcome conduct

- b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to their education
 - c. Sexual assault, dating violence, domestic violence, or stalking
- ii. **Quid Pro Quo:** An employee conditioning the provision of an aid, benefit, or service on the individual's participation in unwelcome conduct. Allegations arising from *quid pro quo* harassment under this Policy must involve employees. A single instance of abuse of authority may constitute *quid pro quo* harassment. Additionally, it still constitutes *quid pro quo* sexual harassment when a Complainant acquiesces to the unwelcome conduct.
- iii. **Hostile Environment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to their education.
- iv. **Sex Discrimination** means discriminatory conduct based on sex, including pay or hiring discrimination.
- v. **Gender-Based Harassment** includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of verbal, non-verbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping.
- vi. **Unwanted Sexual Attention**, which includes verbal or physical sexual advances. This may also include unwanted sexual behaviors such as pressuring a person for dates, unwanted touching including hugging and kissing; dissemination of "revenge porn;" conspiring to sexually harass people; unwelcome conduct that harms and humiliates a person on the basis of sex; recording, photographing, or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third parties to observe private sexual acts; distributing, viewing or forcing others to view illegal pornography; forcing others to view legal pornography; engaging in voyeurism; and exposing one's genitals or inducing one to expose their own genitals in nonconsensual circumstances.
- vii. **Sexual Assault – Rape (FBI definition)** is the penetration, no matter how slight, of the vagina, anus, with any body part or object, or oral penetration by a sex organ of another person without the consent of the victim (or attempts to commit the same). This includes any gender of victim or Respondent.
- viii. **Sexual Assault – Fondling** is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances in which the victim is incapable of giving consent because of

their age or temporary incapacitation (or attempts to commit the same).

- ix. **Statutory Rape** is sexual intercourse with a person who is under the statutory age of consent, which is 16 in Massachusetts. Attempts to commit statutory rape are also prohibited.
- x. **Incest** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- xi. **Dating Violence** includes any act of violence or threatened violence against a person who is, or has been in, a social relationship of a romantic or intimate nature with that person. This includes but is not limited to sexual or physical abuse, or the threat of such abuse.
- xii. **Domestic Violence** includes any felony or misdemeanor crime of violence committed by one person on another where the individuals:
 - are or were married to one another;
 - are or were residing together in the same household;
 - are or were related by blood or marriage;
 - have a child in common regardless of whether they have ever married or lived together; or are or have been in a substantive dating or engagement relationship

According to Section 16 of title 18 of the United States Code, the term “crime of violence” means:

- an offense under Massachusetts State law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- any other offense that is a felony in Massachusetts and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Domestic Violence, as defined by Title IX is considered relationship violence and must be “on the basis of sex.”

For purposes of this Policy, Domestic Violence does not include acts that meet the definition of domestic violence under Massachusetts laws that are based solely on cohabitation (e.g. roommates) or family relationship (e.g. parent/child). While non-intimate-relationship violence would not be addressed using this Policy, it would still be counted for purposes of Clery Act reporting and may be addressed under other College policies.

- xiii. **Stalking** means any course of conduct (more than one act) directed at a specific person (directly, indirectly, through a third party, or other means) that places that person in reasonable fear for his or her safety or the safety of others. For the purposes of this Policy, the behaviors must be directly related to that person's sex.

XV. CONSENT

- A. Consent for purposes of this Policy is an understandable exchange of affirmative words or actions, which indicate a willingness to participate in a mutually agreed upon sexual activity at a mutually agreed upon time. Consent must be informed, freely and actively given. It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.

For example, a position of influence could include supervisory or disciplinary authority. Silence, previous sexual relationships or experiences, and/or a current relationship may not, by themselves, be taken to imply consent. While nonverbal consent is possible (through active participation), it is best to obtain verbal consent. Similarly, consent to one form of sexual activity does not imply consent to other forms of sexual activity. An individual who is incapacitated cannot give consent. Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly.

- B. Consent cannot be given if any of the following factors are present: Force, Coercion, Incapacitation.
 - i. **Force** is the use of physical strength or action (no matter how slight), violence, threats of violence or intimidation (implied threats of violence) as a means to engage in sexual activity. A person who is the object of actual or threatened force is not required to physically, verbally or otherwise resist the aggressor. However, evidence of resistance by the Complainant will be viewed as a clear demonstration of a lack of consent.
 - ii. **Coercion** is the use of an unreasonable amount of pressure to engage in sexual activity. Coercion does not begin when the initiator makes an initial sexual advance. Coercion begins when the initiator continues to pressure another, through the use of psychological/emotional pressure, alcohol, drugs, threat, intimidation, or force, to engage in sexual behavior, when a reasonable person would realize that the other does not want to engage in sexual activity.
 - iii. **Incapacitation** is the physical and/or mental inability, whether temporary or permanent, of an individual to make rational, reasonable decisions, or judgments regarding one's well-being or welfare. States of incapacitation include, but are

not limited to, unconsciousness, sleep, and blackouts. Incapacitation may result from the voluntary or involuntary consumption of alcohol and/or other drugs. Where alcohol or other substances are involved, incapacitation is determined by how the substance impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments.

For purposes of this Policy a person is not incapacitated merely because the person has been drinking or using drugs. The question of incapacitation is determined on a case-by-case basis using both objective and subjective standards. In evaluating whether a person was incapacitated for purposes of evaluating effective consent, the College will consider: (1) whether the person initiating the sexual activity knew that their partner was incapacitated; and if not (2) whether a reasonable person in the same situation would have known that their partner was incapacitated; and (3) whether the person initiating the sexual activity played a role in creating the circumstances of incapacity.

XVI. REPORTING OPTIONS

- A. The College strongly encourages all who have experienced sexual harassment to report the incident so that the College can provide support and pursue an appropriate resolution. The College prohibits and will not tolerate retaliation against anyone who makes a report.
- B. **Immediate Needs: Safety and Preserving Evidence:** If an incident occurs, the College encourages victims to report the incident and seek both police and medical assistance. Seeking police or medical assistance does not obligate a Complainant to make a complaint or take any further action, but the decision to seek medical help and gather evidence allows Complainants to preserve the full range of available options. The College will assist any community member to get to a safe place, provide transportation for medical help and, if requested, contact law enforcement. For 24/7 help, contact the Department of Campus Safety's emergency line at 617.735.9888.

Any person who has experienced sexual harassment is encouraged to take steps to preserve evidence of the incident, as doing so may be necessary to the proof of a crime or to obtain a protection order from the court. After an incident of sexual assault occurs, one should try to refrain from bathing, showering, brushing teeth, drinking, eating, or changing clothes until the evidence can be collected. If one changes clothes, one should place each garment in a separate paper (not plastic) bag. If the incident involves any written or electronic communications (e.g., pictures/videos, texts, social media posts, etc.), take care to preserve copies and not delete the originals.

Complainants may choose to file a report with both law enforcement and the College when the incident constitutes both a crime and a violation of College policy. In cases in which the Complainant chooses to report to law enforcement, the Title IX Coordinator

may contact any law enforcement agency that is conducting its own investigation to inform that agency that a College investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the College in its investigation. At the request of law enforcement, the investigator may delay the College investigation temporarily while an external law enforcement agency is gathering evidence.

C. **Reporting to Law Enforcement:** Conduct that violates this Policy may also violate state and local laws. The College encourages all individuals to immediately contact law enforcement in situations which may present imminent or ongoing danger by contacting:

- 9-1-1- for Emergencies
- Emmanuel College Department of Campus Safety 617.735.9710
- Boston Police Department (District B-2) 617.343.4270
- Boston Police Sexual Assault Unit 617.343.0044

While the College encourages Complainants to contact law enforcement, it is not required. Additionally, the Complainant is still entitled to supportive measures regardless if a report is filed. College officials will aid in contacting law enforcement as needed.

D. **Reporting to the College:** Complainants are encouraged to report the incident to the College by contacting the Title IX Coordinator. The Title IX Coordinator may be contacted by telephone, mail, email or in person during regular business hours (8:30am-4:30pm).

Erin Farmer Noonan
Title IX Coordinator
Eisner Administration Building – 336
farmer@emmanuel.edu
617.735.9991

As discussed within the Policy, upon receipt of a report, the Title IX Coordinator, or Designee, will promptly contact the Complainant and provide the following: information on the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, the ability to receive supportive measures with or without filing a report, information about the process for filing a Formal Complaint.

E. Confidential Reporting Options:

- Students may call the following offices and ask to speak to a designated confidential counselor:
 - Counseling Center 617.735.9920
 - Health Services 617.264.7678
 - Mission & Ministry 617.735.9703
- Other resources which provide confidential assistance are Boston Area Rape Crisis Center: (24-hour free hotline) 1-800-841-8371; Beth Israel Deaconess Medical Center: 617-667-7000 (SANE); Boston Medical Center: 617-638-8000 (SANE) and Brigham and Women's Hospital: 617-732-6462 (SANE).
- Employees: Confidential assistance is always available through the EAP (Employee Assistance Provider), AllOneHealth, (24 hours a day) at 800-451-1834 or at the website at www.allonehealthep.com.

F. **Delayed Reporting:** Complainants have the right not to file a report, yet they are highly encouraged to seek medical attention and counseling. Complainants who wish to file a report at a later date, may do so by utilizing any of the options above. However, please note that a delay in reporting could create obstacles to the College's process for stopping harassment/discrimination, remedying its effects, and preventing recurrence as well as potentially weakening evidence that could be useful in determining whether sexual misconduct occurred.

G. **Supportive Measures** Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available 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. Supportive Measures are designed to balance restoring or preserving access, without unreasonably burdening the other Party, unless the Respondent has been found responsible in which case the burden to Respondent does not prevent imposition of Supportive Measures. Additionally, they are intended to protect the safety of all Parties and/or deter sexual harassment.

Supportive Measures include counseling, extension of deadlines or other course-related adjustments, modification of work or class schedules, campus escort services, mutual orders of no contact, changes in work or housing locations, leaves of absences, increased security and monitoring of certain area. Please visit the [Supportive Measures](#) of the College's website for a full list of resources.

The College will maintain the privacy of any Supportive Measures provided under this Policy to the extent practicable and will promptly address any reports of retaliation or

violations of mutual no contact orders. The College has the discretion to impose and/or modify any Supportive Measures based on all available information.

H. Interim Action

- i. **Emergency Removal:** The College may impose an interim emergency removal of a Respondent prior to or during the grievance process. Such action may be taken when, after an individualized safety and risk analysis, a College official has determined that an immediate threat to the physical health or safety of any student or other individual exists.

Respondent will be provided with written notice including: information about the grievance process, including an opportunity to challenge the dismissal; identities of the Parties involved in the incident, if known; the conduct allegedly constituting sexual harassment; the date and location of the alleged incident.

Respondents wishing to challenge an Emergency Removal must submit a written appeal of such decision within five (5) Business Days. Appeals must be submitted to the Vice President of Student Affairs.

The Vice President of Student Affairs (Appellate Administrator) will provide their decision to the Respondent within five (5) Business Days of receiving the appeal. If the appeal is denied, the emergency removal may remain in effect through the conclusion of the grievance process, including the appellate process.

- i. **Administrative Leave:** The College may place an employee, including student employees, on administrative leave from employment prior to or during the grievance process outlined. Typically, those placed on administrative leave will continue to receive pay and benefits. Additionally, administrative leave is not indefinite and will be provided updates regarding their status.

XVII. EDUCATION, PREVENTION, AND AWARENESS PROGRAMS AND TRAINING OF COLLEGE OFFICIALS

- A. The College engages in comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to reduce and eliminate sexual misconduct or other forms of prohibited conduct which:
 - are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research, or assessed for value, effectiveness, or outcome;

- consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels; and
 - include primary prevention and awareness programs directed at incoming students and ongoing prevention and awareness campaigns directed at current students.
- B. **Risk Reduction** means practices designed to decrease the potential for Sexual Misconduct, and to increase empowerment for victims and bystander intervention in order to promote safety and to help individuals and communities address conditions that facilitate violence. Experiencing Sexual Misconduct or other forms of prohibited conduct is never the victim’s fault. Only abusers are responsible for the abuse they perpetrate. However, there are resources to help reduce risk of victimization, [including this list](#) from The Rape, Abuse, & Incest National Network.
- C. **Bystander Intervention:** Bystanders play a critical role in the prevention of sexual and relationship violence. Bystanders are “individuals who observe violence or witness the conditions that perpetuate violence. These individuals are not directly involved but have the choice to intervene. The College promotes a culture of community accountability where bystanders are actively engaged in the prevention of violence without causing further harm. Individuals may not always know what to do even if they want to help. Below is a list of some ways to be an active bystander. If you or someone else is in immediate danger, dial 911, if a person is yelling at or being physically abusive towards another and it is not safe for you to interrupt.
- Watch out for your friends and fellow students/employees. If you see someone who looks like he or she could be in trouble or need help, ask if he or she is ok.
 - Confront people who seclude, hit on, attempt to make out with, or have sex with people who are incapacitated.
 - Speak up when someone discusses plans to take sexual advantage of another person.
 - Believe someone who discloses sexual assault, abusive behavior, or experience with stalking.
 - Refer people to on- or off-campus resources listed in this Policy for support in health, counseling, or with legal assistance.
- D. **Training of College Officials:** Title IX Coordinators, Investigators, Decision Makers and any person who facilitates an informal resolution process will receive annual training on the following: the definition of sexual harassment, including an understanding of educational program or activity; how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes; how to serve impartially,

including avoiding prejudice about the facts at issue, conflicts of interest, and bias; the technology to be used at a live hearing; issues of relevance, including questioning, and investigative reports.

XVIII. DISABILITY ACCOMMODATIONS AND INTERPRETIVE SERVICES

Students with a disability who desire an accommodation regarding this Policy must request an accommodation by following the procedure for requesting an accommodation through Disability Services. Disability Services will decide regarding the request and notify the appropriate parties. An Individual will not be considered to have a disability unless and until the student registers with Disability Services.

Employees with a disability who desire an accommodation regarding this Policy should request an accommodation with Human Resources.

Similarly, those in need of interpretive services are encouraged to contact Disabilities Services 617.735.9923 or Human Resources at 617.735.9991.

XIX. RECORD RETENTION

- A. The College will keep for seven (7) years, the following:
- i. All information obtained as part of each sexual harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript; any disciplinary sanctions and/or remedies; any appeal, including the result of the appeal; and any informal resolution and the result therefrom.
 - ii. All information regarding any action taken, including Supportive Measures, and a rationale as to why a Formal Complaint was not filed. If a Complainant was not provided Supportive Measures, a rationale must be provided as to why Supportive Measures were not provided.
 - iii. All training materials used to train Title IX Coordinators, Investigators, Decision Makers, Appellate Administrators, and those who facilitate the informal resolution process will be kept in the Office of Human Resources, and current training materials will be available on the College's website.
 - iv. Generally, information from a student's Discipline File is not released without the written consent of the student. However, certain information may be provided to individuals within or outside the College who have a legitimate legal or educational interest in obtaining it. Typically, the information that is released to those outside of the College is limited to information associated with findings of "in violation" which resulted in a suspension or expulsion (Discipline File). Please refer to the federal [Family Educational Rights and Privacy Act of 1974 \(FERPA\)](#).

- v. Personnel files are the property of the College and will not be shared without a subpoena, except upon request by the individual whose records are contained in the personnel file.

XX. REVISION AND INTERPRETATION

- A. The Policy is maintained by the Office of Human Resources and is effective August 14, 2020. The College reserves the right to review and update the Policy in accordance with changing legal requirements and specific needs of the College.
- B. Any questions of interpretation regarding the Policy shall be referred to the Title IX Coordinator, or Designee for determination. The Title IX Coordinator or Designee's determination is final.
- C. All reports received by the College after this date will be administered in accordance with the procedures described under this Policy.

XXI. FREEDOM OF EXPRESSION AND ACADEMIC FREEDOM

The College is committed to protecting, maintaining and encouraging both freedom of expression and full academic freedom of inquiry, teaching, service, and research. Nothing in this Policy shall be construed to penalize a member of the community for expressing an opinion, theory, or idea in the process of responsible teaching and learning. Accordingly, any form of speech or conduct that is protected by the principles of academic freedom or the First Amendment to the United States Constitution is not subject to this Policy.