

EMMANUEL UNIVERSITY
SEXUAL MISCONDUCT POLICY
Effective August 14, 2020

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EMMANUEL SEXUAL MISCONDUCT POLICY
Effective August 14, 2020

I. Opening Statement and Purpose

(a) Non-Discrimination & Anti-Harassment

Emmanuel University (“Emmanuel” or “the University”) is committed to maintaining an environment that is free of unlawful harassment and discrimination. In accordance with federal law and its commitment to a fair and open campus environment, the College cannot and will not tolerate discrimination against or harassment of any individual or group based upon race, sex (including sexual harassment & pregnancy), color, religion, national origin, genetic information, age, disability, veteran’s status, or any factor that is a prohibited consideration under applicable law. *(The College has been granted a Title IX exemption by the Department of Education’s Office of Civil Rights division for certain regulatory provisions regarding sex-based discrimination “to the extent they are interpreted to reach gender-identity or sexual orientation discrimination, and to the extent they restrict Emmanuel College’s freedom to apply and enforce its Statement on Human Life”).*

As a recipient of federal funds, Emmanuel is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (“Title IX”), which prohibits discrimination on the basis of sex in educational programs or activities, admission and employment. Under certain circumstances, sexual misconduct constitutes sex discrimination prohibited by Title IX.

(b) Emmanuel University’s Commitment to Addressing Sexual Misconduct

Emmanuel University reaffirms the principal that its community members, including students, faculty, administrators, staff, and any individuals regularly or temporarily employed, studying, living, visiting, conducting business or having any official capacity with Emmanuel or on the Emmanuel property (“Emmanuel Community”) have a right to be free from sexual misconduct. Sexual misconduct can occur in many forms, including, but not limited to, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and sexual exploitation. Sexual misconduct is prohibited by this Policy, as well as state and federal law. The University will take seriously every allegation or report of sexual misconduct received. The University will not tolerate sexual misconduct and wants to make clear that sexual misconduct is reprehensible in any situation.

This Sexual Misconduct Policy serves as Emmanuel’s overarching policy against sexual misconduct and gender- or sex-based discrimination in all of its forms. The accompanying Formal Grievance Policy, which is linked [here](#) and is found below as Appendix A to this Sexual Misconduct Policy, covers a narrower subset of sexual harassment that must be addressed under a defined formal grievance process as required by the U.S. Department of Education under new Title IX Regulations, effective August 14, 2020. When sexual misconduct meets the criteria specified in the Title IX Regulations, it must be addressed under the Formal Grievance Policy, and not this overarching Sexual Misconduct Policy, to the extent the processes differ between the two policies. See 34 C.F.R. § 106.44-.45; see Sections I-II of each policy. Otherwise, this overarching Sexual Misconduct Policy will apply (e.g., the definitions in this Policy apply to the Formal Grievance Policy). Combined, Emmanuel’s policies and procedures are intended to ensure that all students impacted by an incident or complaint of sexual misconduct receive appropriate support and fair treatment, and that allegations of sexual misconduct are handled in a prompt, thorough and equitable manner.

Relevant terms are defined in **Sections II** below and **XIII** at the end of this Policy.

Emmanuel will review, evaluate, and make any revisions or amendments to its policies on an ongoing and

as-needed basis. This Policy and the accompanying Formal Grievance Policy shall apply to all Reports and Complaints of sexual misconduct received by Emmanuel's Title IX Coordinator on or after August 14, 2020, regardless of the date of the alleged incident. These policies will not be applied retroactively. The prior iteration of this policy shall apply to Reports and Complaints received by the Title IX Coordinator prior to August 14, 2020.

Inquiries about the application of this policy should be directed to Emmanuel's Title IX Coordinator:

Dr. Kirk D. McConnell
Vice President-University Operations
Title IX Coordinator
Emmanuel University-
University Operations
Building
kmccconnell@ec.edu
(706) 498-4719

II. Scope of Policy

A. Scope

This Policy applies to all Emmanuel community members, including students, faculty, administrators, staff, and any individuals regularly or temporarily employed, studying, living, visiting, conducting business or having any official capacity with Emmanuel or on Emmanuel property ("Emmanuel Community") related to any alleged incident of sexual misconduct that is likely to have a substantial adverse effect on, or pose a threat of danger to, the educational opportunities provided by Emmanuel.

This Policy, its supplemental procedural guidance, and the Formal Grievance Policy are intended to protect and guide individuals who have been affected by sexual misconduct, whether as a Complainant, a Respondent, or as a witness, and to provide fair and equitable procedures for investigation and resolution of Reports and Complaints.

As noted above, when sexual misconduct meets the criteria specified in new Title IX Regulations, effective August 14, 2020, it must be addressed under the Formal Grievance Policy, and not this overarching Sexual Misconduct Policy, to the extent the processes differ between the two policies. The Formal Grievance Policy applies to "sexual harassment" in a Emmanuel "education program or activity" against a person in the United States. 34 C.F.R. § 106.44(a). "Sexual harassment" is defined in the Regulations (§ 106.30) to be conduct on the basis of sex that satisfies one or more of the following:

1. A Emmanuel employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct ("quid pro quo");
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 Emmanuel's education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking. (These terms are defined in the Definitions section below, Section XIII.)

"Sexual misconduct," which is addressed in this overarching Sexual Misconduct Policy, is a broader term that covers sex-based conduct beyond the Title IX Regulations' "sexual harassment" definition. Examples may include sexual exploitation and many forms of verbal harassment that may not meet the Regulations' definition of "sexual harassment."

Additionally, the Title IX Regulations' jurisdictional criteria is narrower than this overarching Sexual

Misconduct Policy. The Formal Grievance Policy applies to a Emmanuel “education program or activity,” which is defined by the Regulations to include locations, events or circumstances over which Emmanuel exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Emmanuel, if it occurs in the United States. (§ 106.44(a).)

If sexual misconduct is alleged to have occurred that does not satisfy the Title IX Regulations’ jurisdictional criteria, such as off-campus sexual misconduct (including sexual harassment) alleged to have an on-campus effect or occurring during a study abroad program, then it may be addressed under this overarching Sexual Misconduct Policy.

B. Overview of Policy and Certain Key Definitions

Emmanuel will investigate all reports received by the Title IX Coordinator of sex discrimination and sexual misconduct (“Reports”). Emmanuel is authorized under this Sexual Misconduct Policy and its accompanying Formal Grievance Policy to take certain actions to address or remedy sexual misconduct after receiving a Report, during an investigation, and after an investigation even if the matter does not proceed to an adjudication.

Anyone can report an incident of sex discrimination and sexual misconduct to Emmanuel under the procedure described in **Section VIII** of this Policy. For example, a “Reporter” can be any individual who reports to Emmanuel that they are a victim or survivor of sexual misconduct or that they have been affected by sexual misconduct (sometimes referred to as a “First-Party Reporter”) or that they have knowledge of sexual misconduct happening to or affecting someone else (sometimes referred to as a “Third-Party Reporter”).

A Report will become a “Complaint” if a First-Party Reporter files a written document with the Title IX Coordinator describing an incident of sexual misconduct and indicating that they want Emmanuel to take further steps, such as a full investigation and possibly holding an adjudication to resolve the alleged issue. Emmanuel can also convert a Report to a “Complaint” if Emmanuel determines that, in order to meet its Title IX obligations to provide a safe and nondiscriminatory environment for the broader Emmanuel Community, it must take further steps to address and resolve the matter. A Formal Complaint under the Formal Grievance Policy is a type of Complaint. See Formal Grievance Policy, Section IV.A., regarding Formal Complaints.

A “Complainant” refers to an individual who is alleged to have been subjected to an incident of sexual misconduct (i.e., a First-Party Reporter or a victim or person who has otherwise been affected by sexual misconduct, or under the Formal Grievance Policy governing sexual harassment, an individual who is alleged to be the victim of conduct that could constitute sexual harassment). A Complainant has certain rights under this Policy, as discussed below. A Reporter who reports witnessing sexual misconduct happening to or affecting someone else (i.e., a Third-Party Reporter) can file a Report and request that it be treated as a Complaint, but that does not make them a Complainant. Similarly, the fact that the Title IX Coordinator may elevate a Report to a Complaint does not make the Title IX Coordinator a Complainant.

A “Respondent” refers to an individual who has been accused of conduct that could constitute sexual misconduct prohibited under this Policy (or, under the Formal Grievance Policy governing sexual harassment, an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment). A Respondent has certain rights under this Policy, as discussed below, and under the Formal Grievance Policy when that policy is applicable.

A “third party” refers to any other participant in the process, including a witness to the incident or an individual who makes a Report on behalf of someone else.

As used throughout this Policy, references to the “Title IX Coordinator” shall include any Deputy Title IX Coordinator and any other person expressly designated by the Title IX Coordinator to act on their behalf.

Additional definitions are contained in **Section XIII** at the end of this Policy.

III. Title IX and Nondiscrimination

Emmanuel University (“Emmanuel” or “the University”) is committed to maintaining an environment that is free of unlawful harassment and discrimination. In accordance with federal law and its commitment to a fair and open campus environment, the University cannot and will not tolerate discrimination against or harassment of any individual or group based upon race, sex (including sexual harassment & pregnancy), color, religion, national origin, genetic information, age, disability, veteran’s status, or any factor that is a prohibited consideration under applicable law. (The University has been granted a Title IX exemption by the Department of Education’s Office of Civil Rights division for certain regulatory provisions regarding sex-based discrimination “to the extent they are interpreted to reach gender-identity or sexual orientation discrimination, and to the extent they restrict Emmanuel University’s freedom to apply and enforce its Statement on Human Life”).

Inquiries about the application of Title IX should be directed to Emmanuel’s Title IX Coordinator, Dr. Kirk McConnell via email at kmcconnell@ec.edu. Additional information can be found on Emmanuel’s website <https://eu.edu/title-ix/>.

Inquiries about the application of Title IX also can be directed to the U.S. Department of Education’s Office for Civil Rights.

External Inquiries may be made to:

Equal Employment Opportunity Commission (EEOC)

Contact: <http://www.eeoc.gov/contact>

Office for Civil Rights

Atlanta Office

U.S. Department of Education

61 Forsyth St. SW, Suite 19T70

Atlanta, GA 30303-8927

Telephone: 404-974-9406*

Fax: 404-974-9471

E-mail: OCR.Atlanta@ed.gov

Website: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.pdf>

GA Commission on Equal Opportunity

Mailing Address: 7 Martin Luther King, Jr. Drive, S.E.

3rd Floor-Suite 351

Atlanta, Georgia 30334

GPS Address: 200 Piedmont Avenue Atlanta, Georgia 30334

Telephone: 404- 463-4706

Website: <https://gceo.georgia.gov/>

One does not have to make an internal inquiry or complaint in order to file a complaint with any of the above named external civil rights agencies.

Reports of sex discrimination, harassment, and/or misconduct on the part of the Title IX Coordinator should be reported to the Office of the President (Gregory K. Hearn) at Emmanuel University: 706-245-2842 or ghearn@ec.edu.

IV. Retaliation, Misuse of Confidential Information, and False Accusations

Emmanuel expressly prohibits retaliation against anyone who: 1) in good faith, reports what they believe is discrimination or sexual misconduct, 2) participates in any investigation or proceeding under this Policy, or 3) opposes conduct that they believe to violate this Policy. Retaliation includes intimidation, harassment, threats, or other adverse action or speech against the person who reported the misconduct, the parties, and their witnesses.

Consistent with FERPA's prohibition on re-disclosure of confidential information, any person who receives another person's confidential information solely as a result of participation in any investigation or proceeding under this Policy, is prohibited from using or disclosing such confidential information outside of such forums without express consent or for any improper purpose. This provision only applies to other people's confidential information, as a party is never restricted from discussing their own experience. This provision does not apply to any information learned outside of an investigation or proceeding under this Policy.

Emmanuel will not only take steps to prevent retaliation, but it will also take strong corrective action if it occurs. Anyone who believes they have been the victim of retaliation should immediately report it to the Title IX Coordinator, who shall treat it as a Report. Any individual found to have retaliated against another individual will be in violation of this Policy and will be subject to disciplinary action, up to and potentially including termination for employees and expulsion for students.

Anyone who knowingly makes a false accusation of unlawful discrimination, harassment, or retaliation of any form will be subject to an investigation for a potential violation of this Policy and may be subject to disciplinary action, up to and potentially including termination for employees and expulsion for students.

V. Time Considerations for Reporting and Filing Title IX Complaints

There is no time limit for reporting incidents of Sexual Misconduct under this Policy, although Emmanuel encourages reports to be made as soon as possible. Any individual who has been subjected to, or who knows of or has witnessed, an incident of Sexual Misconduct is encouraged to report the incident or file a Complaint immediately in order to maximize Emmanuel's ability to obtain information and conduct an adequate, thorough, prompt, and impartial investigation into the incident. A delayed Report of alleged Sexual Misconduct may result in the loss of relevant information, evidence, and reliable witness testimony, and may impair Emmanuel's ability to fully investigate the incident. If a party files a Report or Complaint that is related to an existing investigation, Emmanuel has discretion to consolidate the two investigations and adjudications without re-starting the process as set forth in this Policy.

VI. Amnesty for Alcohol and Illegal Drug Use Violations for Individuals Who Report Incidents of Sexual Misconduct

Emmanuel strongly encourages individuals who have been involved in, or who know of, or have witnessed, incidents of Sexual Misconduct to report such incidents as soon as possible. Emmanuel recognizes that students involved (e.g. as witnesses, bystanders, third parties, or Complainants) who may have violated drug and alcohol laws or policies may be hesitant to report out of fear of sanction. Therefore, in order to encourage reporting in all situations, anyone who reports or experiences Sexual Misconduct may be granted amnesty for a violation of Emmanuel's drug and alcohol policies that occurred in connection with the reported incident. Emmanuel intends to grant such amnesty for all but the most egregious violations of its drug and alcohol policies; however, individuals may be provided with resources on drug and alcohol counseling and/or education, as appropriate.

Honor code and other code or policy violations discovered during a Title IX process may be referred to the appropriate Emmanuel office(s).

VII. Available Resources and Recommended Immediate Steps Following An Incident of Sexual Misconduct

LAW ENFORCEMENT	LOCAL HOSPITALS
Emergency Assistance: 911	Piedmont Athens Regional Hospital-Athens, GA (706) 475-7000
Franklin County 911: Non-Emergency: (706) 384-7188	St. Mary's Sacred Heart Hospital-Lavonia, GA (706) 356-7800
Franklin Springs City Hall (706) 245-6957	Reddy Urgent Care-Royston, GA (706) 621-7575
Franklin Springs Police Department (706) 245-0000	Harmony House Harmony House: (706) 245-8700
Franklin County Sheriff's Office (706) 384-2525	<i>Advocate can assist with resources and arrange for a student to be seen by a Sexual Assault Nurse Examiner in the event of a sexual assault. Advocacy and support following the incident can also be provided.</i>

	Franklin Life Pregnancy Center (706) 384-5081
Emmanuel Campus Safety: Franklin Springs Police Chief (706) 245-0000 or kevin.thompson@ec.edu	National Domestic Violence Hotline: 1-800-799-7233 (SAFE) Domestic Abuse Helpline for Men & Women: 888-7HELPLINE (888-743-5754) RAINN: www.rainn.org or 800-656-4673 (National Sexual Assault Hotline)

Emmanuel is acutely aware that an individual who has been subjected to, or who knows of or who has witnessed a sex offense may experience physical, mental and emotional trauma as a result of the incident. A victim of sexual violence (e.g., sexual assault, dating violence, domestic violence, stalking) is encouraged to follow these procedures immediately following the occurrence, when possible:

- A. Get to a safe place immediately and call someone you trust.
- B. If sexual contact and/or penetration occurred, do not wash, douche, shower, bathe, use the toilet, brush your teeth, or change clothing or bedding. Preserve any evidence as would be necessary to prove the offense, or in obtaining a judicial protective order, restraining order, and/or no-contact order. Examples of such evidence include:
 - Clothing worn during the incident, including but not limited to undergarments;
 - Sheets, bedding, and condoms, if used;
 - A list of witnesses with contact information;
 - Text messages, emails, call history, and digital media posts; and
 - Pictures of any injuries.
- C. You are encouraged, but not required, to call the appropriate law enforcement agency. To contact the Franklin Springs Police Department, call 911 (for emergencies) or 706-245-0000. Emmanuel's Title IX Coordinator can assist any student with reporting a crime to the Police Department. Even if you do not intend to pursue a criminal investigation immediately, you may wish to speak with law enforcement resources or sex assault counselors about preserving evidence. This may allow you to proceed at a later time with a criminal complaint, if you later decide to do so. *The filing of a police report or the pendency of civil or criminal proceedings does not stop the Emmanuel Title IX process, However, the University's investigation may be delayed temporarily while the criminal investigators are gathering evidence.*
- D. Get medical attention. The Title IX Coordinator or Residence Life personnel will assist you in calling Emergency Medical Services (911) if you ask them to. Emmanuel also encourages you to go, or have someone else take you, directly to a medical facility or medical provider of your choice. Any medical provider should be instructed to collect and preserve relevant evidence, or if they are not experienced in doing so themselves, to contact the Harmony House Rape Crisis Center at 706-245-8700.
- E. Emmanuel will assist an individual who has been subjected to, who knows of, or who has witnessed an incident of sexual misconduct in obtaining the services of counseling professionals, if requested.

Emmanuel encourages you to seek support services. For on-campus student counseling services, contact the Counseling Center at 706-245-2881. For off-campus counseling and advocacy services, contact the Harmony House Rape Crisis Center at 706-245-8700. Emmanuel will provide as much assistance as possible but cannot assume financial responsibility for such services.

- F. All members of the campus community are encouraged to seek resources and support related to sex discrimination and sexual misconduct proceedings, including Respondents, witnesses and bystanders. For more information, see Emmanuel's Title IX website at <https://eu.edu/title-ix/>.

VIII. Options and Procedures for Reporting or Disclosing Incidents of Sexual Misconduct

A. Options for Reporting to Emmanuel Under This Policy

Anyone can report an incident of sexual misconduct to Emmanuel (a "Report"). A Report can be made by any individual who is a victim or survivor of sexual misconduct, who has been affected by sexual misconduct, or who has knowledge of sexual misconduct happening to or affecting someone else. A Report may be made anonymously (see **Section X**).

Emmanuel strongly encourages all individuals to report incidents of sexual misconduct even if the individual does not intend to pursue a Complaint. Even if Emmanuel does not have jurisdiction over the Respondent, Emmanuel may take prompt action to provide supportive measures for the safety and well-being of any affected person and the broader Emmanuel community. No person should assume that an incident has already been reported by someone else or that Emmanuel already knows about a particular situation.

In order to make a Report to Emmanuel, a reporting individual may do **one or more** of the following:

1. Report the incident to the Title IX Coordinator via email to kmccconnell@ec.edu, in person, by mail, or by email. See Section I for the Title IX Coordinator's contact information. Reporters are encouraged, but not required, to direct their Reports to the Title IX Coordinator.
2. Disclose the incident to any Mandatory Reporter, which includes all faculty and staff members (*with the exception of groundskeeping, maintenance, and housekeeping staff*), as well as all Resident Assistants (RAs); however, the staff listed below in **Section VIII.B** are considered "confidential resources."

It is important to know that, with the exception of the "confidential resources" staff listed below in **Section VIII.B**, all Emmanuel faculty and staff are Mandatory Reporters and are required by school policy to relay allegations of sexual misconduct to the Title IX Coordinator. Mandatory Reporters must relay all known information about any reported policy violation, including but not limited to: the names of involved individuals, the nature of the incident, and the time and location of the incident. (See **Section X** for information about confidential and anonymous reporting.) Once the information is received by the Title IX Coordinator, it will constitute a Report.

All Resident Assistants and Campus Safety work study students are also Mandatory Reporters and are required to report any knowledge of possible violations of the policy to the Title IX Coordinator. No other students are obligated to report knowledge they may have of sexual misconduct, including student employees of Emmanuel who are considered students and not staff for purposes of this Policy and are not Mandatory Reporters.

Once the Title IX Coordinator learns of any Report of alleged sexual misconduct, whether from a direct Report or from a Mandatory Reporter, they will implement supportive measures as needed and initiate an investigation into the alleged incident. The form of the investigation may vary, particularly if the conduct alleged is governed by the U.S. Department of Education's Title IX Regulations, in which case Emmanuel's Formal Grievance Policy at Appendix A will apply. Following an investigation, the Title IX Coordinator has authority to resolve a Report, including the implementation of any supportive measures, and close the case if the Report does not constitute or become a Complaint.

After making a Report, an individual may choose to file or request a Complaint and pursue resolution (under this policy or the Formal Grievance Policy, as applicable) or, if applicable, an Informal Resolution involving the Respondent; may choose to be involved or not be involved in Emmanuel's investigation and any related proceedings; or may choose to end involvement in the process.

B. Privacy and Confidentiality: Understanding the Differences

The University is committed to protecting the privacy of all individuals involved in the investigation and resolution of reports under this Policy. The University is also committed to assisting the campus community in making informed choices. With respect to any report under this Policy, the College will make reasonable efforts to protect the privacy of individuals involved, in accordance with applicable federal and state law, while balancing the need to gather information to take steps to eliminate prohibited conduct, prevent its recurrence, and remedy its effects. Privacy and Confidentiality have distinct meanings under this Policy.

1. Privacy

"Privacy" generally means that information related to a report will only be shared with a limited circle of "need to know" individuals in order to assist in the assessment, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process to the extent permitted by the law.

2. Confidentiality

"Confidentiality" generally means that information shared by an individual with designated campus or community professionals will not be revealed to any other individual without the expressed consent of the individual. See below for more specific details on Confidential Reporting Options.

B. Options Utilizing Confidential Resources

Rather than making a Report, individuals can confidentially discuss incidents of sex discrimination and sexual misconduct with one of the following Emmanuel "confidential resources":

Dr. Blake Rackley
Clinical Crisis Management
brackely@ec.edu
Student Development

Pastor Chris Maxwell
Campus Pastor
cmaxwell@ec.edu
Student Development

Disclosures made to these confidential resources will be held in strict confidence, and will not constitute a Report to Emmanuel under this Policy. These confidential resources may assist individuals with making Reports or filing Complaints if, and only if, the Complainant requests that they do so or if there is an emergency in which the Complainant cannot report the alleged sexual misconduct. Anyone who at first utilizes a confidential resource may later decide to make a report to a non-confidential resource, such as the Title IX Office or law enforcement.

Additionally, in order to assist Emmanuel in collecting data and identifying potential patterns or systemic problems related to sexual violence on and off campus, the “confidential resources” staff will convey general and non-personally-identifiable information about the incident (i.e. nature, time and location of the incident) to the Title IX Coordinator. Because such communications will necessarily lack any personally-identifying information, they will not constitute Reports and generally will not be investigated unless a pattern or systemic problem is discovered. Again, Emmanuel strongly encourages all individuals to report incidents of sexual misconduct to the Title IX office, including with the assistance of confidential resources, if they wish for the incident to be investigated; otherwise, Emmanuel fully respects the confidential resources’ strict confidence when the Reporter chooses not to report.

See **Section X** regarding making confidential and anonymous Reports to Emmanuel.

C. Options for Notifying Off-Campus Law Enforcement Authorities

Individuals can, but are not required to, notify off-campus law enforcement authorities about any incident of alleged sex discrimination and sexual misconduct, including by dialing (911), calling the Franklin Springs Police Department at 706-245-0000, and/or calling the Rape Crisis Center at 706-245-8700. Individuals can also contact other law enforcement agencies, depending on the location of the incident. Notifying off-campus law enforcement authorities will not constitute a Report to Emmanuel under this Policy, but it may or may not result in such authorities reporting relevant information back to Emmanuel which Emmanuel will investigate.

Individuals can request assistance from Emmanuel faculty and staff in notifying appropriate law enforcement authorities, which Emmanuel will encourage them to provide. Requesting such assistance from a Mandatory Reporter will constitute a Report as described above.

D. Option to Not Report

Individuals can choose not to notify Emmanuel or any law enforcement authorities about an alleged incident of sexual misconduct.

IX. Filing a Complaint of Sexual Misconduct

If an individual wishes to pursue an incident of sexual misconduct beyond simply reporting it, they may file a Complaint. The filing of a Complaint means that the individual is asking Emmanuel to take further steps, such as a full investigation and possibly holding an adjudication to resolve the alleged issue. Any Complainant (i.e., an alleged victim or survivor or someone who has otherwise been directly affected by sexual misconduct) may file a Complaint, and Emmanuel will treat it as such. Any Third-Party Reporter may request that Emmanuel treat their Report as a Complaint, but that would not make the Third-Party Reporter into a Complainant, and Emmanuel shall have discretion on whether to treat the Third-Party Report as a Complaint.

In order to meet its Title IX obligations to provide a safe and nondiscriminatory environment for the

broader Emmanuel Community, Emmanuel may convert a Report into a Complaint if Emmanuel determines that it must take additional steps to protect the Emmanuel Community.

Depending on the conduct alleged and the location of the incident, a Complaint will be governed by either this Policy or the accompanying Formal Grievance Policy. A Formal Complaint under the Formal Grievance Policy is a type of Complaint. (See Formal Grievance Policy, Section IV.A., regarding Formal Complaints, and Sections I-II of each policy for descriptions of the scope of each respective policy.)

A. Filing a Complaint

Anyone seeking to file a Complaint of individual or institutional Sexual Misconduct may do so with the Title IX Coordinator. Complaints must be in writing and include all information that the filer believes to be relevant (*e.g.*, time, location and nature of incident, names of individuals involved in or witnesses to the incident, names of other persons affected by the incident, etc.). Alternatively, an individual can also file a Complaint by meeting with the Title IX Coordinator and providing a verbal description of the Sexual Misconduct, which the Title IX Coordinator will use to draft a written document that the individual will review, verify and sign to constitute a Complaint.

B. Action Following the Filing of a Complaint

Emmanuel will investigate all Complaints of Sexual Misconduct. A Complaint meeting the criteria of the Formal Grievance Policy (a “Formal” Complaint) will proceed according to that Policy instead of the provisions below.

For a Complaint that does not meet the criteria of the Formal Grievance Policy, Emmanuel’s process will typically involve an investigation phase and then proceed to a Resolution Hearing before a Sexual Misconduct Hearing Panel to determine whether the Respondent is responsible or not responsible for having violated this Policy, *except* in the circumstances described below. In some instances, an Informal Resolution also may be an option for resolving a Complaint.

C. Where the Formal Grievance Protocol does not apply, the Title IX Coordinator shall have discretion to dismiss a Complaint without a Resolution Hearing in the following circumstances:

- (1) if Emmanuel lacks jurisdiction;
- (2) if a case involves a Emmanuel employee (faculty, staff member or contract services employee), the Title IX Coordinator shall coordinate with Director of Human Resources to initiate appropriate investigation and/or resolution;
- (3) if the allegations could not constitute a Policy violation under any alleged circumstances;
- (4) if the Complaint is eligible for the Informal Resolution process;
- (5) if the Complaint was requested by a Third-Party Reporter who reported witnessing sexual misconduct happening to or affecting someone else, the Title IX Coordinator shall have discretion to resolve the Complaint or to provide modified hearing procedures, particularly to account for the alleged victim’s wishes (*e.g.*, if they do not wish to pursue the Complaint as a first-party Complainant);
- (6) if the Complainant and Respondent both consent to an alternative resolution, with such consent obtained independently from each person by the Title IX Coordinator to avoid a risk of coercion;

(7) for matters that do not involve Emmanuel employees (faculty, staff member or contract services employee), if either Complainant or Respondent, or both, are not Emmanuel students, or cease to be Emmanuel students prior to final resolution of the Complaint (e.g., a student withdrawal), the Title IX Coordinator shall have discretion to resolve the Complaint or to provide modified hearing procedures;

(8) or, if the Respondent admits responsibility for a violation, the Title IX Coordinator shall have discretion to resolve the Complaint or to provide modified hearing procedures to help the Hearing Panel decide appropriate sanctions.

In all circumstances, the Title IX Coordinator shall have authority to provide supportive measures and make accommodations consistent with **Section XI** below and take other measures consistent with the Emmanuel Student Handbook; and for employee matters, the Director of Human Resources shall have authority to take action consistent with the Emmanuel Employee Handbook.

D. A person may withdraw a Complaint. If a Complaint is withdrawn, Emmanuel will treat the withdrawn Complaint as a Report and proceed accordingly.

X. Confidential and Anonymous Reporting

As discussed above in **Section VIII.B.**, individuals can confidentially discuss incidents of sex discrimination and sexual misconduct with Emmanuel's "confidential resources" staff; those discussions will remain confidential and not be considered a Report to Emmanuel.

This **Section X.** relates to situations in which a reporter wants to make a Report to Emmanuel (e.g., so an investigation process may begin) in which the reporter wishes to remain anonymous or wishes for Emmanuel to keep certain information confidential.

Any individual can make an anonymous Report of a violation of the Emmanuel Sexual Misconduct Policy. An individual may report the incident without disclosing their name, identifying a Complainant or a Respondent, or requesting any action. Emmanuel will attempt to investigate all such Reports, but depending on the extent of information available about the incident or the individuals involved, Emmanuel's ability to investigate and respond to an anonymous Report may be limited, particularly to the extent that the conduct alleged would be subject to the Formal Grievance Policy. The Title IX Coordinator will receive the anonymous Report and will determine any appropriate steps, including individual or community remedies as appropriate.

Additionally, a Reporter can make a Report disclosing their name but requesting confidentiality. An affected person who is the subject of a third-party's Report can also request confidentiality. In such instances, if they also request that no investigation or disciplinary action be pursued, the Title IX Coordinator will respect the request for confidentiality as long as only personal supportive measures are requested and grounds do not exist to convert the Report into a Complaint. A request for confidentiality cannot be fulfilled in the case of a Formal Complaint. Further, in some instances, Emmanuel may deny or modify a request for confidentiality when weighed against Emmanuel's obligation to provide a safe, non-discriminatory environment for all students, considering many factors, including:

- The seriousness of the alleged misconduct;
- Whether there have been other reports of sexual misconduct against the Respondent known by Emmanuel;
- Whether the Respondent has allegedly threatened further misconduct or violence;
- Whether the alleged misconduct was committed by multiple perpetrators;

- Whether the alleged misconduct involved use of a weapon;
- The age of the individual subjected to the alleged misconduct;
- Whether Emmanuel possesses other means to obtain relevant evidence of the alleged misconduct;
- Whether the Report reveals a pattern of misconduct at a particular location or by a particular individual or group of individuals; and
- The accused individual's right to receive information about the allegations if the information is maintained by Emmanuel as an "education record" under the Family Educational Rights and Privacy Act (FERPA), if applicable.

In an instance where Emmanuel determines it must deny or modify a request for confidentiality, the Title IX Coordinator will inform the requesting individual prior to making the disclosure to anyone beyond necessary school officials. Any such disclosure will be limited to only individuals with a need to know such information. In all instances, members of the Emmanuel Community should understand that Title IX prohibits retaliation against anyone reporting a potential Title IX incident, and that Emmanuel officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

In all cases of alleged sexual misconduct under this Policy reported to the Title IX Coordinator, Emmanuel will investigate and implement supportive measures. Please note that Emmanuel's ability to investigate and respond fully to an incident may be limited because of requests for confidentiality or to not proceed with disciplinary action.

XI. Supportive Measures

In cases of reported alleged Sexual Misconduct involving students, Emmanuel may implement supportive measures immediately or at any time that Emmanuel determines such measures are necessary. The Title IX Coordinator shall have responsibility for determining such supportive measures. Some of these supportive measures also may continue in effect after an investigation is closed or as post-hearing sanctions or accommodations, depending on the outcome of the investigation and hearing. Examples of supportive measures that Emmanuel may consider and elect to implement include, but are not limited to:

- facilitating leaves of absence for impacted parties, to the extent practicable;
- implementing a mutual "no contact" order to govern, and attempt to avoid, interaction between affected individuals;
- ensuring that the Complainant and the Respondent do not attend the same classes, seminars, functions, meetings, etc.;
- offering to provide or facilitate the provision of medical, counseling and mental health services, but not necessarily covering the cost of such services;
- providing education regarding sex discrimination, sexual misconduct, alcohol and drug use, incapacitation and consent, etc.;
- reviewing any academic challenges or any disciplinary actions taken against the Complainant to see if there is a causal connection between the events that may have impacted the Complainant;
- changing on-campus living arrangements, when reasonable;
- providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred;
- limiting the access of the individual accused of the misconduct to certain Emmanuel facilities until the matter is resolved, including the possibility of an interim suspension if warranted; and
- upon request, arrange for the re-taking, changing, or withdrawing from classes. In such instances,

Emmanuel will make reasonable efforts to mitigate any academic or financial penalty for providing such arrangements. Emmanuel may also provide for the extension of deadlines or other course-related adjustments.

Supportive measures shall be balanced based on the facts collected, seriousness of the allegations, and the potential safety risks posed to the Emmanuel Community. Supportive measures are designed to restore or preserve equal access to Emmanuel's education program and activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Emmanuel's educational environment, or deter sexual misconduct. Emmanuel will maintain as confidential any personal supportive measures provided to only the Complainant or only to the Respondent, to the extent that maintaining such confidentiality would not impair its ability to provide the supportive measures (e.g., not applicable to mutual no contact orders).

Emmanuel may also consider and take supportive measures that affect the broader Emmanuel Community and which are aimed to eliminate occurrences of Sexual Misconduct and to promote academic and employment environments free of such conduct.

If a Respondent student withdraws from Emmanuel while a Report or Complaint is pending, supportive measures may be continued for the Complainant. The Respondent may be required to notify the Title IX Coordinator if they intend to visit any building owned or controlled by Emmanuel or a student organization that is officially recognized by Emmanuel, or if they otherwise seek to attend any Emmanuel education program or activity or event, so that the Complainant may be given an opportunity to receive supportive measures if needed. The Respondent's student records also may be marked to indicate their departure during a disciplinary process (which may resume if they return to Emmanuel), but shall not indicate that such Respondent was found or assumed responsible for any alleged misconduct pending at the time of departure.

XII. Investigation and Resolution Processes For Cases In Which Both Parties Are Students

This Section describes Emmanuel's investigation and resolution processes for cases in which both parties are students and in which the conduct alleged does not trigger the Emmanuel Formal Grievance Policy.

For more details, please refer to the Formal Grievance Policy accompanying this Policy.

A. Investigation

Emmanuel will investigate all Reports of sexual misconduct reported to the Title IX Coordinator regardless of whether the Report becomes a Complaint. The investigation and adjudication procedures (if needed) shall be prompt, fair, and impartial. The process typically will begin with intake meetings conducted by the Title IX Coordinator. The investigation phase may include interviewing the Complainant/ First-Party Reporter, the Respondent, and any witnesses; reviewing law enforcement investigation documents if applicable; reviewing relevant student files; and gathering and examining other relevant documents and evidence.

For Reports, the Title IX Coordinator or his/her designee will conduct an initial investigation. If that initial investigation demonstrates that the case may implicate Emmanuel's Title IX obligations to provide a safe and nondiscriminatory environment for the broader Emmanuel Community, the Title IX Coordinator will/may treat the Report as a Complaint and follow the Complaint processes outlined herein and in the

accompanying Procedural Guidance. If the Title IX Coordinator determines that the Report does not implicate Emmanuel's Title IX obligations, then after the Title IX Coordinator's investigation, implementation of any supportive measures, and finalization of any investigation memo, the Title IX Coordinator will be authorized to close the matter.

For Complaints, the Title IX Coordinator will appoint two investigators ("Investigators") to handle the investigation. This Investigators will be a different persons than the Title IX Coordinator. Following the investigation, the Investigators will draft an investigation report succinctly describing all collected information. The report will be delivered to the Title IX Coordinator, who will analyze the report to ensure that the investigation was prompt, fair, impartial, thorough, and consistent with this policy. The Investigators will not make any recommendation as to whether a policy violation has occurred or potential sanctions. Depending on how the Complaint proceeds, the investigation report and other materials related to the investigation may be presented at a Resolution Hearing and/or may be presented during an Informal Resolution process.

Emmanuel will make reasonable efforts to balance and protect the rights of the parties during any investigation commenced under this Policy. Emmanuel will respect the privacy of the parties and any witnesses in a manner consistent with Emmanuel's obligations to investigate the alleged incident, and take appropriate interim and/or corrective action. The Title IX Coordinator will keep the parties reasonably informed of the status of the investigation.

Both Complainants and Respondents may utilize an Advisor or Support person throughout the investigation process, including to accompany them to any hearing, conference, or related disciplinary proceeding. Neither Advisors nor Supporters are permitted to directly participate in Resolution Hearings or Informal Resolution conferences; they may be present solely to advise or support the party and are prohibited from speaking directly to the Investigator, the Hearing Panel, other parties, or witnesses.

B. Informal Resolution

For Complaints with a student Respondent, at the discretion of the Title IX Coordinator, the parties may opt to pursue an Informal Resolution as an alternative to a Resolution Hearing. An Informal Resolution involves a remedies-based, non-judicial process designed to eliminate or address potential sexual misconduct. This process aims to assure fairness, to facilitate communication, and to maintain an equitable balance of power between the parties. Emmanuel will not compel face-to-face confrontation between the parties or participation in any particular form of Informal Resolution.

The Title IX Coordinator will make an initial decision about whether a case qualifies for an Informal Resolution, and if both parties then agree to pursue that path, Emmanuel will halt any investigation or scheduled Resolution Hearing so that the parties can explore the possibility of informal resolution. Participation in an Informal Resolution is voluntary, and either party can request to end the Informal conference at any time and return the investigation or proceeding to its pre-conference status. If the parties agree to a resolution during an Informal Resolution process, the Title IX Coordinator will oversee its implementation, the Complaint will be deemed withdrawn, and the matter will be terminated. However, the resolution will be considered binding, and its breach would give rise to a new Complaint, which may restart the investigation and/or Resolution Hearing process.

C. Resolution Hearing

A Resolution Hearing is Emmanuel's disciplinary proceeding through which a Sexual Misconduct Hearing Panel evaluates evidence related to a Complaint to determine whether a student Respondent is responsible or not responsible for a violation of this Policy. Emmanuel will use a "clear and convincing evidence"

standard. Under this standard, the burden of proof is met and a Respondent may be found responsible for a Policy violation if the Sexual Misconduct Hearing Panel determines that the alleged sexual misconduct is substantially more likely to be true than untrue; that it is highly probable that the Respondent committed the alleged violation. If the Respondent is found in violation of the Policy, the Respondent may be subjected to disciplinary action.

The parties will be provided notice of the date, time and location of the hearing. At least ten (10) business days prior to a hearing, both parties and the Sexual Misconduct Hearing Panel will be provided access to a hearing packet containing the investigation report and other information pertinent to the hearing. The hearing may consist of testimony by the parties, witnesses and the Investigator, and may include the presentation of other evidence. Hearings, including those that occur during the non-academic year, may be conducted via video conference and/or teleconference, as needed. The Sexual Misconduct Hearing Panel will be allowed to question each witness who appears, and the parties will be allowed to ask questions through the Sexual Misconduct Hearing Panel. Live, verbal, and direct cross-examination of a party or witness is not permitted under this Policy by a party or that party's Advisor (unlike in the Formal Grievance Process required for addressing defined sexual harassment). The parties will be provided notice of the outcome of the Board's deliberations, including the determination of whether the Respondent was found responsible or not responsible for the alleged violation(s) and applicable sanction(s). Decisions made in a Resolution Hearing may be appealed. The Title IX Coordinator will be authorized to stay sanctions pending appeal and/or make further accommodations that are consistent with the Sexual Misconduct Hearing Panel's decision.

D. Appeals

Either Complainant or Respondent may appeal any Sexual Misconduct Hearing Panel decision within five (5) business days of delivery of the Hearing Panel's determination. Appeals can only be raised on one or more of the following grounds: (1) a procedural irregularity that affected the outcome of the matter; (2) to consider new facts or information that were not known or knowable to the appealing party before or during the time of the hearing and that were sufficient to alter the decision; (3) the Title IX Coordinator, Investigator, or adjudicator(s) had a conflict of interest or bias against the appealing party that affected the outcome of the matter; (4) the decision reached was not supported by clear and convincing evidence; or (5) the sanctions were disproportionate to the findings. The appeal will be reviewed and determined by the Appeal Officer, based on the grounds contained in the appeal statement. Appeals decisions are final and not subject to further review.

XIII. Definitions

Please also refer to Section II.B. for more information about certain key definitions.

Advisor: Refers to an attorney or a non-attorney advisor who can provide assistance to the Complainant or the Respondent during Resolution Hearings, Informal Resolution conferences, and any other stage of the processes covered by this Policy, although they are not permitted to directly participate. Emmanuel will provide a list of faculty and staff who have received training to serve as Advisors, but parties retain the right to select their own Advisor if they so choose.

Affirmative Consent: Means an affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity. The presence or absence of consent is determined by evaluating the relevant facts and circumstances. All five of the following elements are essential in order to have affirmative consent. If one or more of the following is absent, there is no affirmative consent.

- A. *Consists of Mutually Understandable Communication:* Communication regarding consent consists of mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity. In the absence of clear communication or outward demonstration, there is no consent. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to an erroneous conclusion as to whether consent was sought or given. Verbal communication is the best way to ensure all individuals are willing and consenting to the sexual activity.
- B. *Informed and Reciprocal:* All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.
- C. *Freely and Actively Given:* Consent cannot be obtained through the use of force, coercion, threats, or intimidation, or by taking advantage of the incapacitation of another individual.
- D. *Not Unlimited:* Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant. Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.
- E. *Not Indefinite:* Consent may be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed “no” or can be based on an outward demonstration that conveys that an individual is confused, uncertain or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

Emmanuel prohibits romantic, sexual, and exploitative relationships between college employees and students. (See *Emmanuel Handbook – Section 1.15*)

Appeal Officer: Refers to a current Employee that hears and decides appeals of findings and sanctions imposed by the Sexual Misconduct Hearing Panel (defined below). The Appeal Officer is a current Employee that has had no prior involvement in the case. This Appeal Officer is authorized to affirm, alter, or reverse the original findings and/or sanctions recommended by the Sexual Misconduct Hearing Panel. Once issued, the Appeal Officer’s decision is final.

Clear and convincing evidence: Refers to the standard by which Emmanuel determines at a hearing whether or not a violation of this Policy has occurred, and means that the Sexual Misconduct Hearing Panel determines that the alleged sexual misconduct is substantially more likely to be true than untrue; that it is highly probable that the Respondent committed the alleged violation. This standard applies for all claims of sexual misconduct, including sexual harassment under the Formal Grievance Policy.

Coercion: Means the use of pressure to compel another individual to initiate or continue activity against their will, including psychological or emotional pressure, physical or emotional threats, intimidation, manipulation, or blackmail. Coercion may include a threat of kidnapping, extortion, force or violence to be

performed immediately or in the future. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include, but are not limited to threatening to "out" someone based on sexual orientation, gender identity, or gender expression; threatening to harm oneself if the other party does not engage in the sexual activity; and threatening to expose someone's prior sexual activity to another person and/or through digital media.

Complaint: Refers to a written complaint filed with the Title IX Coordinator alleging any action, policy, procedure or practice that would be prohibited by Title IX, such as Sexual Misconduct, and indicating that they want Emmanuel to take further steps, such as a full investigation and possibly holding an adjudication to resolve the alleged issue. A Complaint may be filed by a Complainant. A third-party who knows of or witnessed an incident of Sexual Misconduct but who did not suffer such misconduct themselves may request that Emmanuel treat their third-party Report as a Complaint. Emmanuel can convert a Report to a Complaint if Emmanuel determines that, in order to meet its Title IX obligations to provide a safe and nondiscriminatory environment for the broader Emmanuel Community, it must take further steps to address and resolve the matter. A Formal Complaint under the Formal Grievance Policy is a type of Complaint. See Formal Grievance Policy, Section IV.A., regarding Formal Complaints.

Complainant: Refers to an individual who is alleged to have been subjected to an incident of Sexual Misconduct (i.e., a First-Party Reporter or a victim or person who has otherwise been affected by sexual misconduct, or under the Formal Grievance Policy governing sexual harassment, an individual who is alleged to be the victim of conduct that could constitute sexual harassment). A Reporter who reports witnessing sexual misconduct happening to or affecting *someone else* (i.e., a Third-Party Reporter) can file a Report and request that it be treated as a Complaint, but that does not make them a Complainant. Similarly, the fact that the Title IX Coordinator may elevate a Report to a Complaint does not make the Title IX Coordinator a Complainant.

Consent: See *Affirmative Consent* above.

Dating Violence: See *Sexual Harassment* below, Subsection B.

Domestic Violence: See *Sexual Harassment* below, Subsection C.

Formal Complaint: See *Complaint* above. See also Formal Grievance Policy, Section IV.A.

Formal Grievance Process: The process described in the Formal Grievance Policy for addressing and resolving a Formal Complaint, as required by the new Title IX Regulations, effective August 14, 2020.

Incapacitation: Means the lack of ability to make rational, reasonable judgments as a result of alcohol consumption, other drug use, sleep, the taking of any so-called "date-rape" drug, unconsciousness, or blackout. An incapacitated person cannot make rational, reasonable decisions because that person lacks the ability to fully understand the who, what, where, or how of their sexual interaction. Incapacitation is a state beyond drunkenness or intoxication, in which alcohol, drugs, or other factors render one unable to make fully informed judgments or have an awareness of consequences. While incapacitation may be caused by drugs or alcohol, it also includes the state of being asleep, during which time a person is unable to provide affirmative consent.

Informal Resolution: A process intended to allow the Complainant and the Respondent to provide information about the alleged incident(s) of discrimination or harassment, and to reach a mutually agreeable resolution. An Informal Resolution process may take many forms upon the agreement of the parties and the Title IX Coordinator. This process aims to assure fairness, to facilitate communication, and to maintain an

equitable balance of power between the parties.

Investigator: Refers to an official(s) designated by the Title IX Coordinator to conduct an investigation of alleged Sexual Misconduct. The Investigator will be a trained individual who objectively collects and examines the facts and circumstances of potential violations of this Policy and documents them for review. The Investigator will be neutral and will not have a conflict of interest or bias. The Investigator may act as a witness in the event of a Resolution Hearing.

Mandatory Reporter: Refers to an individual who is obligated to report any knowledge they may have of Sexual Misconduct. If a Mandatory Reporter observes, is informed of, or otherwise learns of an act of sexual misconduct, they must report it to the Title IX Coordinator. Emmanuel defines all faculty and staff (with the exception of groundskeeping, maintenance, and housekeeping staff) as mandatory reporters except certain “confidential resources” staff. (See **Section VIII** above.) The only students who are designated as Mandatory Reporters are Resident Assistants and Campus Safety work study students..

Non-Consensual Sexual Contact: See *Sexual Misconduct* below, Subsection A.

Non-Consensual Sexual Penetration: See *Sexual Misconduct* below, Subsection B.

Report: Refers to any written communication that constitutes notice of an incident or allegation that sexual misconduct occurred or may have occurred. Anyone can report an incident of sexual misconduct to Emmanuel under the procedure described in **Section VIII** of this Policy. Notice may be given directly to the Title IX Coordinator (“actual notice”), or to any Mandatory Reporter who has a duty to report such information to the Title IX Coordinator. Once the Title IX Coordinator learns of any Report of alleged sexual misconduct, whether from a direct Report or from a Mandatory Reporter, they will implement supportive measures as needed and initiate an investigation into the alleged incident. The form of the investigation may vary, particularly if the conduct alleged is governed by the U.S. Department of Education’s Title IX Regulations, in which case Emmanuel’s Formal Grievance Policy at Appendix A will apply. Following an investigation, the Title IX Coordinator has authority to resolve a Report, including the implementation of any supportive measures, and close the case if the Report does not constitute or become a Complaint.

After making a Report, an individual may choose to end their involvement in the process; may choose to be involved or not be involved in Emmanuel’s investigation and related proceedings; or may choose to file or request a Complaint and pursue resolution (under this policy or the Formal Grievance Policy, as applicable) or, if applicable, an Informal Resolution involving the Respondent.

Emmanuel strongly encourages all individuals to report incidents of sexual misconduct even if the individual does not intend to pursue a Complaint.

Reporter: Refers to an individual who notifies the Title IX Coordinator or a Mandatory Reporter of an alleged violation of this Policy. A Reporter can be any individual who reports to Emmanuel that they are a victim or survivor of sexual misconduct; that they have been affected by sexual misconduct; or that they have knowledge of sex discrimination and sexual misconduct happening to or affecting someone else.

Resolution Hearing: Refers to Emmanuel’s disciplinary proceeding through which the Sexual Misconduct Hearing Panel evaluates evidence related to a Complaint to determine whether a Respondent is in violation of this Policy. This process differs from the Formal Grievance Process for sexual harassment required by the new Title IX Regulations, effective August 14, 2020.

Respondent: Refers to an individual who has been accused in a Report or Complaint of conduct that could

constitute sexual misconduct prohibited under this Policy (or, under the Formal Grievance Policy governing sexual harassment, an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment).

Sexual Assault: See **Sexual Harassment** below, Subsection A.

Sexual Exploitation: See **Sexual Misconduct** below, Subsection C.

Sexual Harassment: “Sexual harassment” is defined in the new Title IX Regulations (34 C.F.R. § 106.30), effective August 14, 2020, to be conduct on the basis of sex that satisfies one or more of the following:

1. A Emmanuel employee conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct (“quid pro quo”);
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 Emmanuel’s education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking.

A. **Sexual Assault:** An act of sexually-motivated physical contact directed towards another person when the other person does not consent or is incapable of giving consent. This includes but is not limited to rape, sodomy, sexual battery, fondling, incest, and statutory rape. See Title IX Regulations, which cite to 20 U.S.C. § 1092(f)(6)(A)(v).

B. **Dating Violence:** The term “dating violence” is defined in the new Title IX Regulations by reference to federal statute 34 U.S.C. § 12291(a)(10), which defines the term as 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, and (iii) the frequency of interaction between the persons involved in the relationship.

C. **Domestic Violence:** The term “domestic violence” is defined in the new Title IX Regulations by reference to federal statute 34 U.S.C. § 12291(a)(8), which defines the term as felony or misdemeanor crimes of violence committed between:

- individuals who are current or former spouses or intimate partners,
- persons who share a child in common,
- persons who currently live together or have formerly lived together as spouses or intimate partners,
- a person similarly situated to a spouse of the victim under the domestic or family violence laws of the school’s jurisdiction, or
- 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 school’s jurisdiction.

D. **Stalking:** The term “stalking” is defined in the new Title IX Regulations by reference to federal statute 34 U.S.C. § 12291(a)(30), which defines the term as 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.

Types of stalking could include, but are not limited to:

- Following the targeted person;
- Approaching or confronting that person in a public place or on private property;

- Persistent and unwelcome attempts to contact the person by phone, electronic communication (including via the internet and cellphones), or regular mail, either anonymously or non-anonymously;
- Vandalizing the person's property or leaving unwanted items for the person;
- Persistently appearing at the person's classroom, residence, or workplace without that person's permission or other lawful purpose;
- Cyber-stalking, in which a person follows, observes, monitors, or surveils another person through the use of electronic media such as the Internet, digital media networks, blogs, cell phones, texts or other similar devices; and
- Using visual or audio recording devices or hidden or remote cameras used without the subject's consent.

It is important to note that the Title IX Regulations' use of federal definitions of sexual assault, dating violence, domestic violence, and stalking may differ from state law. Accordingly, any criminal proceeding brought by state or local law enforcement authorities may use different definitions.

Sexual Misconduct: Is a broad term that includes "sexual harassment" defined by the Title IX Regulations and also encompasses other sexually-motivated or gender-biased misconduct beyond sexual harassment. Examples may include sexual exploitation and many forms of verbal harassment that may not meet the Regulations' definition of "sexual harassment."

Additionally, if sexual misconduct is alleged to have occurred that does not satisfy the Title IX Regulations' jurisdictional criteria, such as off-campus sexual misconduct (including sexual harassment) alleged to have an on-campus effect or occurring during a study abroad program, then it may be addressed according to this overarching Sexual Misconduct Policy. Such off-campus sexual harassment may be referred to Non-Consensual Sexual Contact ("NCSC") or Non-Consensual Sexual Penetration ("NCSP") (defined below) to avoid confusion between charges brought under this Policy and its procedures as compared to the Title IX Regulations' "sexual harassment" definitions and requirements, which are governed by Emmanuel's Formal Grievance Policy at Appendix A.

Sexual misconduct is conduct that is unwanted or unwelcome and is sexual in nature. Experiencing sexual misconduct may interfere with an Emmanuel community member's ability to perform a job, participate in activities, and/or participate fully in Emmanuel's education programs. It is a form of misconduct that is demeaning to others and undermines the integrity of the employment relationship and/or learning environment by creating an intimidating, hostile or offensive working or academic environment through verbal or physical conduct of a sexual nature. Sexual misconduct is prohibited regardless of whether it is between or among members of the same sex or opposite sex. Sexual misconduct may also consist of inappropriate gender-based comments and gender stereotyping, even if the acts do not involve conduct of an overtly sexual nature.

- A. ***Non-Consensual Sexual Contact:*** "Sexual contact" is defined as the intentional touching of another person's intimate parts, or the intentional touching of the clothing covering the immediate area of the other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification. Such contact is deemed non-consensual if done without the other person's affirmative consent (see definition above).
- B. ***Non-Consensual Sexual Penetration:*** "Sexual penetration" is defined as sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of any other person's body. Such

contact is deemed non-consensual if done without the other person's affirmative consent (see definition above).

- C. **Sexual Exploitation:** Occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or the benefit of anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to:
- Non-consensual video or audio-taping of sexual activity or other private activity, even if that activity occurs in a public or semi-public place;
 - Non-consensual dissemination of video, photographs, or audio of sexual activity or other private activity, including dissemination by a third party or a person not involved in the original conduct;
 - Exceeding the boundaries of consent (such as, permitting others to hide in a closet and observe consensual sexual activity, videotaping of a person using a bathroom or engaging in other private activities);
 - Engaging in voyeurism, exposing one's breasts, buttocks, or genitals in a non-consensual circumstance or inducing another to expose their breasts, buttocks, or genitals without affirmative consent;
 - Prostituting another person;
 - Engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease or infection (STD or STI) and without informing the other person of such disease or infection; and
 - Sexually-based stalking and/or bullying.
- CI. **Sex Discrimination:** Refers to the unequal treatment of an individual based on their sex in any employment decision, education program or educational activity receiving Federal financial assistance. Such programs or activities include, but are not limited to, admission, hiring and recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing and employment. The prohibition on sex discrimination also covers unlawful discrimination based on pregnancy, childbirth or related conditions. Also prohibited as sex discrimination is any act which is based on parental, family, or marital status and which is applied differently based on sex. *(The College has been granted a Title IX exemption by the Department of Education's Office of Civil Rights division for certain regulatory provisions regarding sex-based discrimination "to the extent they are interpreted to reach gender-identity or sexual orientation discrimination, and to the extent they restrict Emmanuel College's freedom to apply and enforce its Statement on Human Life").*

Sexual Misconduct Hearing Panel: Refers to the four-member decision-making body, composed of trained Emmanuel faculty and staff, that considers cases brought under this Policy. One of the four Board members will be designated as the chairperson and is a non-voting member. The Hearing Panel hears the facts and circumstances of an alleged policy violation as presented by the Investigator, a Complainant, a Respondent and/or witnesses at a Resolution Hearing. This body is responsible for determining if a policy violation has occurred and whether/what sanctions are appropriate. Decision is by majority vote.

Stalking: See **Sexual Harassment** above, Subsection D.

Supporter: Refers to any person, regardless of their association with Emmanuel, who a Reporter, Complainant, or Respondent may want to support them through a portion of or the entire process. A Supporter is not required, but is encouraged to help the party with emotional and personal support. When present during interviews, hearings, and appeals, the Supporter cannot take an active role. A supporter can be a friend, family member, or any trusted person who can provide needed care to a party.

Title IX: Refers to a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity. Title IX prohibits the use of federal money to support sex discrimination in education programs and provides individual citizens effective protection against those practices. Title IX applies, with a few specific exceptions, to all aspects of federally funded education programs or activities.

Title IX Regulations: The U.S. Department of Education enacted Title IX Regulations, effective August 14, 2020, that are binding on Emmanuel under certain circumstances involving sexual harassment, as that term is defined by the Regulations. The Title IX Regulations amended several sections of Part 106 of title 34 of the Code of Federal Regulations, but the most extensive changes appear in 34 C.F.R. § 106.30, 106.44 and 106.45.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

December 14, 2017

Ron White, Ed. D.
President
Emmanuel College
P.O. Box 129
Franklin Springs, GA 30639

Dear Dr. White:

I write in response to your June 2, 2016, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested a religious exemption for Emmanuel College (College) of Franklin Springs, Georgia, from Title IX of the Education Amendments of 1972 (Title **IX**), 20 U.S.C. § 1681.

Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. Title IX and its implementing regulation at 34 C.F.R. § 106.12 provide that Title IX does not apply to an educational institution that is controlled by a religious organization to the extent that the application of Title IX would be inconsistent with the controlling organization's religious tenets. Therefore, such educational institutions may request an exemption from Title IX by identifying the provisions of Title IX that conflict with a specific tenet of the religious organization. The request must identify the religious organization that controls the education institution and specify the tenets of that organization and the provisions of the law or regulation that conflict with those tenets.

Your request indicates the College is "a Christ-centered institution of higher education." The sponsoring denomination of Emmanuel College is the International Pentecostal Holiness Church (IPHC)." The request explains that "Fourteen (14) officials of the IPHC, including the General Superintendent (CEO), are *ex officio* members of the Emmanuel College Board of Trustees." Your letter further explains that "Emmanuel College and the IPHC, as the sponsoring denomination, understand the Bible to be the infallible, written Word of God" and that "both the Denomination and the College affirm that the Apostle's Creed, the Article of Faith, the Ordinances of the Church, and the Covenant of Commitment as expressed in the IPHC Church Manual ... , provide the most adequate and comprehensive expression of the system of doctrine taught in the Bible. The IPHC and Emmanuel College submit themselves to the Bible and to these historic expressions of its doctrine and seek to express positions that are in accord with those standards."

Your letter requests exemption from certain provisions of Title IX and its implementing regulations "to the extent they are interpreted to reach gender identity or sexual orientation discrimination, and to the extent they restrict Emmanuel College's freedom to apply and enforce its Statement on Human Life." In support of this request, your letter

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www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

cites to the College's Policy on Sexual Behavior and Gender Identity, which states that "God's original and ongoing intent and action were the creation of humanity manifest as two distinct sexes, male and female," "that each person was intended to experience congruence between the physical and experiential dimensions of their sexuality," and that "the utilization of surgical or other medical procedures or interventions to change one's biological gender as established at birth or presenting oneself in a manner intended to change society's perception of one's biological gender are violations of institutional policy." Your letter also states that the IPHC maintains "a strong biblical position against premarital, extramarital, and deviant sex, including homosexual and lesbian relationships." Your letter also explains that the College "adheres to the biblical teaching that God had, and continues to have, a specific design for sexual behavior and marriage" and that "God established and sanctified marriage as the covenant relationship between a man and a woman." In addition, your letter indicates that the IPHC "affirm[s] every person's right to life and maintain a strong position against abortion and euthanasia, both of which undermine the biblical sanctity of life." The letter explains that the College's Code of Student Conduct and Employee Handbook reflect this biblical interpretation.

Your letter states that, for the above reasons, the College is requesting an exemption from the following regulatory provisions "to the extent they are interpreted to reach gender identity or sexual orientation discrimination, and to the extent they restrict the Emmanuel College's freedom to apply and enforce its Statement on Human Life":

- 34 C.F.R. § 106.21 (governing admission);
- 34 C.F.R. § 106.22 (governing preference in admission);
- 34 C.F.R. § 106.23 (governing recruitment of students);
- 34 C.F.R. § 106.31 (governing education programs or activities);
- 34 C.F.R. § 106.32 (governing housing);
- 34 C.F.R. § 106.33 (governing comparable facilities);
- 34 C.F.R. § 106.34 (governing access to classes and schools);
- 34 C.F.R. § 106.36 (governing counseling);
- 34 C.F.R. § 106.37 (governing financial assistance);
- 34 C.F.R. § 106.38 (governing employment assistance to students);
- 34 C.F.R. § 106.39 (governing health and insurance benefits and services);
- 34 C.F.R. § 106.40 (governing marital or parental status);
- 34 C.F.R. § 106.41 (governing athletics);
- 34 C.F.R. § 106.43 (governing standards for measuring skill or progress in physical education classes); and
- 34 C.F.R. §§ 106.51-61 (governing employment).

The College is exempt from these provisions to the extent that compliance would conflict with the controlling organization's religious tenets.

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulation other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here recognized.

I hope this letter fully responds to your request. If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Jackson', with a long horizontal flourish extending to the right.

Candice Jackson
Acting Assistant Secretary for Civil Rights

Formal Grievance Policy
As Required by the U.S. Department of Education, 34 C.F.R. § 106.45,
Effective August 14, 2020

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Formal Grievance Policy
As Required by the U.S. Department of Education, 34 C.F.R. § 106.45,
Effective August 14, 2020

I. = Introduction

As required by the U.S. Department of Education under new Title IX Regulations, effective August 14, 2020, this Policy addresses certain types of sexual misconduct via a defined process. The scope of this Policy is set forth in Section II, below. This Policy contains citations to the applicable Title IX Regulations throughout. See 34 C.F.R. Part 106.

This Formal Grievance Policy, as dictated by the U.S. Department of Education (USDOE), along with the comprehensive Emmanuel Sexual Misconduct Policy, are intended to define, address and remedy sexual misconduct for Emmanuel students and employees.

Emmanuel prohibits sexual misconduct by faculty, staff, and students. The prohibition applies regardless of the gender of the individuals involved and includes sexual relationships involving a status differential and those between peers, colleagues, and co-workers.

This Policy applies to all members of the Emmanuel community, including students, faculty and staff, and its terms supersede any contrary school policies pertaining to the investigation or adjudication of “sexual harassment” as defined herein.

For the complete Emmanuel Sexual Misconduct Policy, which addresses sexual misconduct beyond the scope of the Title IX Regulations, please visit <https://eu.edu/title-ix/>.

This Formal Grievance Policy proceeds in four additional sections.

Section II defines the scope of this Formal Grievance Policy. Under the new Title IX Regulations, sexual harassment (a subset of sexual misconduct) must be investigated and adjudicated under the procedures set forth in this policy. Although the new Title IX Regulations narrowly define sexual harassment, Emmanuel remains committed to providing a higher education environment that is free from sexual discrimination, sexual misconduct, and sexual violence. To that end, sexual misconduct that does not rise to the level of sexual harassment as defined by the U.S. Department of Education, or that does not meet Title IX’s jurisdictional requirements, will still be investigated and addressed under the Emmanuel Sexual Misconduct Policy.

Section III contains the U.S. Department of Education’s statements regarding equitable treatment under the Title IX Regulations. The concepts of equitable treatment include the provision of supportive measures and waiting until the grievance process concludes to make conclusions.

Section IV contains Emmanuel’s Formal Grievance Process, as required by the Regulations. This section contains information on filing a Formal Complaint of sexual harassment, the investigation process, the role of the Title IX Coordinator, Title IX’s live hearing requirements, the appeals process, and other topics. Students, faculty, and staff should

consult this section to learn about the process Emmanuel will use to investigate and adjudicate allegations of sexual harassment.

Section V explains that Emmanuel will not retaliate against any person for that person's involvement in the Title IX process.

Emmanuel has designated a Title IX Coordinator to oversee the investigation and resolution of reports of sexual misconduct and Emmanuel's compliance with Title IX. Any questions about this policy, Emmanuel's processes under Title IX, or reports of alleged sexual misconduct should be directed to the Title IX Coordinator:

Dr. Kirk D. McConnell
Vice President-University Operations
Title IX Coordinator
Emmanuel University-
University Operations
Building
kmccconnell@ec.edu
(706) 498-4719

The Title IX Coordinator, in conjunction with the Director of Human Resources (for faculty and staff matters), will oversee all matters relating to sex discrimination (including sexual harassment) on campus, including distribution of policies, educational programs, investigations, policy enforcement, and follow-up with complainants and respondents in investigations. Any questions regarding this Formal Grievance Policy or Title IX generally may be directed to the Title IX Coordinator.

II. Scope of Policy

This Formal Grievance Policy will apply to "sexual harassment" in a Emmanuel "education program or activity" against a person in the United States, per USDOE Regulations, effective August 14, 2020. 34 C.F.R. § 106.44(a).

A. Definitional Requirement

"Sexual harassment" is defined in the Regulations (§ 106.30) to be conduct on the basis of sex that satisfies one or more of the following:

1. A Emmanuel employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct ("quid pro quo");
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 Emmanuel's education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking. (These terms are defined in the Definitions section of the Emmanuel Sexual Misconduct Policy.)

"Sexual misconduct" is a broader term that covers other sex-based conduct beyond the USDOE's

“sexual harassment” definition.

If alleged sexual misconduct does not satisfy the USDOE’s definitional requirement, then it may be addressed under the Emmanuel Sexual Misconduct Policy instead of this Policy.

B. Jurisdictional Requirement

An “education program or activity” includes locations, events, or circumstances over which Emmanuel exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Emmanuel. USDOE’s Regulations exclude any “education program or activity” that does not occur in the United States. (§ 106.44(a).)

If alleged sexual misconduct does not satisfy the USDOE’s jurisdictional requirement, such as off-campus behavior alleged to have an on-campus effect, then it may be addressed under the Emmanuel Sexual Misconduct Policy instead of this Policy.

C. Other Definitions

The terms “Complainant” and “Respondent” are used throughout this Policy as well as the Emmanuel Sexual Misconduct Policy. A Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment. A Respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. (§ 106.30.)

Other terms used within this Policy, like Supportive Measures and Formal Complaint, are defined below.

All relevant terms, including Consent and Incapacitation, are defined in the Emmanuel Sexual Misconduct Policy.

III. USDOE Statements of Equitable Treatment

A. As required by USDOE’s Regulations, Emmanuel’s Formal Grievance Process will “treat complainants and respondents equitably by [1] offering supportive measures ... to a complainant, and [2] by following a grievance process that complies with [the new Title IX Regulations] before the imposition of any disciplinary sanctions or other actions that are not supportive measures ... against a respondent.” (106.44(a); 106.45(b)(1)(i).) This Policy explains the new Title IX Regulations’ requirements.

Supportive measures also may be offered as needed to respondents and other members of the Emmanuel community who may be affected by sexual misconduct.

B. The Title IX Regulations define “supportive measures” as “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent.” They may be sought or provided 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 the [school’s] education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the [school’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, 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.

Supportive measures also may include:

- facilitating leaves of absence for impacted parties, to the extent practicable;
- implementing a mutual “no contact” order to govern, and attempt to avoid, interaction between affected individuals;
- ensuring that the Complainant and the Respondent do not attend the same classes, seminars, functions, meetings, etc.;
- offering to provide or facilitate the provision of medical, counseling and mental health services, but not necessarily covering the cost of such services;
- providing education regarding sex discrimination, sexual misconduct, alcohol and drug use, incapacitation and consent, etc.;
- reviewing any academic challenges or any disciplinary actions taken against the Complainant to see if there is a causal connection between the events that may have impacted the Complainant;
- changing on-campus living arrangements, when reasonable;
- providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred;
- limiting the access of the individual accused of the misconduct to certain Emmanuel facilities until the matter is resolved, including the possibility of an interim suspension if warranted; and
- upon request, arrange for the re-taking, changing, or withdrawing from classes. In such instances, Emmanuel will make reasonable efforts to mitigate any academic or financial penalty for providing such arrangements. Emmanuel may also provide for the extension of deadlines or other course-related adjustments.

Emmanuel will keep any supportive measures provided to the complainant or respondent confidential, to the extent possible. However, supportive measures that impact other members of the Emmanuel community (e.g. mutual no-contact orders, where the other party must be made aware of the order and its implications), may be disclosed in order to enforce them. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

C. An individual’s status as a respondent will not be considered a negative factor during consideration of the grievance. Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct unless and until the grievance process concludes and a determination regarding responsibility is issued. Similarly, credibility determinations will not be based on a person’s status as a complainant, respondent, or witness. (106.45(b)(1)(ii-iv).)

D. Emmanuel's Formal Grievance Process will provide remedies to a complainant only if the grievance process described in this Policy results in a determination that the respondent is responsible for sexual harassment. Remedies are designed to restore or preserve equal access to the school's education program or activity, and they may include the same individualized services as supportive measures. Remedies may be disciplinary and punitive. (106.45(b)(1)(i).)

E. Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process (Title IX administrators) will not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent in the grievance process. Emmanuel will provide necessary and appropriate training to each administrator involved in the Title IX process. Training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of sexual harassment. (106.45(b)(1)(iii).)

IV. Formal Grievance Procedure

This portion of the Policy outlines the steps taken to initiate a grievance, as well as USDOE's procedural requirements for investigation and adjudication of Formal Complaints.

A. Formal Complaint

- i. The submission of a Formal Complaint triggers the Formal Grievance Process described herein when received by the
 - Title IX Coordinator
 - Division Vice Presidents
 - Director of Human Resources
 - Director of Student Conduct
 - Residence Directors

The Title IX Regulations define a Formal Complaint as “a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment [as defined by the Title IX Regulations] against a respondent and requesting that [Emmanuel] investigate the allegation of sexual harassment.”

At the time of filing a Formal Complaint, “a complainant must be participating in or attempting to participate in the education program or activity.” A Formal Complaint must be in writing and may be filed with the Title IX Coordinator in person, by mail, or by email. The Formal Complaint must contain the complainant's physical or digital signature, or some other indication that the complainant is the person filing it. (106.30.)

- ii. If Emmanuel receives an allegation of sexual misconduct that falls within the Formal Grievance Policy's scope (it meets both the Title IX Regulations' jurisdictional requirements and definition of “sexual harassment” (see Section II)) but no Formal Complaint is filed, then the new Title IX Regulations prevent Emmanuel from administering a formal grievance process that may permit “the imposition of any disciplinary sanctions or other actions ... against a respondent.” Supportive measures, however, may still be given. According to USDOE, the purpose of the Formal

Complaint is to clarify that the complainant (or the Title IX Coordinator) believes that the school should investigate the allegations of sexual harassment against the respondent. 34 C.F.R. § 106.44(a); 34 C.F.R. § 106.45(b)(1)(i); see also 34 C.F.R. § 106.8(c).

Accordingly, Emmanuel strongly encourages complainants to file Formal Complaints, so that the required Formal Grievance Process described in this Policy can be initiated. If the alleged conduct meets the Regulations' definitional and jurisdictional requirements, the law now requires a Formal Complaint before Emmanuel can pursue a full investigation or explore the possibility of an informal or early resolution, which occur before holding a disciplinary hearing or issuing sanctions.

- iii. After filing a Formal Complaint, a complainant may withdraw their Formal Complaint at any time by providing written notice to the Title IX Coordinator. That withdrawal will result in dismissal of the Formal Grievance Process unless the Title IX Coordinator takes action under subsection A.iv immediately below. (See also Subsection D.v. below re permissive dismissal.)
- iv. A Title IX Coordinator may sign a Formal Complaint to initiate or continue the Formal Grievance Process described herein, if necessary to fulfill the school's duties under Title IX to not be deliberately indifferent to actual knowledge of sexual misconduct. Signing a Formal Complaint does not make a Title IX Coordinator a complainant or otherwise a party. (106.30.)
- v. Emmanuel may, but is not required to, consolidate Formal Complaints arising out of the same factual circumstances in two scenarios:
 - 1. Where there is more than one complainant or respondent;
 - 2. Where a complaint has also been filed by the respondent against the complainant. (106.45(b)(4).) In such cases, the Formal Grievance Process for a later-filed complaint may be consolidated into an earlier-filed process rather than re-start from the beginning (e.g., the new charges may be considered in the course of a pre-existing investigation).
- vi. Mandatory Dismissal (106.45(b)(3)(i, iii).)
 - 1. If a Formal Complaint is filed, Emmanuel will investigate its allegations.
 - 2. If the conduct alleged does not meet the Formal Grievance Policy scope requirements in Section II for "sexual harassment" as defined by USDOE, Emmanuel must dismiss the Formal Complaint under this Policy. However, in such circumstance, the complaint will be automatically transferred into the Emmanuel Student Conduct Policy for review and possible investigation and resolution.
 - 3. In such circumstance, Emmanuel will promptly and simultaneously send written notice to each party of the dismissal of the Formal Complaint, the reasoning, and the transfer.
- vii. Title IX Coordinator Initial Responsibilities
 - i. Upon receipt of any report of alleged sexual misconduct, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures and explain the process involved in filing a Formal Complaint. The Title IX Coordinator will

inform the complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and will consider the complainant's wishes with respect to supportive measures. (106.44(a).)

- ii. Supportive measures will be assessed and may be offered as needed to complainants, respondents and other members of the Emmanuel community who may have been affected by the allegations at issue. See Section III.B. regarding supportive measures.

- iii. The Title IX Coordinator may conduct a limited, threshold investigation:

- 1. to determine if the Formal Grievance Policy scope requirements in Section II for § 106.30 "sexual harassment" have been met;
- 2. if the Complainant does not file a Formal Complaint, to determine whether the school's Title IX obligations require the Title IX Coordinator to "sign" a Formal Complaint; and
- 3. for other limited purposes;

provided that if a Formal Complaint is filed or signed, the Title IX Coordinator will fulfill the terms of this Formal Grievance Process, including the notice provisions immediately below and the more thorough investigation process described below even if it is somewhat duplicative of the threshold investigation.

If the respondent is a current employee, the Deputy Title IX Coordinator for HR matters may conduct or participate in the threshold investigation.

- iv. The Title IX Coordinator may remove a respondent from the education program or activity on an emergency basis, provided that the Title IX Coordinator undertakes an individualized safety and risk analysis, and 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. The respondent must receive notice and an opportunity to challenge the decision immediately following such removal. (106.44(c).)
- v. The Title IX Coordinator, or a Deputy Title IX Coordinator for employee matters, may place a non-student employee respondent on administrative leave during the pendency of a Formal Grievance Process. (106.44(d).)

C. Notice of Allegations (106.45(b)(2))

- i. Upon receipt of a Formal Complaint, Emmanuel will provide written notice to known parties of the following:
 - 1. Notice of Emmanuel's Formal Grievance Process by providing access to this policy.
 - 2. Notice of the allegations potentially constituting sexual harassment as defined in 106.30, including sufficient details known at the time. Sufficient details are defined in the Title IX Regulations to include:
 - a. The identities of the parties involved in the incident, if known;
 - b. The conduct allegedly constituting sexual harassment under 106.30; and
 - c. The date and location of the alleged incident, if known.
 - 3. Per the Title IX Regulations, the written notice must also include the following statements:
 - a. The respondent is presumed not responsible for the alleged conduct.

- b. A determination regarding responsibility is made at the conclusion of the grievance process.
 - c. The parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
 - d. The parties may inspect and review evidence.
 - e. The parties are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.
- 4. The notice must be given as soon as practicable and with sufficient time to prepare a response before any initial investigation interview.
- ii. If, at any point during the course of the investigation, Emmanuel decides to investigate allegations that are not included in the original notice, it will provide notice of the additional allegations to the parties.

D. Investigation Procedure

- i. The Title IX Coordinator will appoint two Investigators to investigate the allegations subject to the Formal Grievance Process. The investigation may include, among other steps, interviewing the complainant, the respondent, and any witnesses; reviewing law enforcement investigation documents if applicable; reviewing relevant student or employment files; and gathering and examining other relevant documents, social media and evidence. The Investigator will attempt to collect all relevant information and evidence. While the Investigators will have the burden of gathering evidence, it is crucial that the parties present evidence and identify witnesses to the Investigator so that they may be considered during the investigation. As described below in Section IV.E.iii.3., while all evidence presented at a hearing by the parties will be considered, the adjudicator(s) may, in its/their discretion, grant lesser weight to last-minute information or evidence introduced at the hearing that was not previously presented for investigation by the Investigators. The investigation file should contain all information gathered during the investigation that is potentially relevant to the alleged misconduct; the Investigators should not filter or exclude evidence or decide the weight or credibility of evidence, unless the evidence is clearly irrelevant or not pertinent to the facts at issue. Following the investigation, the Investigators will draft an investigation report succinctly describing all collected information. The Investigators will not make any recommendation as to whether a Policy violation has occurred or potential sanctions.
- ii. Evidentiary Considerations
 - 1. While investigating the allegations of any Formal Complaint of sexual harassment, the Investigators will conduct an objective evaluation of all relevant evidence. Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true (both corroborating and “exculpatory” or contradicting evidence). (106.45(b)(1)(ii).)

2. Standard of evidence
 - a. In assessing allegations of sexual harassment and conducting its Formal Grievance Process, Emmanuel will use a “clear and convincing evidence” standard. (106.45(b)(1)(vii).) This standard means that the alleged sexual misconduct is substantially more likely to be true than untrue; that the allegation is highly probable.
 - b. That standard will apply to all Formal Complaints of sexual harassment, regardless of whether the Formal Complaint is against a student or an employee or faculty member. (106.45(b)(1)(vii).)
- iii. As dictated by the Title IX Regulations at 34 C.F.R. § 106.45(b)(5), when investigating a Formal Complaint and throughout the grievance process, Emmanuel will:
 1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Emmanuel and not on the parties. (106.45(b)(5)(i).) This means that the school’s decision-makers will use the clear and convincing standard. See also Subsection D.i. above.
 2. Provide an equal opportunity for the parties to present witnesses and other relevant evidence. (106.45(b)(5)(ii).)
 3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. (106.45(b)(5)(iii).)
 - a. That said, Emmanuel expects the parties to respect the sensitive nature of allegations of sexual misconduct and to respect other parties’ sense of confidentiality.
 - b. While Emmanuel cannot prevent a party from discussing the allegations under investigation, the Title IX Regulations and this Policy prohibit retaliation against any person because they participate or refuse to participate in any part of the school’s sexual misconduct processes. See Section V. below.
 - c. Consistent with FERPA’s prohibition on re-disclosure of confidential information, any person who receives another person’s confidential information solely as a result of participation in any investigation or proceeding under this Policy, is prohibited from using or disclosing such confidential information outside of such forums without express consent or for any improper purpose. This provision only applies to other people’s confidential information, as a party is never restricted from discussing their own experience. This provision does not apply to any information learned outside of an investigation or proceeding under this Policy.
 4. Provide the parties with the same opportunities to have an Advisor or Support person present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. The advisor may be, but is not required to be, an attorney. Emmanuel will not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding; however, Emmanuel will restrict the extent to which the advisor may actively participate in the proceedings, which will apply equally to both parties’ advisors. (106.45(b)(5)(iv).)
 - a. Advisors are not permitted to directly participate in any proceeding, except as specified in Section IV.E.iv. below related to hearings. Advisors may be present

- solely to advise or support the party and are prohibited from speaking directly to the investigator, adjudicators, other parties, or witnesses in such proceedings.
5. Provide written notice to each party of the date, time, location, participants, and purposes of each Formal Grievance Process meeting at which they are invited to participate, with sufficient time for the party to prepare to participate.
 - a. For all hearings, Emmanuel will provide 10 days' written notice;
 - b. For all non-hearing investigative interviews or meetings to which a party is invited or expected at Emmanuel's discretion, Emmanuel will provide 5 days' written notice. (106.45(b)(5)(v).)
 6. Provide both parties an equal opportunity to inspect and review any evidence Emmanuel obtained as part of the investigation, whether obtained from a party or other source, that is directly related to the allegations raised in a Formal Complaint. The provision of such evidence is intended to help each party meaningfully respond to the evidence prior to conclusion of the investigation. (106.45(b)(5)(vi).)
 - a. Emmanuel will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, *unless* the party voluntarily consents in writing to their use in a Formal Grievance Process. (106.45(b)(5)(i).)
- iv. Investigative Report (106.45(b)(5)(vi-vii).)
1. Prior to completion of the investigative report, Emmanuel will send to each party, and the party's advisor if any, a draft investigative report and the evidence subject to inspection and review.
 - a. Such evidence also will be available at any hearing, to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
 - b. Emmanuel retains discretion to elect to send such materials in an electronic format or a hard copy. The provision of such evidence may include data security safeguards that prevent it from being downloaded, printed or forwarded. (See 85 Fed. Reg. at 30304.)
 2. The parties will have 10 calendar days to submit a written response. The investigator will consider any such response prior to completion of the final investigative report.
 3. The investigator will then create a final investigative report that fairly summarizes the relevant evidence. The final investigative report will not make any recommendation as to whether a policy violation has occurred or potential sanctions. At least 10 days prior to a hearing, Emmanuel will send the final investigative report to each party, and the party's advisor if any, for their review and written response.
 4. Any such response must be received by the Title IX Coordinator within five days of when the final investigative report was delivered to the party, so that the party's response may be available for consideration by the adjudicator(s). If warranted, the investigator may choose to update the final investigative report to take a party's response into account, in which case the hearing date may be postponed.

v. Permissive Dismissal

1. At any time during the investigation or hearing, Emmanuel may dismiss the Formal Complaint or any of its allegations if:
 - a. A complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the Formal Complaint or any allegation therein;
 - b. The respondent is no longer enrolled or employed by the school; or
 - c. Specific circumstances prevent Emmanuel from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
(106.45(b)(3)(ii).)
2. In all such circumstances, supportive measures may be continued.
3. Under (a) above, the Title IX Coordinator may choose in his or her discretion to sign the Formal Complaint to continue the Formal Grievance Process. See also Sections IV.A.iii-iv, above.
4. Under t(b) above:
 - a. The respondent's student or employment records may be marked to indicate their departure during a disciplinary process (which may resume if they return to Emmanuel), but will not indicate that such respondent was found or assumed responsible for any alleged misconduct pending at the time of departure.
 - b. The respondent may be required to notify the Title IX Coordinator if they intend to visit any building owned or controlled by Emmanuel or a student organization that is officially recognized by Emmanuel, or if they otherwise seek to attend any Emmanuel education program or activity or event, so that the complainant may be given an opportunity to receive supportive measures if needed.
5. If permissive dismissal is granted under this section, the Formal Grievance Process will cease. Under the Title IX Regulations, effective August 14, 2020, no further investigation will occur, and no disciplinary sanctions or actions can be imposed against the respondent. See Section IV.A.ii. (citing 34 C.F.R. § 106.44(a); 34 C.F.R. § 106.45(b)(1)(i); 34 C.F.R. § 106.8(c).)
6. A permissive dismissal under this section differs from a mandatory dismissal under Section IV.A.vi. for alleged conduct that does not meet the Formal Grievance Policy scope requirements contained in Section II for § 106.30 "sexual harassment."

vi. Adjudication

i. Adjudication via hearing

1. Emmanuel's Formal Grievance Process will culminate in a live hearing before one or more adjudicators, who will consider all evidence presented (subject to the terms below) and determine whether a respondent is responsible or not responsible for a violation of this Policy, based on the criteria of clear and convincing evidence. Under that standard, the burden of proof is met, and a respondent may be found responsible for a policy violation, if the adjudicator(s) determine that the alleged sexual misconduct is substantially more likely to be true than untrue; that the allegation is highly probable to have occurred. Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct until the grievance process concludes and a determination regarding responsibility is issued. If the respondent is found responsible for

a violation of this Policy, the respondent may be subjected to disciplinary action.
(106.45(b)(6)(i).)

2. The adjudicators will be selected by the Title IX Coordinator and may vary based on the enrollment or employment status of the respondent.
 - a. All cases typically will be adjudicated by a three-member panel of trained Emmanuel faculty and/or staff. One of the three panel members will be designated as the chairperson. A hearing officer who is not a member of the three-member panel is also permitted to preside and make evidentiary rulings at the hearing.

The adjudicators will not be the same person as the Title IX Coordinator or the Investigator.

3. At the request of either party, Emmanuel will allow the live hearing to take place with the parties located in separate rooms. Technology must enable the adjudicator(s) and parties to simultaneously see and hear the party or witness answering questions. Live hearings may, then, be conducted with all parties physically present in the same location, or any or all parties, witnesses and other participants may appear at the live hearing virtually.
4. Emmanuel will create a transcript or recording (audio or audiovisual) of any adjudicative hearing. It will be available to the parties for inspection and review in compliance with FERPA.

ii. Pre-hearing

1. The Title IX Coordinator will identify the adjudicators to the parties five days in advance of the hearing. Either party may challenge a named adjudicator if believed to have a conflict of interest or bias. A challenge must be delivered in writing to the Title IX Coordinator at least two days in advance of the hearing, specifying the reasons for such belief. The Title IX Coordinator has sole discretion to keep or replace the challenged adjudicator, and if replaced, will postpone the hearing to allow for a replacement adjudicator.
2. Five days in advance of the hearing, the parties will identify their expected attendees (including any advisor) and their expected witnesses (including themselves), including the witnesses' expected sequence, via writing to the Title IX Coordinator, who will supply the disclosure to the other party so that they can be prepared. The parties will not be strictly bound to their disclosures, but they should be submitted in good faith.
3. Typically, the parties will be in charge of choosing and supplying their own witnesses at the hearing. When necessary for the pursuit of truth and to gather evidence sufficient to reach a determination, the adjudicators will have discretion to ask the Title IX Coordinator to request additional witnesses after receipt of the parties' witness lists; recognizing, however, that the school has no ability to compel any witness to attend. Any such requested witness will be disclosed to the parties.

iii. Evidence

1. At the hearing, all relevant evidence will be objectively evaluated. Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true

(corroborating and exculpatory or contradicting evidence). Credibility determinations will not be based on a person's status as a complainant, respondent, or witness. (106.45(b)(1)(ii).)

2. The Title IX Regulations state that questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
 - a. "offered to prove that someone other than the respondent committed the conduct alleged" or
 - b. "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."

(34 C.F.R. § 106.45(b)(6)(i).)

3. While all relevant evidence presented at a hearing by the parties will be considered, the adjudicator(s) have discretion to grant lesser weight to last-minute information or evidence introduced at the hearing that was not previously presented for investigation by the Investigator. See also Section IV.D.i., above.

iv. Cross-examination

1. As stated above in Section IV.D.iii.4., each party may be accompanied to the hearing by the advisor of their choice. The advisor may be, but is not required to be, an attorney. Advisors may be present solely to advise or support the party and are prohibited from speaking directly to the investigator, adjudicators, other parties, or witnesses during the hearing, except for conducting cross examination.
2. At the hearing, each party's advisor is permitted 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 must be conducted directly, orally, and in real time by the party's advisor of choice, and never by a party personally. (106.45(b)(6)(i).) However, the adjudicator(s) will typically ask questions before either advisor.
3. If a party does not have an advisor present at the live hearing, Emmanuel will provide without fee or charge to that party, an advisor who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. (106.45(b)(6)(i).)
 - a. If a party does not have an advisor for the hearing, the party must notify the Title IX Coordinator no later than the party's pre-hearing disclosures. (See Section IV. E. ii. 2., above.) Otherwise, the hearing may be delayed, and the appointed advisor may have less time to prepare for the hearing.
 - b. Process for appointing advisor: pool of trained advisors will be provided to the party for them to choose.
4. Only relevant cross-examination and other questions may be asked of a party or witness. See Section IV.E.iii., above, regarding relevancy. Before a party or witness answers a cross-examination or other question, the adjudicator must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. (106.45(b)(6)(i).)

5. If a party or witness does not submit to cross-examination at the live hearing, the adjudicator(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility. However, the adjudicator(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. (106.45(b)(6)(i).)

v. Determination Regarding Responsibility

1. The adjudicator(s) will issue a written determination following the hearing. Based on clear and convincing evidence, the adjudicator(s) will decide if the respondent is responsible for engaging in the conduct alleged, and if so, what disciplinary action may be appropriate.
2. The written determination will include:
 - a. Identification of the allegations potentially constituting sexual harassment as defined in 106.30;
 - 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 evidence, and hearings held;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of this Policy to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including:
 - i. A determination regarding responsibility;
 - ii. Any disciplinary sanctions the adjudicator(s) imposes on the respondent; and
 - iii. Whether remedies designed to restore or preserve equal access to Emmanuel's education program or activity will be provided to the complainant; and
 - f. Procedures and permissible bases for the parties to appeal the determination. (106.45(b)(7)(ii).)
3. The written determination will be provided to the parties simultaneously.
4. Supportive measures also may be provided to the complainant that are designed to restore or preserve equal access to Emmanuel's education program or activity, even if they are not listed in the written determination. Remedies and supportive measures that do not impact the respondent should not be disclosed in the written determination; rather, the determination should simply indicate that "remedies will be provided to the complainant." 85 Fed. Reg. at 30425. The Title IX Coordinator is responsible for effective implementation of any remedies and supportive measures. (106.45(b)(7)(iv).)

vi. Range of Sanctions and Remedies (106.45(b)(1)(vi))

1. Expulsion- Permanent severance of the student's relationship with the College. This severance includes being barred from campus.
2. Withholding a promotion or pay increase, reassigning employment, terminating employment, temporary suspension without pay, compensation adjustments.

3. Disciplinary Suspension- Temporary severance of the student's relationship with the College for a specified period of time. This may include the student being barred from campus.
4. Limited Suspension- A student may be denied certain privileges for a specified period of time. These privileges may include, but are not limited to, class attendance, housing, parking on campus, participation in extracurricular activities, ID card privileges, access to institutional facilities, and access to the campus.
5. Immediate Suspension- The student may be required to leave the campus immediately if, in the opinion of the Title IX Coordinator, the student's presence on campus would be detrimental to the institution. Suspension without a hearing shall continue until the disciplinary process is completed. Best efforts will be made to schedule and complete the disciplinary process as promptly as possible.
6. Disciplinary Probation- Notice to the student that any further, major disciplinary violation may result in suspension. Disciplinary probation might also include one or more of the following: the setting of restrictions or the issuing of a reprimand.
7. Reprimand (either oral or written.)
8. Educational assignment.
9. Counseling- The Hearing Panel may require that a Respondent participate in counseling with the campus counselor for issues including, but not limited to, anger management, substance abuse, and extenuating personal circumstances. The Counselor may confirm participation, but not the content of the meetings.
10. Work assignment changed

vii. Finality

The determination regarding responsibility becomes final either:

1. if an appeal is filed, on the date that Emmanuel provides the parties with the written determination of the result of the appeal, or
2. if an appeal is not filed, the date on which an appeal would no longer be considered timely. (106.45(b)(7)(iii).)

F. Appeals

- i. Both parties may appeal from a determination regarding responsibility, or from a dismissal of a Formal Complaint or any allegations therein, on the following bases:
 1. A procedural irregularity, meaning an alleged failure to follow the process outlined in this Policy, that affected the outcome of the matter;

2. New evidence *that was not reasonably available to the appealing party at the time of the hearing or dismissal*, that could affect the outcome of the matter; and
 3. The Title IX Coordinator, Investigators, or adjudicator(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. The notice of appeal must describe specifically the basis upon which such conflict of interest or bias is alleged and how it allegedly affected the outcome.
- ii. Appeals must be submitted in writing to the Title IX Coordinator within 10 days of the date that the written adjudication determination is provided to the parties. The written appeal must state the grounds for the appeal, include the name of the appealing party, and bear evidence that it was submitted by the appealing party. The appeal statement must contain a sufficient description supporting the grounds for appeal. If the grounds for appeal is to consider new evidence that could affect the outcome of the matter that was not reasonably available to the appealing party before or during the time of the hearing or the dismissal, then the written appeal must include such information. The Title IX Coordinator retains discretion to verify and/or waive minor procedural variations in the timing and content of the appeal submission.
- iii. Upon receipt of an appeal, Emmanuel will:
1. Notify the other party in writing when the appeal is filed and implement appeal procedures equally for both parties;
 2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the original determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
 3. Ensure that the decision-maker(s) for the appeal does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and that the decision-maker(s) for the appeal has received the appropriate and necessary training;
 4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
(106.45(b)(8)(iii).)
- iv. Emmanuel will provide a copy of the appeal to the non-appealing party. The non-appealing party may submit a written statement within 10 days that may seek to affirm the initial decision and/or respond to the appeal statement.
- v. The Title IX Coordinator has discretion to impose or withhold any applicable sanctions or supportive measures prior to the appeal deadline and prior to the resolution of any appeal.
- vi. The appeal officer will issue a written decision describing the result of the appeal and the rationale for the result within a reasonably prompt time frame following receipt of all appeals materials. The appeal will determine whether the adjudicator(s) made an error on the grounds alleged in the appeal statement. The appeal is typically determined based on the existing record. The appeal decision will be given simultaneously to both parties.
(106.45(b)(8)(iii)(E-F).)

G. Informal Resolution

- i. At any time prior to reaching a determination regarding responsibility, Emmanuel may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. Emmanuel may not offer an informal resolution process unless a Formal Complaint is filed. Both parties must agree to participate in an informal resolution process, and if they do, the Formal Grievance Process stops. Either party may withdraw from the informal process and re-start the Formal Grievance Process at any time before an informal resolution is reached. Emmanuel will not require the parties to participate in an informal resolution process, and will not require them to waive their rights to a Formal Grievance Process. (106.45(b)(9).)
- ii. Emmanuel will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. (106.45)(b)(9)(iii).)
- iii. Prior to facilitating an informal resolution process, Emmanuel will:
 1. Provide written notice to the parties disclosing the following:
 - a. The allegations;
 - b. 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;
 - c. The fact that, at any time prior to agreeing to an informal resolution, any party may withdraw from the informal resolution process and resume the Formal Grievance Process; and
 - d. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
 2. Obtain the parties' voluntary, written consent to the informal resolution process. (106.45(b)(9)(i-ii).)
- iv. If the parties agree to a resolution during an informal resolution process, the Formal Complaint will be deemed withdrawn and the Formal Grievance Process will be terminated. However, the resolution will be considered binding, and its breach will give rise to a new Complaint, which may restart the Formal Grievance Process.

V. Retaliation (34 C.F.R. § 106.71.)

- A. No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its regulation, or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. "Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this [Policy], constitutes retaliation."
- B. Emmanuel will "keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a

formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted” by Title IX, FERPA, or as otherwise required by law, or to carry out Emmanuel’s Title IX procedures.

- C. The exercise of rights protected under the First Amendment does not constitute retaliation.
- D. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a sexual misconduct grievance proceeding does not constitute retaliation. A determination regarding responsibility alone, however, is not sufficient to conclude that any party made a materially false statement in bad faith.
- E. Complaints alleging retaliation may be filed with the Title IX Coordinator and will follow grievance procedures either under this Policy or under the Emmanuel Sexual Misconduct Policy.

In the event an individual alleges that the Title IX Coordinator retaliated against them, the individual may file a complaint with the President, Dr. Ron White, who will follow the grievance procedures either under this Policy or under the Emmanuel Sexual Misconduct Policy. The Title IX Coordinator will not oversee the investigation or adjudication of a complaint alleging that they engaged in retaliation.