

Discrimination and Harassment Policy

Policy Statements

A. Non-Discrimination Policy Statement

Emory & Henry College is committed to having an inclusive campus community where all members are treated with dignity and respect. Emory & Henry College does not discriminate or permit discrimination by any member of its community, to include faculty, staff, students, visitors, vendors, contractors or third parties, against any individual on the basis of race, ethnicity, color, religion, national origin, birthplace or ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, national origin, language, political belief or affiliation, socioeconomic status, disability, geographic status, pregnancy or childbirth, veteran status or genetic information in matters of employment, admissions, housing, services or its educational programs and activities or status as a victim of domestic violence. Emory & Henry College affirms the dignity and worth of every individual.

B. Non-Harassment Policy Statement

Emory & Henry College is committed to having an inclusive campus community where all members are treated with dignity and respect. Harassment, whether verbal, physical, electronic, or visual, that is based on any of the aforementioned characteristics in the non-discrimination policy, is a form of discrimination and will not be tolerated.

This includes harassing conduct affecting tangible job benefits, interfering unreasonably with an individual's academic or work performance, or creating what a reasonable person would perceive as an intimidating, hostile, or offensive environment. Prohibited sex discrimination includes sexual harassment and sexual violence.

Emory & Henry College affirms its commitment to ensuring fair and respectful learning and working conditions for its students, faculty, and professional staff. Harassment of or by faculty, professional staff, or students is unacceptable in a college because it is a form of unprofessional behavior detrimental to the educational and work environments. Emory & Henry College does not discriminate on the basis of sex in its educational programs and activities. To that end, this policy prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972 ("Title IX"); Title VII of the Civil Rights Act of 1964 ("Title VII"); and/or the Virginia Human Rights Act. Such behavior also requires the College certain obligations under the Violence Against Women Reauthorization Act of 2013 ("VAWA") and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act").

Definitions:

Discrimination is an act or communication that alters an individual's or group's ability to completely participate in Emory & Henry's community on the basis of race, gender, disability, religion, sexual orientation, national origin or gender expression.

Social Harassment is conduct and/or verbal action which, because of its severity, interferes with an individual's or group's work or education, or adversely affects living conditions.

Sexual harassment is unwelcome conduct of a sexual nature and can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. (Please refer to the Policy on Sexual and Gender-based Harassment and Discrimination and Other Forms of Interpersonal Violence section of this handbook located on pages 68-84 for resolution guidelines.)

Hostile Environment is caused by behavior that is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the services, activities, or opportunities offered by the College. It is considered to be disruptive to the educational community. Determining whether or not a hostile environment exists is examined from both subjective and objective perspectives and often depends on a balancing of factors in this six-factor

balancing test: -the type of harassment (e.g., whether it was verbal or physical); -the frequency and severity of the conduct; -the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student); -the setting and context in which the harassment occurred; -whether other incidents have occurred at the college or university; and other relevant factors.

Mediation is a facilitated discussion that is conducted with the assistance of a trained third party. It is designed to help the parties to reach a mutually agreeable resolution of a dispute and may be appropriate when:

- The parties wish to continue communicating or working together.
- The complaining party is able to articulate a desired outcome.
- No one has been physically harmed.

Complainant and Respondent Designations:

(Standard terms from the Department of Education)

Complainant: individual who brings forward the complaint about an alleged violation of the policy.

Respondent: individual who is the alleged perpetrator as identified by the complainant.

Accommodations

An individual may request reasonable accommodations or assistance during these procedures at any time. Accommodations include: a language interpreter, verbal, visual, or technology aids, adjusted class schedules and/or living arrangements, or behavior management support. (This is a non-exhaustive list. All requests for accommodations will be considered.)

Timing and Deadlines

“Days” in these procedures refer to business days, not weekends or college holidays. Any requirement in these procedures must be completed by 3:00 PM on the day specified, unless otherwise noted.

Persons Covered by this Policy

This policy applies broadly to the entire Emory & Henry College community, including students in the School of Health Sciences; those employed by the college, including faculty, affiliates, and visiting faculty, and all staff (including all exempt and non-exempt and senior administrative positions), as well as individuals who are not employed by Emory & Henry including contractors, vendors, or other third parties contractually obligated to Emory & Henry; and visitors or guests of Emory & Henry College.

Seeking Procedural Information and Guidance on a Discrimination & Harassment Complaint Process

An individual can seek assistance and guidance from the following people:

- Dean of Students
- Director of Human Resources
- Director of Inclusion & Diversity
- Equity Officer

These persons are trained to assist the individual in assessing the incident and/or to explain the options and resources available. *Questions are encouraged; merely discussing an incident in this way does not commit an individual to making a formal complaint.* The complainant may request to have their name kept confidential at this informal stage. If there is a resolution acceptable to parties involved, the matter will not proceed further. Records will be kept of materials generated by such informal mediation along with an informal written agreement which will be reviewed and signed by parties involved, and kept in the Office of Human Resources. All cases will be reported to and tracked by the Director of Human Resources.

Making a Report And/Or Filing a Complaint

An individual can report an incident (including a bystander report of an incident), report a barrier, and/or file a complaint with the Director of Human Resources and will have the option to engage in the Restorative Justice Resolution process or a Formal Complaint process. Once the Director of Human Resources has been notified of a report and/or complaint they will acknowledge the receipt of the report and/or complaint and provide an initial response within 3-5 business days.

Emory & Henry College provides Covered Persons, whether as complainants or respondents, with support and guidance throughout the initiation, investigation, and resolution of a complaint. For general information on resources pertaining to alleged discrimination and/or harassment violations, individuals should contact the TBD. Emory & Henry recognizes that deciding whether to make a report or file a complaint is a personal decision, and the complainant's autonomy is to be respected to the extent possible. However, when there is a risk of imminent harm to an individual or others, or if there is a threat to the safety of the campus, the college may be required to take immediate action upon receipt of a report and/or complaint. In such circumstances, the safety of the community is priority and the college will provide information regarding their actions according to what the law and policy allow.

The Office of Institutional Equity does not provide emergency services. For emergency assistance please consider the following information:

Campus Safety: 276-944-6222

The Powell Resource Center: 276-944-6144 (typically open Monday-Friday, 8 AM-5 PM, located in Wiley 220; on-call counselors are available after business hours by calling Campus Safety)

Call 911

Determining Violation(s) of the Policy

Factors to be considered in determining whether and the extent to which behavior(s) could be construed as unlawful discrimination or harassment may include, but are not limited to:

- Frequency
- Severity and pervasiveness of the conduct
- Whether it is physically threatening
- Degree to which the conduct interfered with an employee's work performance or a student's academic performance and/or full enjoyment of the academic/campus programs and services
- The relationship between the alleged harasser and the subject or subjects of the harassment

The severity and pervasiveness of the conduct is considered from both subjective and objective perspectives. This policy complies with all relevant federal and state laws and Emory & Henry College statements and policies.

Procedures

Emory & Henry College has created procedures for the resolution of complaints alleging violation of its discrimination and harassment policy. While these procedures provide sanctions for behaviors that violate state and federal law and college conduct standards, more importantly, they also describe ways of resolving informally the various conflicts and disagreements that inevitably arise in a community distinguished by its diversity. These procedures are intended to provide fair, prompt, and consistent mechanisms for determining whether Emory & Henry's discrimination and harassment policy has been violated and, if so, to provide appropriate resolution. The availability of these procedures to all individuals does not limit the responsibility of the college to ensure that the protections of this policy prevail throughout the college community and these procedures are not intended to impair or limit the right of any individual to seek a remedy available under state or federal law.

Restorative Justice Resolution

In a diverse academic community, disagreements and conflicts of various degrees of seriousness are inevitable, which may or may not rise to the level of a violation of the discrimination and harassment policy. Many issues, whether they arise to a policy violation or not, are often best resolved informally, by direct communication between the individuals involved, or with the help of mediation by a third party (Dean of Students, Director of Inclusion & Diversity, Director of Human Resources). Often, the most effective avenue for informal resolution of complaints is direct conversation with the person or persons alleged to have caused the offense; reasoned discussion of the issue will often bring about a resolution and new understanding. After coming to a resolution, there will be an informal written agreement which will be reviewed and signed by individuals involved of what actions will be taken to ensure continued resolution. We strive to have this process completed within 60 business days. The complainant, respondent, or college official may terminate a restorative justice process at any time and initiate the student conduct process.

Formal Complaint Procedures

An individual who chooses to pursue formal resolution of a complaint alleging violations of the college's discrimination and harassment policy must begin by filing a formal written complaint with the Office of Human Resources. Once the Director of Human Resources has received a report and/or complaint, they will acknowledge the receipt of that report and/or complaint and provide an initial response within 3-5 business days. Note: Once a formal complaint is filed, parties involved can request a restorative justice process.

A formal complaint may be filed immediately after an alleged act of discrimination or harassment has taken place or after any efforts that may have been undertaken to reach an informal settlement has proven unsuccessful. The complaint will be investigated, evaluated, and addressed within 60 business days of the date of acknowledgement. However, this time frame may be extended by the Director of Human Resources or the institution upon a written petition by the complainant(s), or the respondent. In determining whether to grant an extension, the Director of Human Resources or institution shall consider the salient factors of the particular case, which may include items such as the complexity and/or severity of the matter to be heard, the number of individuals involved in the particular matter, or whether the academic calendar makes it impractical to commence a hearing within the prescribed 60 days.

Filing a Complaint. Emory & Henry College is committed to providing a quality education and a learning environment for our students and welcomes input and opinions from our students. Students can file a written complaint on the official complaint form or use the Campus Conduct Hotline (866-943-5787) to file a complaint anonymously.

The student should submit a formal written and signed complaint to the Director of Human Resources located on the 2nd floor of Kelly Library or 276.944.6112. The Emory & Henry College official complaint form can be found in the Dean of Students Office or the Office of Human Resources. Complaints must include the nature of the complaint, names, dates, and other specific information. Complaints must be submitted within 60 days of an incident. When a complaint is filed more than 60 days after the alleged incident, the Director of Human Resources will determine whether circumstances support a late filing of charges.

Preliminary Review. Some incidents are not clearly defined when the Office of Human Resources receives initial reports. For such cases, a Preliminary Review may be conducted to gather more information. This may include meeting with the involved parties or witnesses and requesting statements and/or documents that will help determine whether charges, a formal investigation, or no actions are warranted.

Investigation. A formal investigation is utilized when the Office of Human Resources receives allegations that, if substantiated, could warrant a student's separation from the college. The investigation/evaluation process is conducted by trained investigators that include faculty and staff members of the Emory & Henry College community. Signed statements can be requested during this process. The investigation, which includes interviews with the parties and relevant witnesses and a collection of all relevant documents and other evidence, will culminate in a comprehensive investigation report that will be reviewed by the Dean of Students. If the complaint is not complex in nature, it may be investigated by collecting statements and documents from complainant(s), respondent(s), and any relevant witnesses before a summary and a packet of information are provided to the Dean of Students for review. After review, the Dean of Students will determine whether there is a basis to file charges against a student(s) and at what level, if any, the matter should be resolved. The possible resolution recommendations from the Dean of Students are as follows:

1. **Disciplinary, Higher Level.** Matters that may result in a sanction of suspension or above will be resolved through a Title VI Hearing.
2. **Disciplinary, Lower Level.** Matters that will not result in a sanction of suspension or above will be resolved through a formal meeting with the Dean of Students who will determine a period of probation and student will be required to participate in a Title VI educational program. A formal written agreement will be established which will be reviewed and signed by individuals involved of what actions will be taken to ensure continued resolution. Violation of probation at this level will result in higher level sanctions.
3. **Non-disciplinary Actions/Referrals.** If it is determined that a hearing or a formal meeting with the Dean of Students is not necessary, the matter may be addressed with a warning letter or a Dean of Students conference and a referral to mediation or counseling. Student may also be required to participate in a Title VI educational program and will be required to sign an informal agreement of what actions will be taken to ensure continued resolution.
4. **No Action.** If there is no basis to file charges and no follow up is warranted, the Dean of Students may recommend that the Office of Student Life close the case and take no action.
5. **Withdrawing Charges.** The Dean of Students has the authority to withdraw charges once they have been made.

Title VI Hearings

Title VI Pre-Hearing Procedures:

Notice. At least seven (7) days before the hearing, the Director of Human Resources will provide the respondent(s) with written notification of the charges, the time and place of the hearing, and a copy of the case materials. The complainant(s) also receives the case materials.

Expedited Hearing(s). If the Dean of Students determines that an expedited hearing is necessary (e.g. end of the academic year), the notice may be provided fewer than seven (7) days before the hearing.

Requests for Witnesses. The respondent(s) and the complainant(s) will provide the Dean of Students with a written list of witnesses they would like to appear at the hearing at least four (4) days prior to the hearing by 9:00 AM. For cases in which an investigator is not used, all witnesses will provide a written statement and/or any relevant documents at least four (4) days prior to the hearing by 9:00 AM. If, after the four-day deadline, either party believes that there is new information which may substantially influence the outcome of the hearing, they will request of the Dean of Students that the information be admitted to the hearing. The Dean of Students will also notify the parties of any other witnesses who have been called to appear at the hearing. The Dean of Students will make all decisions about witnesses appearing at the hearing.

Advisors. The respondent(s) and the complainant(s) will also specify whether an advisor will be assisting them, and

if so, the name of the person chosen.

Title VI Hearing Process. The Title VI Hearing Panel is composed of a combination of 3 faculty and/or staff who are members of the Student Conduct Board system. The case will be heard by these community members and all investigative findings from the Dean of Students Office will be presented at the hearing. If there are additional code of conduct charges stemming from the same incident, all charges will be processed during the Title VI hearing. Both the complainant and respondent will be given an opportunity to make a statement and be questioned by the panel members. These proceedings are not adversarial actions.

Hearing Process Accommodations. Any complainant can request to give their testimony without being in the physical presence of the person they are accused. Screens, teleconference, or closed-circuit broadcasts may be permitted, but not to the disadvantage of the respondent. It will be the hearing officer's responsibility to ensure that all testimonies are presented in a fair and impartial manner.

Title VI Hearing Procedures

Title VI hearings proceed as follows:

1. The Dean of Students reads the charge(s) and informs the respondent(s) of the right to remain silent.
2. The Dean of Students is available to answer questions about the case materials.
3. The respondent may make an opening statement.
4. The complainant may make an opening statement.
5. The hearing panel examines the evidence and the testimony of any witnesses, including asking the respondent and complainant. The respondent(s) and the complainant(s) may ask questions of all witnesses who are called to the hearing. It may be required that all questions be directed through the Dean of Students. At the discretion of the Dean of Students, witnesses may be recalled.
6. The complainant may make a closing statement.
7. The respondent may make a closing statement.

Deliberations. Following the closing statements, the Title VI Hearing Panel adjourns into closed session (1) to determine if the respondent(s) is responsible for violation(s) of the discrimination and harassment policy and, if so, (2) to recommend an appropriate sanction up to Expulsion from the college; including accompanying terms to the Dean of Students. After a determination of responsibility but prior to the recommendation of a sanction, the Dean of Students informs the panel of any prior disciplinary finding(s) against the respondent. The decision(s) of the Title VI Hearing Panel will be made by majority vote and will be forwarded to the Dean of Students. Within five (5) days of the conclusion of the hearing, the Dean of Students will notify the respondent(s), and the complainant(s) as permitted by applicable regulations, of the outcome of the case.

Appeals. Appeals can be made by respondent or complainant and must be filed within 3 days of notice of conclusion. Appeals can be made on the grounds of violation of hearing procedures, violation of student rights, introduction of new evidence that was not available at the time of the original hearing, and/or excessive or inconsistent sanctions. All appeals must be in writing and submitted to the Dean of Students Office within three (3) academic days of written notification. The appeal must be based on one or more of the following reasons (1) new, material evidence that was unavailable at the time of the investigation and hearing process, (2) procedural error that may have impacted the outcome of the matter, and (3) inappropriate sanction based on the findings. Mere dissatisfaction with the outcome is not a reason for appeal. At the end of the appeal filing time, both the respondent and the complainant will be notified if any appeals are received.

Appeals Process. The Dean of Students will provide case materials and any new evidence to the Vice President of Student Life and the Director of Human Resources who will make a final decision regarding sanction.