

SEXUAL MISCONDUCT POLICY AND PROCEDURES

1. Policy statement

AMBS intends to maintain a work and academic environment that exemplifies and supports Christian sexual values, maintains the dignity and worth of all individuals, and fosters relational trust between men and women. AMBS does not discriminate in its educational policies, program, activities, or environment on the basis of sex (gender).

Sexual misconduct undermines Christian values, personal dignity, and trusting relationships. Therefore, sexual discrimination, harassment, and violence are strictly forbidden among all AMBS employees, students, housing residents, campus visitors, board members, internship supervisors, and others who do business with AMBS. This learning community promotes safety and freedom for everyone involved at AMBS. All students and those providing services to AMBS will be apprised of this policy.

Sexual misconduct fosters a hostile environment that can impair AMBS employees' sense of well-being and job performance. It can deny or limit students' opportunities and abilities to benefit from the programs offered by AMBS and participation in its community life. Hostile working or educational environments demean and intimidate employees and/or students.

Sexual harassment is prohibited by law under federal and state statutes: Title VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; and the Indiana Civil Rights Act. Institutional policy and governmental law alone cannot address the larger and more pressing issue—namely, the cultivation of a community of safety, trust, and mutual regard between faculty, administration, staff, students, and other members of the AMBS community, and between women and men. The development and maintenance of a healthy and safe community life is AMBS's primary commitment.

AMBS is committed to a policy of nondiscrimination against persons who file complaints against a person accused of sexual misconduct or who activate the outlined mediation or grievance procedures.

Sexual misconduct of any sort can become cause for temporary suspension from employment or student status at AMBS and possibly termination of employment or of student status.

2. Definitions

Sexual misconduct: A broad category of verbal, nonverbal, or physical behaviors directed toward females or males on the basis of their sex that demean, bully, threaten, or injure them including sexual discrimination, sexual harassment, and sexual violence. Misconduct can occur among employees, between employees and students, between students, between employees and campus residents or guests, between students and campus residents or guests, or between internship supervisors and students. A consensual sexual relationship that may not include a differential of power, nor demeaning, bullying, threatening nor injury, but does represent a violation of a marriage covenant of any person involved in the relationship is also understood to be sexual misconduct.

Sexual discrimination: the limitation of opportunities for employment, promotions, benefits, education, entrance to programs, or other social or personal advancements on the basis of sex (gender).

Sexual harassment: unwanted sexual comments, advances or attention; sexual solicitations or propositions; bullying, intimidation, threats, coercion of a sexual nature; non-consensual sexual contact; innuendo or demand of sexual favors for future benefits (e.g., maintaining employment, securing advancement, favorable recommendations, participation in special projects or programs, etc.), indecent exposure; voyeurism; displaying or distributing sexually explicit images or text in any location for the purpose of intimidation; sex-based cyber-harassment through social media.

Sexual violence: non-consensual sexual intercourse of any type; sexual assault; date violence; sexually motivated stalking; rape; death resulting from physical violence of a sexual nature

Consent: informed and freely given agreement to participate in a form of sexual activity; clear communication in understandable words. Silence, passivity, or lack of active resistance does not constitute consent. Lack of resistance in the face of threat of force, violence, or intimidation does not constitute consent.¹

3. Some Examples of Sexual Misconduct:

- Denial of opportunities for advancement, participation in an institutional program, or inequitable compensation as the direct result of a person's sex (gender);
- Behavior of a sexual nature that is insulting or degrading to a person of the opposite or the same sex (gender);
- Unwanted, inappropriate, and offensive sexual advances of a verbal or physical nature;
- Purveying unsolicited or undesired information, images, video, comments, etc., of a sexually demeaning nature through electronic or internet modes of communication;
- Solicitation of sexual favors in exchange for some kind of benefit or reward (e.g., good grades or job promotion);
- Sex-linked behavior that is coerced by threat or punishment;
- Forcible sex offense such as rape, sodomy, sexual assault with an object, forcible] fondling, incest and statutory rape;

4. Education of AMBS community

In the interest of cultivating wholesome relationships between women and men, and in order to inform and remind people of AMBS's stance against sexual misconduct, AMBS employees and students are educated on the nature and consequences of sexual misconduct in the following ways:

- The Sexual Misconduct Policy is available on the AMBS website for student and employee access.
- The policy be printed in the faculty, staff, and student handbooks and reviewed with new employees and students during their orientation.

- AMBS employees and students are informed about this policy on an annual basis reviewing: definitions of sexual misconduct; clear prohibitions against sexual discrimination, harassment, and violence; recognizing discrimination and harassment; how to report sexual misconduct incidents; assessing AMBS' activities and climate of safety and freedom; the relationship between drug and alcohol abuse and sexual harassment or violence; and procedures to ensure that AMBS officials will act promptly and equitably to investigate any complaints.
- The director of enrollment ensures that administrators have appropriate training to recognize sexual violence and sexual harassment, to determine whether local law enforcement should be contacted, and to begin the appropriate mediation or grievance procedures upon receipt of written complaint.
- AMBS administrators and faculty sponsor community forums, seminars, and continuing education events to educate and inform persons about the nature and consequences of sexual misconduct and issues related to it.
- Professors teaching courses on sexual or professional ethics, gender issues, pastoral leadership, and pastoral counseling are required to deal with issues related to sexual misconduct, including discrimination, harassment and violence such as the maintenance of appropriate boundaries in professional relationships and the implications of imbalances in power between professionals and those with whom they work.
- The library will acquire on an ongoing basis the most pertinent material on this subject (e.g., electronic resources, books, and/or DVDs), including materials that approach the subject from a Christian theological perspective and deal with the issues in congregational and other ministry settings to which graduates will be serving.

5. Title IX Coordinator

The AMBS director of enrollment and financial aid serves as the Title IX Coordinator.

6. People to contact in the event of sexual misconduct

Students, employees, or visitors on the AMBS campus or AMBS-Kansas Center extension site or engaged in any AMBS-related activities (including distance courses) who have experienced incidents that may be defined as sexual misconduct (i.e., discrimination, sexual harassment, or sexual violence) should report their experience to the Title IX Coordinator.

The Title IX Coordinator will outline the procedure for informing accusers of their options for notifying law enforcement authorities at the time when the complaint is reported. The director will assist accusers in making contact with local police if required.

If the Coordinator is not immediately available to help students, employees, or visitors who have experienced sexual violence, or if a sexual misconduct complaint is lodged against the Coordinator, they should contact the director of maintenance and security, the academic

dean, the chief financial officer, the campus pastor, or the director of financial aid. These people will begin the process of determining whether law enforcement should be involved; they should also contact the Title IX Coordinator, if this director is not otherwise implicated in the incident. If the Coordinator has perpetrated the misconduct, then the president (the director's supervisor) should be contacted.

- **Jeff Marshall**, Director of Maintenance and Security, jmarshall@ambs.edu; 574-298-2575 (cell)
- **Rebecca Slough**, Vice President and Academic Dean, rslough@ambs.edu, 574-296-6238 or 574-903-6200
- **Ron Ringenberg**, Vice President and Chief Financial Officer, rringb@ambs.edu, 574-296-6212
- **Janeen Bertsche Johnson**, Campus Pastor, jbjohnson@ambs.edu, 574-533-3608 (cell)
- **Daniel Grimes**, Director of Enrollment and Financial Aid and Title IX Coordinator, dbgrimes@ambs.edu, 574-296-6266

Students or employees in the distance program should contact Daniel Grimes or Rebecca Slough.

7. Failure to Participate

Victims of sexual misconduct may choose not to submit a complaint to the Title IX Coordinator. However, should evidence of sexual misconduct come to the attention of the Administrative Cabinet, this governing body is required to investigate the allegation.

Any employee or student accused of sexual misconduct who refuses to participate in the Level 1 mediation procedures or Level 2 grievance procedures will be placed on unpaid leave or withdrawn from courses and placed on leave of absence.

8. Prompt and Equitable Response

AMBS will address all sexual misconduct complaints with the following actions:

- Securing medical services in the event of violent sexual misconduct;
- Helping accuser determine if the misconduct warrants criminal investigation, if requested;
- Advising the accuser of resources available at AMBS or in the community (e.g., health services, mental health resources, law enforcement authorities, pastoral or spiritual care resources);
- Ensuring the integrity and respect of the accuser and accused;
- Making reasonable changes in work, living, or academic program arrangements if needed;
- Carrying out a prompt and thorough investigation of a written complaint submitted to the Title IX Coordinator;
- Preserving confidentiality of accuser and accused as far as possible to carry out a thorough investigation of a complaint;
- Taking disciplinary or corrective action or imposing sanctions as appropriate and the investigation warrants;

- Advising the accuser and accused of the outcomes of the investigation promptly and concurrently.

9. Procedure for Addressing Sexual Misconduct Complaints

The Title IX Coordinator will ensure that the grievance procedures laid out below are followed and that the process is prompt, thorough, impartial, and reaches an equitable resolution for the accuser and the accused. The procedures set out in this policy apply to all employees, students, and third parties (e.g., volunteers, board members, internship supervisors, vendors, visitors, etc.). If the complaint is not one of sexual violence, the accuser may begin the mediation process as soon as the written complaint has been submitted to the Coordinator. The accuser can move into the formal grievance process at any time.

If the complaint is of a criminal nature, law enforcement investigation will be carried out independently of investigations at AMBS.

The AMBS procedures include:

- An information-gathering process to determine the nature of the complaint;
- Level One mediation (not used to resolve sexual violence complaints)
- Level Two formal grievance

The information-gathering phase is initiated by the accuser, with the help of the Title IX Coordinator if needed, with a signed statement that includes the following:

- names of the accuser and the accused;
- type of sexual misconduct alleged (discrimination, harassment, violence);
- date(s) and location(s) when the alleged misconduct occurred;
- details of the alleged misconduct including any information that supports the complaint;
- description of actions taken by accuser to end the alleged misconduct;
- the redress that is sought.

To the extent possible, AMBS seeks to protect the privacy of all parties involved in alleged acts of sexual discrimination, harassment, or violence. However, upon receipt of a complaint of sexual misconduct, AMBS is required by law to take action that ensures that the harassment and/or violence stops immediately, prevents its recurrence, and addresses its effects. These requirements will mean sharing limited and pertinent information with the accuser, accused, witnesses, investigators, and members of the Administrative Cabinet related to the specific complaint.

A Sexual Misconduct Response Team (SRMT) will be appointed by the Administrative Cabinet to work with the Title IX Coordinator within a week of the submitted complaint. This team will include a member of the Administrative Cabinet, a member of the teaching faculty, a member of the administrative faculty, and the Title IX Coordinator.

The Coordinator will determine a clear and prompt timeline for the major stages of the complaint process:

- Timeline for conducting the full investigation of the complaint including the mediation phase (if followed) and grievance procedures;
- Timeline for accuser and accused to receive communication about the outcome of mediation and/or grievance process;
- Timeline in which both parties may appeal the outcome of the grievance process.

10. Level 1 (Mediation Procedures)

If appropriate, the accuser will be encouraged to discuss her or his complaint with the accused directly. If this approach has failed or is deemed inadvisable, the accuser may choose to begin with the Level 1 process in consultation with the Title IX Coordinator. Complaints that can be addressed in a reasonably straightforward and uncomplicated way are appropriate for this level of mediation. This level is not advisable if the sexual misconduct is of a violent nature.

The accuser is strongly encouraged to submit her/his complaint to the Coordinator within 60 days of the incident; complaints may be received by the Coordinator up to 180 days STET the incident.

After receiving the written complaint of the accuser, the Coordinator will ask the accused to submit a written report within five days using the same complaint outline giving her/his perspective on the alleged misconduct.

The Coordinator will meet with the accuser and the accused along with another AMBS administrator or faculty member who serves as a witness to the proceedings.

A date for a mediation meeting is set; the accuser and the accused may each bring an advocate to the meeting who will remain silent unless called upon by the mediator.

The mediation meetings will proceed in the following manner:

- The Title IX Coordinator, serving as mediator, will set out clearly the procedure for mediation discussion, ensuring that both accuser and accused have equal opportunity to be heard, understood, and actively involved in finding a resolution to the complaint.
- An orderly, full, frank, and fair conversation about the sexual misconduct incident will allow the accuser and accused to come to a fuller understanding of the situation.
- If accuser and accused can reach a satisfactory resolution to the complaint, including clear agreements for changes in behavior and understanding of consequences, then the Title IX Coordinator will close the mediation by verbally stating the understandings, outcomes, and commitments made through the procedure.
- If a second meeting appears needed for the accuser and accused to reach a satisfactory outcome, another date is scheduled.
- A written report of the mediation process, including the stated understandings, outcomes, and commitments reached, will be submitted to the accuser and accused for correction and signature.
- The outcome of the mediation will be reported to an employee's supervisor or the academic dean in the case of students.

- The written report will be filed in the director of human resource's office. If no further incidents are reported by the accuser or accused in a five year period, the report is removed from the director's office and shredded.

At any point in the Level 1 mediation process, the accuser may decide to suspend this procedure and move to Level 2.

11. Level 2 (Grievance Procedures)

Accusers are strongly encouraged to submit their complaints to the Title IX Coordinator within 60 days of the incident; complaints may be received by the Coordinator up to 180 days of the incident. Upon receipt of a complaint of sexual misconduct, the Coordinator will meet with the accuser to determine whether the Level 1 or Level 2 procedures are most appropriate for dealing with the complaint. All sexual violence complaints should begin with the Level 2 procedures.

The Title IX Coordinator will work with the Administrative Cabinet to name a Sexual Misconduct Response Team (SMRT) to address the complaint within one week of receiving the complaint.

The director will also request that the accused complete and sign a statement that addresses the following:

- names of the accuser and the accused;
- type of sexual misconduct alleged (discrimination, harassment, violence);
- date(s) and location(s) when the alleged misconduct occurred;
- details of the alleged misconduct including any information that explains the alleged behavior;
- description of actions taken by accuser to end the alleged misconduct and accused response

The SMRT will review the statements submitted by the accuser and accused and determine next steps in the investigative process. Such investigation could include, but not be limited to: review of relevant evidence (e.g., email communications or other written or graphic communication; interviews with witnesses; legal implications of the alleged misconduct; review of any factors in AMBS community life that encouraged misconduct; etc.). Great care will be taken to ensure that the privacy rights of the accuser and the accused are reasonably protected given the nature of the investigation and/or possible threat to either party or the community.

The Title IX Coordinator will communicate the progress of the information gathering process (but not necessarily the findings) to the accuser and accused in an ongoing and timely way.

Working with the SMRT, the accuser, the accused, and the Coordinator will develop a schedule for meetings to hear testimony from the accuser, the accused, witnesses, or others whose expertise may be relevant to the complaint. This schedule will take into careful consideration issues related to the physical and psychological safety of the accuser and the

accused. The accuser and the accused may invite an advocate to attend meetings with the SMRT; the advocate will not contribute to the proceedings unless asked specifically to do so.

Meetings with the SMRT, the accused, and the accuser will follow this outline:

- The Title IX Coordinator, serving as convener of the meeting will state clearly the discussion procedure for the meeting and ensure that both accuser and accused have equal opportunity to be heard (if both are present), understood, and actively involved in establishing the facts of the complaint.
- The Title IX Coordinator will make clear that the preponderance of evidence is the standard by which decisions related to the alleged misconduct will be made.
- An orderly, full, frank, and fair conversation about the sexual misconduct incident will allow the SMRT to come to a fuller understanding of the complaint, to determine whether sexual misconduct occurred and if so, to identify appropriate disciplinary actions or sanctions.
- The Title IX Coordinator will summarize verbally the findings, understandings, and/or decisions reached during the meeting.
- If future meetings are required, next meeting times will be set before the conclusion of the meeting OR agreements made for follow-up scheduling.
- A written summary of the meeting will be available to the SMRT, the accuser, and accused within five working days of the meeting.

At the conclusion of all scheduled meetings with the accuser and the accused, the SMRT will determine whether sexual misconduct did occur and what disciplinary actions or sanctions will follow. The future safety of the accuser and the accused will be considered in these deliberations.

The Title IX Coordinator will meet with the Administrative Cabinet and distribute a written report of the SMRT's determination of the sexual misconduct complaint, including disciplinary actions or sanctions, within 24 hours of the final SMRT meeting. Any disciplinary actions required for the safety of the accuser or the accused will take effect immediately.

The Title IX Coordinator will communicate the action of the Administrative Cabinet to the accuser and the accused in writing within 24 hours of the Administrative Cabinet meeting.

Within ten working days, the Title IX Coordinator will compile the meeting schedule, all meeting summaries, final determination related to sexual misconduct, and action of the Administrative Cabinet. This report will be filed in the office of the Coordinator.

12. Disciplinary Actions and Sanctions

If the Sexual Misconduct Response Team determines that the accused did engage in sexual misconduct (discrimination, harassment, or violence), the following examples of possible disciplinary actions or sanctions may be imposed:

- Verbal reprimand with possible warnings
- Probationary period
- Written reprimand with warnings in personnel or student file

- Monitored, restricted, or denial of access to AMBS campus, programs, online resources, continuing education, employee or all-campus social gatherings, salary increases, research funds.
- No social or verbal interactions with accuser (including change of residence, work schedule or course schedule if necessary)
- Mandatory counseling/therapy or training at accused's expense
- Suspension from work (unpaid) or courses for a period of time
- Dismissal from employment or academic program

13. Prompt and Equitable Requirements

The Level 1 procedures and/or the Level 2 grievance procedures will seek to determine whether sexual discrimination, harassment or violence has occurred using the preponderance of evidence standard.

AMBS will maintain documentation of all proceedings related to the complaint independent of other criminal investigation.

The Title IX Coordinator will ensure that both parties are concurrently given written notification of the outcome of the mediation or grievance procedures. FERPA laws permit AMBS to disclose information to the accuser related to the sanction imposed upon a student, employee, or third party who was found to have engaged in discrimination or harassment if the sanction directly relates to the accuser.

14. Appeal of Sexual Misconduct Response Team's Ruling

The accuser or the accused may appeal the outcome of the Sexual Misconduct Response Team's (SMRT) findings and ruling to the AMBS president within ten working days (i.e., Monday through Friday) of its receipt. The president will have 30 days to review the work of the SMRT, conduct other deliberative work, and determine whether to honor the appeal. The decision of the president will be final. If the president is the accused, the appeal will go to the chair of the AMBS board of trustees, and possibly Mennonite Education Agency and Mennonite Church Canada Formation Council, for review and final decision.

15. Remedies and Enforcement

If the mediation or the grievance process determined that sexual discrimination, harassment, or violence has occurred, AMBS will take steps promptly to protect the accuser and the accused.

The AMBS campus minister will follow-up with accusers and accused to offer support and assistance, which could include referrals to local agencies or ministries for ongoing counseling.

The Title IX Coordinator will have resources available for educating employees and students on the definition, nature, evidence, and consequences of sexual discrimination, sexual harassment, and sexual violence.

16. Community Resources

911 – Emergency number

Elkhart General Hospital Emergency Room, 600 East Blvd., Elkhart, IN
574-523-3315

Oaklawn Community Mental Health Center, 2600 Oakland Ave., Elkhart, IN
574-533-1234

Samaritan Center, 221 E. Crawford St., Elkhart, IN
574-262-3597

Elkhart City Police, 175 E. Waterfall, Dr. Elkhart, IN
574-295-7070

S-O-S of the Family Justice Center, South Bend, IN 46617
Hotline: 5742894357 Business: 5742346900
Website: <http://fjcsjc.org>

Community Resources for employees or student participating in distance programs will be gathered by the Title IX Coordinator.

17. Retaliatory Behavior

AMBS will not tolerate retaliatory behavior toward the accuser, witnesses, advocates, or others involved in processing the complaint by any person, group, or organization. It will also not tolerate retaliatory behavior toward the accused, witnesses, or advocates by any person, group, or organization. Retaliation by an AMBS employee may result in suspension or possibly termination of employment; retaliation by student(s) may result in suspension from courses and/or termination of student status.

18. Intentionally Dishonest Complaints of Sexual Misconduct

This Sexual Misconduct policy assumes “good faith” on the part of the person lodging the complaint and/or activating the grievance procedures. Anyone who has submitted a sexual misconduct complaint that is intentionally deceiving, dishonest, or malicious or has given false or misleading testimony in the pursuit of a complaint will be subject to disciplinary action. Persons who feel they have been falsely accused of sexual misconduct may utilize the AMBS grievance policy.

¹ Sexual Misconduct and Sexual Assault Policy, University of Notre Dame. (August 16, 2012)
<http://dulac.nd.edu/university-standards-of-conduct/sexual-misconduct-and-sexual-assault-policy/> accessed August 2, 2013

Sources Used

Institutional policies of Eastern Mennonite University, Goshen College, University of Notre Dame

National Women’s Law Center, <http://www.nwlc.org/resource/cyberbullying-and-sexual-harassment-faqs-about-cyberbullying-and-title-ix>

Office of Civil Rights: U.S. Department of Education. “Dear Colleague” Letter, April 4, 2011.

Office of Civil Rights: U.S. Department of Education. *Sexual Harassment: It’s Not Academic*. September 2008

Petrocelli, William, and Barbara Kate Repa, *Sexual Harassment on the Job* (Nolo Press, 1992).
Riggs, Robert O., Patricia H. Murrell, and Joanne C. Cutting, *Sexual Harassment in Higher Education: From Conflict to Community*, ASHE-ERIC Higher Education Report (No. 2, 1993).
U.S. Department of Education. *Handbook for Campus Safety and Security Reporting*, 2011

Approved by AMBS Board, October 28–29, 1994

Approved by Administrative Cabinet, August 22, 2002

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