Response to and Grievance Process for Complaints of Sexual Harassment

11/12/2021

	European Medical School of Massage Response to and Grievance Process for Complaints of Sexual Harassment	Created: 11/12/2021

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1) Purpose
   a) This the procedure for handling an allegation involving sexual harassment.
2) Scope
   a) This document describes the action taken by EMSOM staff in the event of allegations of conduct considered sexual in nature that occurs on the premises of or at an activity held by European Medical School of Massage (EMSOM) between two students, two employees or a student and an employee.
3) Roles and Responsibilities
   a) EMSOM staff
      i) acting as Title IX Coordinator, investigator, decision-maker or participating in any part of a response to complaints of sexual harassment:
         (1) Will have a thorough understanding of the definition of sexual harassment
         (2) Be versed in the investigation and grievance process listed herein
         (3) Objectively evaluate all relevant evidence, inculpatory and exculpatory.
         (4) Serve impartially, avoiding prejudgment of the facts, conflicts of interest and bias of any kind.
         (5) Regard both the complainant and the respondent equitably regardless of sex, gender, race, religion, socioeconomic status, age, political views or any other discerning characteristics.
   b) Title IX Coordinator – this person is responsible for coordinating EMSOM's efforts to comply with Title IX requirements. Complaints of sexual discrimination or harassment can be directed to this person. Contact information can be found in the EMSOM Catalog and on EMSOM's website.
   c) Investigator(s) – the staff member(s) carrying out the formal inquiry or investigation for the formal complaints submitted to EMSOM administration
   d) Decision-maker – this person objectively evaluates all relevant evidence from the investigation and additional information from the hearing and makes a determination of responsibility or dismissal regarding the formal complaint. The decision-maker cannot be the Title IX Coordinator or the Investigator.
4) Abbreviations and Definitions
   a) Sexual Harassment - conduct on the basis of sex that satisfies one or more of the following:
      i) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
      ii) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
      iii) Sexual assault[1], dating violence[2], domestic violence[3], or stalking[4]
   b) Complainant - an individual who is alleged to be the victim of conduct that could constitute sexual harassment. At the time that a formal complaint is filed, the complainant must be enrolled in EMSOM's program.

[1] as defined in 20 U.S.C. 1092(f)(6)(A)(v)
[2] as defined in 34 U.S.C. 12291(a)(10)
[3] as defined in 34 U.S.C. 12291(a)(8)
[4] as defined in 34 U.S.C. 12291(a)(30).

c) Respondent - an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

5) The Grievance Process
   a) Complaints of Sexual Harassment
      i) In order for the complaint to be handled in accordance with Title IX:
         (1) The alleged conduct must constitute sexual harassment as defined in §106.30,
         (2) Occurred during participation in EMSOM's program
      ii) Complaints can be submitted via email or handwritten or typed hard copy.
      iii) Complainant will be contacted within 24 hours to discuss supportive measures.
         (1) These are measures to restore or preserve the complainant's access to EMSOM's educational program.
         (2) These are provided given that reasonable access to the program also remains for the accused party.
         (3) Supportive measures may include in-house coaching, tutoring, extensions of deadlines or other course-related adjustments, modifications of class schedules, mutual restrictions on contact between parties, or leaves of absence.
         (4) All supportive measures will be carried out under confidentiality to the extent that maintaining such confidentiality would impair their provision.
      iv) No disciplinary sanctions will be leveed upon accused party unless the formal grievance proceeding takes place.
      v) EMSOM staff will take steps to protect the safety of all parties, the educational environment and deter further sexual harassment.
      vi) Emergency removal of the respondent will be considered only if EMSOM administration 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 will be given an opportunity to challenge the removal immediately following the decision.
      vii) Informal resolution will be offered as a way to resolve conflict between the parties involved.
      viii) EMSOM will provide instructions for submission of formal complaint if necessary.
   b) Formal Complaint
      i) A formal complaint contains the following:
         (1) An account of the alleged sexual harassment
         (2) A request that EMSOM investigates the allegation
         (3) The complainant's physical or digital signature, or other indication that the complainant is the person filing the formal complaint, or the complaint must be signed by the Title IX Coordinator.
      ii) The complaint may be filed in person, by mail or by electronic mail to the Title IX Coordinator.
      iii) EMSOM may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.
      iv) The formal complaint may be dismissed if at any time during the grievance process,

(1) a complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the formal complaint or allegations herein,
(2) the respondent is no longer enrolled or employed with EMSOM,
(3) specific circumstances prevent EMSOM from gathering evidence sufficient to reach a determination within a reasonable amount of time.

c) Notification of Allegations Constituting Sexual Harassment
   i) Within 48 hours of EMSOM's review of a formal complaint, a Notice of Allegations is issued to all involved parties. The notice is issued on the form entitled *Notice of Allegations Constituting Sexual Harassment,* which can be found at the end of this document. The following information is included on this form:
      (1) Notice of EMSOM's Procedure for Addressing Allegations of Sexual Misconduct.
      (2) Notice of the allegations of sexual harassment, including (if known)
         (a) Identities of parties involved in the incident
         (b) The conduct allegedly constituting sexual harassment
         (c) The date and location of the alleged incident.
      (3) A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
      (4) Information that the parties may have an advisor of their choice who may be, but is not required to be, an attorney and may inspect and review evidence.
      (5) A reminder of EMSOM's high ethical standard and that ethical behavior does not involve knowingly making false statements or submitting false information during the grievance process.

d) Private Interviews
   i) Within ten business days of the notice of allegations distribution, EMSOM administration will hold individual meetings with each party involved in the complaint. During this initial meeting,
      (1) The grievance process will be discussed with the attendant(s),
      (2) As an alternative to investigation and adjudication, informal resolution (such as mediation) will be offered to both parties.
         (a) If at any time prior to the determination of responsibility, the parties reach an agreement on a resolution other than a continuation of the grievance process, EMSOM will facilitate the alternative resolution[5].
         (b) EMSOM will use the form entitled *Agreement to Alternative Resolution*, found at the end of this document, to
            (i) Provide a written notice to both parties disclosing:
               1. The allegations within the formal complaint,
               2. The description and requirements of the informal resolution process, including:

[5] The informal resolution process will not be facilitated to resolved allegations that an employee sexually harassed a student.

a. the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations,
b. that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

3. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

(ii) Obtain the parties' voluntary, written consent to the informal resolution process.
(iii) Ensure a reasonably prompt resolution.

e) Investigation of Formal Complaint
i) EMSOM administration will conduct a thorough investigation of the formal complaint.
(1) The purpose of the investigation will be to gather sufficient evidence to reach a determination regarding responsibility.
(2) All evidence will be regarded objectively, and the respondent will be presumed not responsible for the alleged conduct until the determination regarding responsibility at the conclusion of the grievance process.
(3) The investigation will not continue more than two weeks after the date of the latest initial interview without notice to all involved parties.

f) Investigative Methods
(1) Access, consideration, disclosure or use of records made or maintained by a physician, psychiatrist or other recognized medical provider which are made and maintained in connection with the provision of treatment to either party, given that the party provides voluntary, written consent to do so,
(2) Opportunities for both parties to present witnesses and other evidence,
(a) No restrictions will be placed on either party regarding discussion of the allegations or the gathering and presentation of relevant evidence.
(3) Conferences with one or both parties and/or witnesses.
(a) Parties will be extended the opportunity to have an advisor of their choice accompany them in conference; however, EMSOM may establish restrictions regarding the extent to which the advisor may participate in conference.
(b) Written notice of the date, time, location, participants and purpose of any conference will be provided to invited or expected parties at least three (3) days in advance.
(c) Conferences may be recorded. Consent will be obtained from all parties before the meeting begins.

g) Final Investigation Report
(1) Both parties will have the opportunity to inspect and review any evidence obtained as part of the investigation, provided it is directly related to the allegations addressed in the formal complaint.
(2) The evidence subject to inspection will be provided to each party in electronic format or hard copy.

(3) Both parties will have ten days to review the evidence and submit a response to be considered before the completion of the final investigative report.

(4) A final report will be issued, fairly summarizing relevant evidence. Each party and party's advisor will receive an electronic or hard copy at least ten days before the scheduled live hearing. Review and written response is encouraged.

h) Live Hearing

i) Each party's advisor will be permitted to question the other party and any witnesses.

(1) All questioning must be conducted directly, orally and only by a party's advisor, never by a party personally. If a party does not have an accompanying advisor, EMSOM will provide someone to conduct the cross-examination.

(2) The questions must be relevant to the allegations or follow-up questions; relevant questions include those that challenge credibility. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless

(a) The questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or

(b) 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.

(3) Before a question is answered, EMSOM will determine whether the question is relevant and will explain their reasoning if a question is determined to be irrelevant.

ii) At either party's request, EMSOM will provide for the live hearing to occur with parties located in different locations with technology allowing communication between both parties and EMSOM staff simultaneously.

iii) EMSOM will create an audiovisual recording of the hearing and make it available for all parties to inspect or review.

i) Determination of Responsibility

i) The standard of evidence used by EMSOM to determine responsibility under Title IX is the Preponderance of Evidence. Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true[6].

ii) Within five business days of the hearing, a written determination of responsibility will be issued simultaneously to both parties. The determination is issued using the form entitled *Determination of Responsibility,* which can be found at the end of this document. Included is the following information:

(1) Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;

(2) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

[6] https://www.law.cornell.edu/wex/preponderance_of_the_evidence

(3) Findings of fact supporting the determination;
(4) Conclusions regarding the application of the recipient's code of conduct to the facts;
(5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
(6) The recipient's procedures and permissible bases for the complainant and respondent to appeal.

6) Remedies and Disciplinary Sanctions
   i) If a respondent is determined to be not responsible for alleged conduct at the conclusion of the grievance process, EMSOM will take action to restore or preserve access for both parties to EMSOM's educational program.
      (1) Remedial measures may include in-house coaching, tutoring, extensions of deadlines or other course-related adjustments, modifications of class schedules, mutual restrictions on contact between parties, or leaves of absence.
   ii) If a respondent is determined to be responsible for the alleged conduct, EMSOM will take action to provide remedial measures for the complainant and disciplinary sanctions will be measured against the respondent.
      (1) EMSOM has a zero-tolerance policy for behavior of this type. Disciplinary actions may include:
         (a) Disciplinary Probation – As sexual harassment is a part of EMSOM's Code of Conduct, disciplinary probation is the imposition of a time period in which the respondent must show that they are willing to live up to the expectations in this Code of Conduct. During this period of time, any further violations of the Code of Conduct will result in an immediate dismissal from the program.
         (b) Immediate Dismissal – The student may be immediately dismissed from the program.
      (2) EMSOM reserves the right to determine disciplinary actions based on what is deemed best for everyone involved.

7) Appeals
   i) Both parties have the right to appeal a determination of responsibility or of dismissal of a formal complaint or allegations therein on the following bases:
      (1) Inconsistencies in the handling of the grievance process that affected the outcome,
      (2) Availability of new evidence
      (3) A member of EMSOM's team involved in the process was determined to have had a conflict of interest or bias

b) To appeal a decision, a party can request an appeal form (appended to the Notice of Appeal Rights) from EMSOM administration and return to the office within 5 business days of the determination. This form is found at the end of this document.

c) When an appeal is made, EMSOM will:
   i) Notify the other party in writing and begin the appeal process within 48 hours,
   ii) Assign a different party as decision-maker for the appeal than was assigned for the original determination,

iii) Accept submission from both parties of a written statement in support of, or challenging, the outcome of the original determination within 5 days of receipt of appeal,
iv) Issue a written decision describing the result of the appeal and the rationale for the result, and
v) Issue said written decision simultaneously to both parties, no later than ten days after receipt of the appeal.

8) Recordkeeping
   a) EMSOM will maintain all records, including the following, for a period of seven years.
      i) Documentation of any and all sexual harassment investigations, audio and/or video recordings of meetings or hearings, disciplinary sanctions imposed on respondents and any remedies provided to the complainant.
      ii) Documentation of any appeal and the result of said appeal,
      iii) Training materials used to train EMSOM employees on this procedure.
   b) Documentation of any response to informal complaints, including supportive measures provided to the complainant. If no action is taken, documentation will be kept explaining the rationale.
9) Disclaimers regarding time
   a) EMSOM will respond to all email, text and phone communications within 24 hours.
   b) EMSOM will work diligently to complete the grievance process within a reasonably prompt time frame, however, understands and allows for the temporary delay or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

OFFICIAL NOTICE OF ALLEGATIONS

The administration at European Medical School of Massage has been made aware of, by way of formal complaint, alleged conduct that may constitute sexual harassment under United States Title 34, Subpart D §106.30. In compliance with §106.45, EMSOM has begun the grievance process. The written procedure for this process has been included with this notice. Upon distribution of this notice, investigation into the alleged incident will begin.

Following are the details of the formal complaint:

Date of incident		Location of incident	
Complainant		Respondent	
Alleged conduct			

Throughout the investigation and remaining stages of the grievance process,

- The respondent will be presumed *not responsible* for the alleged conduct. A determination regarding responsibility is made *only* at the conclusion of the grievance process.
- Both parties involved in the grievance process may have an advisor of their choice who may be, but is not required to be, an attorney and may inspect and review evidence.
- EMSOM will maintain a high ethical standard; ethical behavior is expected at all times and does not involve knowingly making false statements or submitting false information during the grievance process.

You are invited to join the EMSOM team for an initial interview regarding this notice on [INSERT DAY & TIME]. In attendance will be [ATTENDEE], [ATTENDEE], [ATTENDEE] and [ATTENDEE]. Please let us know if this will work for you.

As always, please reach out with any questions you may have.
Thank you,
EMSOM Staff

Enclosed: sexual harassment procedure

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NOTICE OF AGREEMENT TO ALTERNATIVE RESOLUTION

This document is for the acknowledgement of agreement to and provision of voluntary consent to participation in informal resolution to a formal complaint containing allegations that may constitute sexual harassment as defined in Title IX. Details regarding the complaint and allegations, involved parties and chosen resolution follow. Either party, at any time during this informal resolution process, has the right to withdraw and resume the formal grievance process with respect to the formal complaint. However, any consequences resulting from participation in the informal resolution process, including records generated, will be maintained and could be shared as evidence.

<table>
<tr><td>Date of incident</td><td></td><td>Location of incident</td><td></td></tr>
<tr><td>Complainant</td><td></td><td>Respondent</td><td></td></tr>
<tr><td>Alleged conduct</td><td colspan="3"></td></tr>
<tr><td rowspan="4">Proposed Resolution</td><td>What is the resolution?</td><td colspan="2">Who will participate?</td></tr>
<tr><td>When will this take place?</td><td colspan="2">Where?</td></tr>
<tr><td>How will this happen?</td><td colspan="2">How will this solve the problem?</td></tr>
<tr><td colspan="3">Define success with regard to this resolution for each party involved.</td></tr>
</table>

By signing this form, I am voluntarily consenting to participation in the informal resolution proposed as written above. In addition, I agree to the details included regarding the resolution, including what is considered a successful resolution.

_____ _____

Complainant/Date Respondent/Date

The above informal resolution has been completed and success has been achieved. As such, the related formal complaint is considered resolved and no further action is needed on behalf of European Medical School of Massage.

_____ _____

Complainant/Date Respondent/Date

FINAL DETERMINATION OF RESPONSIBILITY

TITLE *[A concise title should, at minimum, include the name of the respondent in order to facilitate effective recordkeeping.]*		
Investigator:		
Decision Maker:		
Report Date:		
GENERAL INFORMATION		
Nature of Complaint:	*This section should provide a brief single paragraph introduction to the case, including who the respondent is, what they are alleged of doing, who reported these actions, and what policies have been violated.*	
Involved Parties:	*Complainant name and description*	*Respondent name and description*
History of Case	*This section should include an overview of the case prior to the final determination, including what the formal complaint alleges happened, who reported the alleged conduct, who received the report, and any additional procedural history that led up to the final determination.*	
Procedural Steps	*A description of all procedural steps that have been taken from the receipt of the formal complaint through the final determination needs to be included in the final determination report. This includes:* • *Any notifications to the parties* • *Interviews with parties and witnesses* • *Site visits* • *Methods used to gather evidence*	
POLICIES AT ISSUE		
EMSOM Policies	*This section should outline, or directly quote, any university policies that the alleged conduct, if true, would be found to violate.*	
Standard of Proof	*This section should restate the standard of proof that a decision maker will utilize when making a decision in the case.*	
ALLEGATIONS		
Allegations	*This section should contain a concise list of all allegations of policy violations being made against the Respondent.*	
SUMMARY OF CONCLUSION		
This section should provide a brief conclusion of the final determination (further details supporting this conclusion will be included in subsequent sections).		

FINDINGS OF FACT *The following section should outline all findings of fact that support the determination made by the Decision Maker. This includes relevant information from the investigation – e.g. evidence, interviews, statements*	
Background	*This section should include a brief description of the background of the case. How are the Complainant and Respondent related to one another? What types of interactions have they had in the past?*
Investigation Details	*This section summarizes relevant findings of fact that were ascertained through the investigation process and the investigation report. This can include, among other things, summaries of key interviews, descriptions of relevant evidence, credibility determinations made by the investigator, and site visits that were made in the course of the investigation. This section can also outline attempts made at gathering information that were unsuccessful – e.g. interviewees that were unavailable or uncooperative.*
Hearing Details	*This section summarizes relevant findings of fact that were discovered or confirmed during the hearing procedures. This should include a summary of hearing examinations and cross-examinations, evidence discussed, credibility determinations, and other issues that arose during the hearing.*
Other relevant information	*Any additional information that was relevant to the decision maker's final decision should be listed in this section. If this information came from a source, such as a webpage or employee's file, the source should be listed as well.*
Exhibits	*This section should provide a list of exhibits obtained during the course of the investigation. These exhibits should be attached to the final determination report.*
CONCLUSIONS	
Application of Policy to Facts	*This section should apply the Code of Conduct or other policies at question to the specific findings of fact discussed above.*
Conclusions	*In this section, the Decision Maker should provide a statement of, and rationale for, the result as to each allegation outlined at the beginning of the report. Each statement should also include a determination regarding the Respondent's responsibility.*
Sanctions	*In this section, the Decision Maker should outline each disciplinary sanction to be imposed upon the Respondent, if any.*
Remedies	*This section should outline any remedies provided to the Complainant as a result of this grievance process.*

_____

Decision Maker Name/Date

NOTICE OF APPEAL RIGHTS

1) Both parties have the right to appeal a determination of responsibility or of dismissal of a formal complaint or allegations therein on the following bases:
   a) Inconsistencies in the handling of the grievance process that affected the outcome,
   b) Availability of new evidence
   c) A member of EMSOM's team involved in the process was determined to have had a conflict of interest or bias
2) To appeal a decision, a party can request an appeal form (also appended to this *Notice of Appeal Rights*) from EMSOM administration and return to the office within 5 business days of the determination.
3) When an appeal is made, EMSOM will:
   a) Notify the other party in writing and begin the appeal process within 24 hours,
   b) Assign a different party as decision-maker for the appeal than was assigned for the original determination,
   c) Accept submission from both parties of a written statement in support of, or challenging, the outcome of the original determination within 5 days of receipt of appeal,
   d) Issue a written decision describing the result of the appeal and the rationale for the result, and
   e) Issue said written decision simultaneously to both parties, no later than ten days after receipt of the appeal.

APPEAL OF FINAL DETERMINATION OF RESPONSIBILITY

I would like to invoke my right to appeal the final determination of responsibility entitled _____.

I am the complainant / respondent in the matter and would like to have the determination reconsidered. I will submit a written statement within five days of the date of this appeal, describing my argument for reexamination of this evidence in this decision.

_____

Name/Date