



SEXUAL ASSAULT AND MISCONDUCT POLICY

STATEMENT ON SEXUAL ASSAULT AND MISCONDUCT

Elmira Business Institute, as a higher education institution, takes serious its responsibility to provide a safe environment free of gender discrimination, sexual assault, stalking and dating violence. Elmira Business Institute developed this policy to outline its policies and procedures surrounding sexual misconduct. This policy provides procedures for reporting, investigating and adjudicating sexual misconduct. It applies to all members of the College community, including the College's students, faculty, and staff, and applies regardless of one's sexual orientation, gender, gender identity, or gender expression. Individuals who may have violated EBI policy are subject to an investigation and at the disposition of the case subject to appropriate conduct action including suspension and expulsion for students and for employees, employment action up to and including termination of employment of employee.

Members of the campus community who experience any form of sexual misconduct discussed in this policy should contact one of the persons/offices identified in this policy for assistance. Some of these resources can provide confidential assistance, while others will have a reporting obligation. You should carefully consider which resource you want to choose, or you may choose both. These resources can assist you in recovering from the experience and in deciding among options that may be available, such as the criminal justice system and/or the College investigation and conduct process as described in this policy. Any member of Elmira Business Institute's community who has been the victim of misconduct has the right to make a report to Security, a Responsible Administrator, local law enforcement, and/or the New York State Police, or choose not to report. If reported to EBI, under this policy, a reporting individual will be protected from retaliation and will receive appropriate assistance and resources from the administration. A Students' Bill of Rights for cases involving sexual assault, domestic violence, dating violence or stalking is attached at the end of this policy and can be found on Elmira Business Institute's web page.

DEFINITIONS

Sexual Misconduct

Sexual misconduct is a term used by this policy to refer to all forms of inappropriate sexual communication or behavior, including but not limited to harassment, nonconsensual sexual activity, sexual exploitation, as well as dating violence, domestic violence, and stalking, which impacts or has the potential to impact the educational or employment environment of any member of the College community. While sexual misconduct can be a criminal offense under New York State law, a person's conduct may violate EBI's Policy even if it does not rise to the level of a violation of State law. Sexual misconduct can be committed by males or by females, and it can occur between people of the same or different sex.

Non-consensual sexual activity includes any of the following:

- Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, forcibly or without consent or where the victim is incapable of consent due to mental or physical incapacity.
- Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent.

Fondling

Any intentional touching, however slight, for purposes of sexual gratification or with sexual intent, with an object or bodily part, by a person upon another person that is without consent.

Sexual Exploitation

When one takes non-consensual sexual advantage of another. Examples of sexual exploitation include but are not limited to observing or recording others engaged in sexual or private activity (such as undressing) without the consent of all involved; or taking intimate pictures of another but then distributing the pictures to others without the photographed person's consent; acts of incest; engaging in sexual activity with another while knowingly infected with a sexually transmitted infection (STI) without informing the other person of such infection or exposing one's genitals in non-consensual circumstances.

Dating Violence

Dating violence refers to physical violence (hitting, punching, kicking, etc.), threats of violence or acts of physical intimidation or coercion committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Domestic Violence

Domestic violence refers to physical violence, threats of violence or acts of physical intimidation or coercion between spouses or former spouses, cohabitating romantic partners or individuals who were formerly cohabitating romantic partners, individuals who share a child in common, or others in a family or financial relationship.

Stalking

Stalking is 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. Stalking behavior includes but is not limited to repeated, intentional following or observing another; or using "spyware" or other electronic means to gain impermissible access to a person's private information.

AFFIRMATIVE CONSENT

Affirmative consent is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.
- Sexual relationships between faculty and students and staff and students are problematic due to the inherent power differential. Therefore, sexual or romantic relationships between faculty and students and between staff and students are absolutely prohibited.

CRIMINAL PROCEEDINGS

A victim of a crime, including Sexual Misconduct, is encouraged to, but is not required to, report the incident to law enforcement and pursue criminal charges. If you want to pursue criminal charges related to an incident occurring on campus, you may contact Security or your Campus Director. For assistance in making a report of a crime that took place off campus, you may contact the local police department directly. The criminal process and the College's conduct processes are not mutually exclusive or dependent on each other, meaning that a person may pursue either a criminal complaint or internal complaint with the College or both. An individual's decision to file a report with criminal authorities may result in some delay in any internal College investigation, so as not to interfere with evidence gathering by law enforcement, but College procedures will resume as soon as possible. In addition, Elmira Business Institute will cooperate with any criminal proceedings as permitted by law. Any student coming forward should recognize the importance of evidence and the preservation of evidence. Ways to preserve evidence may include acts such as avoiding: showering, douching, cleaning clothing, washing hands, and deleting text messages and/or voicemails. A criminal justice investigation will not last longer than 10 days unless specifically requested and justified.

REPORTING SEXUAL MISCONDUCT

Any Elmira Business Institute student, staff member, or faculty member who has been the victim of sexual misconduct is encouraged to seek support and assistance from within or outside the College. Incidents of sexual misconduct that happen on EBI property or between students, staff, or faculty should be reported to the appropriate campus Title IX Coordinator. Reporting a sexual offense quickly is important to preserving evidence that may be necessary to prove the offense occurred. Elmira Business Institute employees who become aware that a student has been a victim of sexual misconduct including sexual harassment or assault, domestic or dating violence, or stalking are encouraged to report these incidents to the Campuses Title IX Coordinator.

Title IX Coordinators:

Elmira Main Campus:

607-733-7177

Erin McCann

Corporate Accountant

emccann@ebi.edu

Vestal Non-Main Campus:

607-729-8915

Jeffery Wood

Financial Aid Director

jwood@ebi.edu

Elmira Business Institute has designated the following individuals as responsible employees and are required to report any instance of sexual misconduct including sexual harassment or assault, domestic or dating violence, or stalking:

Elmira Main Campus:

607-733-7177

Angela Wood

Campus Director/Academic Dean

awood@ebi.edu

Holly Boyce

Career Services Coordinator

hboyce@ebi.edu

Vestal Non-Main Campus:

607-729-8915

Charade Kittle

Campus Director

ckittle@ebi.edu

Kristi Potter

Academic Dean

kpotter@ebi.edu

Scott Galilei

Admissions Director

sgalilei@ebi.edu

While certain employees may also have a reporting obligation, if a complaint is made to anyone other than the Responsible Administrators listed above, the complainant risks the possibility that it will not come to the attention of the proper officials and may, therefore, not be acted upon. For purposes of this policy, Faculty are not considered Responsible Administrators. In addition, unless a report is made to someone listed as a Confidential Resource, confidentiality cannot be assured.

Upon receiving a report, the Responsible Administrator to whom the report is made will discuss with the complainant available avenues and options. Options may include conduct action against the accused and remedial actions to correct the effects of the Misconduct.

Elmira Business Institute will review the facts and circumstances of each case, as well the complainant's wishes, in deciding whether and what steps are reasonable and appropriate. A Responsible Administrator will share all information reported to him/her with the Title IX Coordinator and may share with other school administrators, as needed. A Responsible Administrator will similarly report Misconduct that he or she observes firsthand or learns about in any other manner.

Confidential Resources

Elmira Business Institute is a non-traditional higher education institution. With that being said, EBI has designated a Confidential Resource at each campus. A report to a Confidential Resource is not an official report and will not result in any response from the institution. Elmira Business Institute's Confidential Resources are:

Elmira Main Campus:

607-733-7177

Larry Canfield

lcanfield@ebi.edu

Vestal Non-Main Campus:

607-729-8915

William Spring

wspring@ebi.edu

COMMUNITY RESOURCES

Sometimes students will feel more comfortable talking with a member of the community. The Southern Tier has various resources to assist students at both locations including:

- Sexual Assault Resource Center (SARC) - 888-810-0093
- Arnot Ogden Medical Center - 607-737-9194
- Saint Joseph's Hospital - 607-737-7806
- Planned Parenthood - 607-734-3313
- Counseling Services - 607-734-1447
- Suicide Hotline - 800-SUICIDE (734-2433)
- NYS Office of Victim Services - 1-800-247-8035
- Vestal Police Department - 607-754-2111
- Elmira Police Department - 607-735-8600
- New York State Police Department - 844-845-7269
- Crime Victims Assistance Center - 607-722-4256
- UHS Binghamton Hospital - 607-762-2200

As Elmira Business Institute is a non-traditional, non-residential institution of higher education, students who are seeking support for an act of sexual violence are encouraged to use local hospitals near the Elmira Main or Vestal Non-Main campus, which have Sexual Assault Nurse Examiners available. These services are free regardless of a person's choice to pursue criminal charges.

RIGHTS OF THE COMPLAINANT

- Contact security, local law enforcement or the New York State Police.
- Access to confidential resources who can help with reporting complaint to institution or law enforcement.
- Have immediate access to the Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a reporting individual to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney. Such official shall also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy, and shall inform the reporting individual of other reporting options.
- Disclose the incident to institution representatives who can offer privacy or confidentiality and can assist in providing services.
- File a report of sexual misconduct to the appropriate trained staff and provide resources and if requested, initiate an investigation into the complaint.
- Bring a complaint against an employee to the appropriate Elmira Business Institute Campus Director.
- Receive assistance from appropriate employee in seeking legal help or services.
- To not be retaliated against for bringing a complaint forward.
- Withdraw a complaint or involvement from the institution process at any time.

STANDARD OF PROOF

All student conduct cases will be decided on the burden of proof standard of a “preponderance of the evidence.” This means the determination will be made on the basis of whether it is “more likely than not” that a student violated the Code of Conduct.

CONFIDENTIALITY AND PRIVACY

“Confidentiality” may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092(f) and 20 U.S.C. 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality.

“Privacy” may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate institution officials. Institutions may substitute another relevant term having the same meaning, as appropriate to the policies of the institution.

Elmira Business Institute has a responsibility for the health and safety of all students and employees. While the institution respects the confidential nature of sexual misconduct complaints, there are times where confidentiality requests may not be honored. Certain circumstances, such as those that present a threat to the health and safety of the institution may prohibit confidentiality from being honored. The Title IX Coordinator will consult with the Campus Director and Senior Vice President to determine if an ongoing threat to the health and safety of the community exists and what actions should be taken.

INTERIM ACTIONS

Interim actions are actions that will help remedy an immediate concern and support students through the disclosure and investigation Process. Students can submit supporting documentation to support their request for interim actions. Options may include interim:

- Changes in academic or working arrangements to separate the complainant and the accused
- Increased monitoring of an area
- No contact contracts/orders
- Legal order of protection if issued by local enforcement/judge
- Interim suspension
- Limited access to locations on campus

POTENTIAL CONDUCT SANCTIONS

A student found responsible in violating Elmira Business Institute's Sexual Misconduct Policy, including the VAWA amendments, is subject to a range of sanctions depending on the circumstances of each case. Those sanctions can include written warnings, educational programs, education assignment, suspension or expulsion.

Any employee or faculty member found to have engaged in misconduct is subject to a range of range of action depending on the circumstances of each case. That action can include a letter of reprimand, employee counseling, corrective action plans, or other sanctions as may be deemed appropriate by the College.

Transcript notations for a student suspended or who choose to withdraw pending conduct investigation will remain on a transcript for a minimum of one year. After one years' time, a student may request to have the transcript notation removed by filing an appeal with the Senior Vice President or her designee. If an appeal is not filed, the notation will be removed after seven years.

Transcript Notation Policy

Transcript Notation Process. As required by the Read Bill effective October 5, 2015 all colleges and universities in New York are required to denote conduct outcomes on academic transcripts of students found in violation of any policy violation that is deemed a violent offense as defined by CLERY reportable crimes. Transcript notations are applied at the conclusion of the conduct proceedings and appeals processes. The following are examples of language that may appear on an academic transcript:

- "Expelled after a finding of responsibility for a code of conduct violation"
- "Suspended after a finding of responsibility for a code of conduct violation"
- "Withdrew with conduct charges pending"

Transcript notations for a student suspended or who choose to withdraw pending conduct investigation will remain on a transcript for a minimum of one year. After one years' time, a student may request to have the transcript notation removed by filing an appeal with the Senior Vice President or her designee. If an appeal is not filed, the notation will be removed after seven years.

Transcript Notation Appeals Process

To file an appeal to have the transcript notation removed from an academic transcript a student must submit in writing to the Campus Director or Academic Dean the following:

- A statement describing the incident and what was learned over your time away from the institution.
- Documentation of successful completion of an in/out patient program or therapy to address the conduct.
- Students who withdrew from the College prior to resolution of the conduct process will need to fulfill the sanctions found in absentia before being permitted to appeal.
- Transcript notations for students expelled are permanent and cannot be appealed.

Appeals will be read and a decision will be provided in writing within thirty days of submission.

INCIDENT AMNESTY POLICY

Elmira Business Institute is a non-residential campus. Students who bring a complaint of sexual misconduct forward can do so without concern with regards to violating EBI's alcohol and/or drug policy. Students will be offered amnesty from any conduct action that could have resulted from information being shared as part of the complaint or investigation.

PROCESS

An Elmira Business Institute student who files a complaint has two options: Formal (Investigation) or Informal. The student will meet with the Title IX Coordinator to discuss the complaint and determine which option is appropriate given the information shared in the meeting.

Informal Remedies:

Informal remedies are reserved for incidents where the complaining party feels behavior can be changed by a less formal approach. Informal remedies include but are not limited to:

- The issuance of an institutional no-contact order
- Assignment to a different section of the class
- A follow-up conversation with EBI official and respondent regarding behavior
- Conversation with the individual regarding policies, including discussing the complaint and affirming Elmira Business Institute's definitions of sexual misconduct

While many times informal remedies are appropriate, Elmira Business Institute reserves the right to initiate a formal investigation after an informal meeting at 1) the request of the complaining party or 2) to ensure the safety and wellbeing of Elmira Business Institute's community. Please note the complainant can stop the informal process at any point and request a formal process.

Formal Process (Investigation):

Allegations of sexual misconduct involving students and faculty staff are conducted by the Title IX Coordinator. Upon receipt of information that alleges a violation has taken place, the Title IX Coordinator will contact the complaining party and schedule a meeting to discuss options, services and potential interim actions. Once this happens, the Title IX Coordinator will assign two investigators to the case to begin an investigation with the complainant's consent.

If, however, the complainant does not consent to an investigation, the College will take all reasonable steps to investigate and respond to the complaint consistent with the complainant's request not to pursue an investigation unless the College determines that a complete investigation is necessary in order for it to respond effectively to the harassment and prevent the harassment of other students.

As Elmira Business Institute is a non-traditional small institution, they will use external investigators to complete all Title IX investigations.

Steps of the formal process:

1. Notification will be sent to all parties involved alerting them to their rights, ability to have advisors present, ability to present witnesses and explain the policy violation being investigated.
 - a. Notice will be provided to the respondent describing the date, time, location and factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions.
2. The investigators will read all documents submitted, review evidence provided and ask for additional information they deem necessary to provide a fair and equitable investigation.
3. The investigators will interview all relevant parties regarding the allegation of sexual misconduct. All parties will be advised of their rights to have an advisor present during the investigation process. Both parties are ensured of a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by trained individual.

- a. While a party participating in a conduct proceeding may present evidence of their own past sexual history with persons other than the other party and/or evidence of mental health diagnosis and treatment (or have the institution present such evidence on their behalf), they may likewise prohibit the other party from seeking to present testimony or other evidence of the same.
4. After the investigation, the investigators will submit to the Title IX Coordinator a full report, including evidence submitted and their recommendations/findings. The Title IX Coordinator will allow all parties to review their portion of the report for accuracy and allow for them to correct mistakes in the report.
5. The Title IX Coordinator will forward the report to the decision maker in the case. The Campus Director for each campus is designated as the decision maker.
6. The decision maker will review the report and has one of the following options:
 - a. Accept the findings and recommendations of the investigators.
 - b. Reject the findings and recommendations of the investigators and assign a different finding and sanctions.
 - c. Refer investigation back to investigators for further clarification or investigation.
7. Once the decision maker accepts the report, they will issue one of the following:
 - a. Student is found in violation of the College's Sexual Misconduct policy
 - b. Student is not found in violation of the College's Sexual Misconduct policy
8. The decision maker will inform the Title IX Coordinator of the findings. If found responsible, before a sanction is determined, both parties will have the ability to submit a Victim Impact Statement. The Victim Impact Statement will be due within 72 hours of notification of the findings.
9. The Title IX Coordinator will forward on to the decision maker any Victim Impact Statements received.
10. The Decision Maker will review the impact statement and make a determination of sanctions.
11. Both parties will be contacted in writing of the findings, rationale for findings, and any sanctions imposed. The letter will also outline the appeal process and timeline for submission of appeal.

Throughout the entire process the complainant and respondent will be kept up to date of the status of the investigation through its conclusion. It is Elmira Business Institute's goal to have all cases decided within 60 days of initial complaint. However, there are times or situations where meeting the 60-day deadline is not feasible. The Title IX Coordinator will communicate with both parties of the reason for the delay.

APPEALS PROCESS

In compliance with NYS 129-B either party may appeal in writing within 3 business days of the decision. Given the small administrative structure of Elmira Business Institute, all appeals will be considered by a panel consisting of the Senior Vice President and two other officials appointed by the Title IX Coordinator. If the Senior Vice President is unable to serve as an appellate officer, the Title IX officer will appoint someone to act in their stead.

As stated in NYS 129-B both parties are entitled to an appeal. On appeal, the designated person(s) reviewing the appeal may accept, reject, or modify any finding and/or sanction, or may return the matter for further consideration. The designated person(s) reviewing the appeal may also, as part of this appeal process, speak directly with the investigatory team, the initial decision-maker, or otherwise directly (or through a designee) seek additional information from the parties or witnesses, if considered necessary. A written decision regarding an appeal (which will be based on a preponderance of the evidence standard) will generally be issued within 10 business days.

Regardless of whether discipline is imposed, Elmira Business Institute may impose, non-disciplinary remedies to the complainant. **At all steps of the process, Elmira Business Institute officials may consult with the College's legal counsel or a third party independent contractor trained in Title IX and NYS 129B.**

STUDENT SEXUAL ASSAULT BILL OF RIGHTS

Elmira Business Institute is committed to providing options, support and assistance to victims/survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate fully in their academic endeavors. All victims/survivors of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights:

- Make a report to local law enforcement and/or the New York State Police
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously
- Make a decision about whether or not to disclose a crime or violation and participate in the conduct process and/or criminal process free from pressure from the institution
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard
- Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available
- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations
- Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident
- Be free from retaliation by the institution, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution
- Access to at least one level of appeal of a determination
- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of Elmira Business Institute

ELMIRA MAIN CAMPUS:

Langdon Plaza
303 N. Main St.
Elmira, NY 14901
607-733-7177

VESTAL NON-MAIN CAMPUS:

Vestal Executive Park
4100 Vestal Rd.
Vestal, NY 13850
607-729-8915