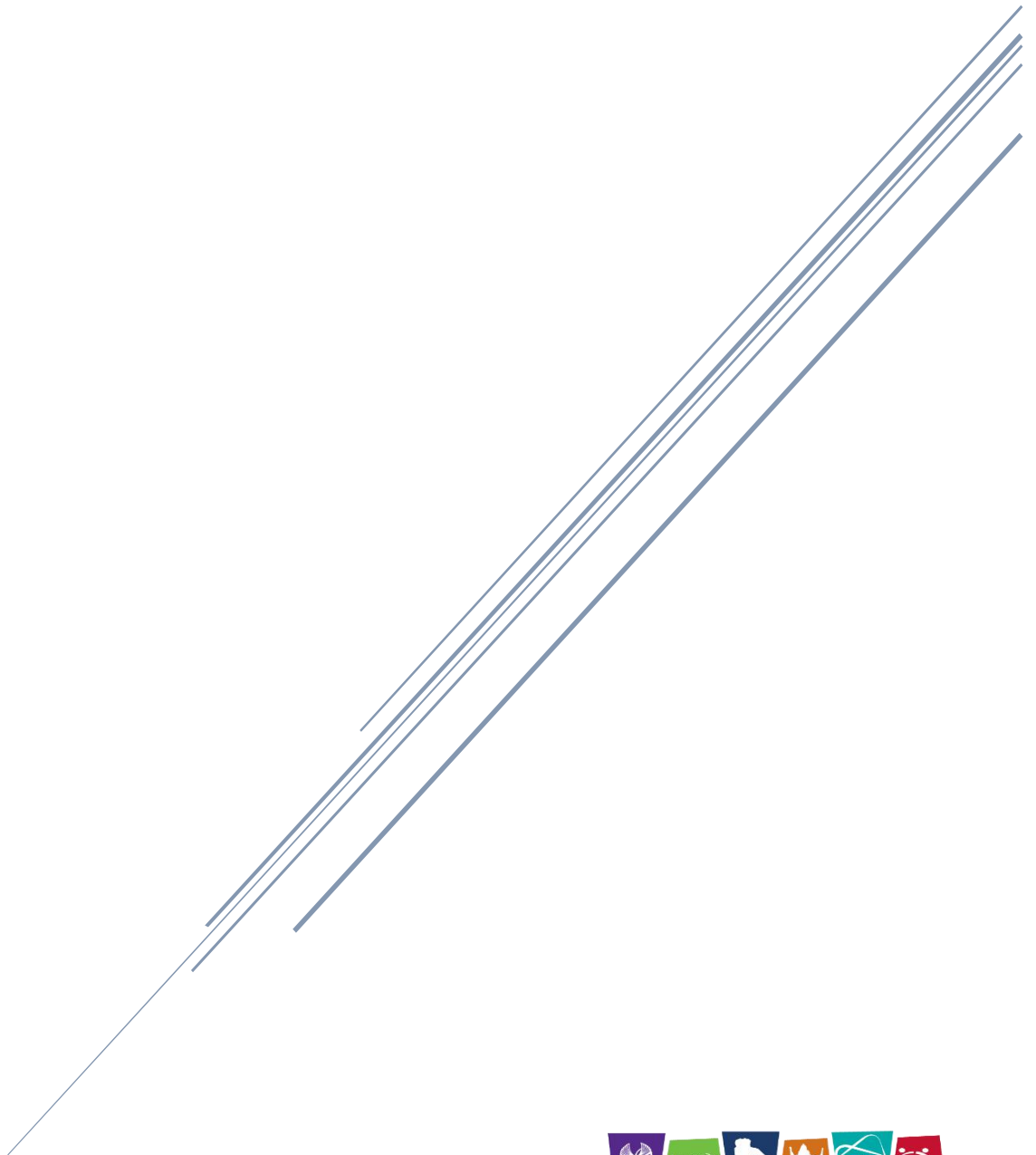


# **SEXUAL HARASSMENT POLICY OF THE EDNA MANLEY COLLEGE OF THE VISUAL AND PERFORMING ARTS**



**Edna Manley College  
of the Visual and Performing Arts**

## Table of Contents

Introduction	Page 2
Policy Statement	Pages 2 - 3
Applicability	Page 3 - 4
Scope	Page 4
Definitions	Pages 4 - 6
Types of Sexual Harassment	Pages 6 - 9
Responsibility	Pages 9 - 13
Reporting Procedure	Pages 13 - 19
Informal Procedure	Page 16
Formal Procedure	Pages 17 - 19
Sanctions	Pages 19 -20
Right To Redress	Page 21
General	Pages 21 - 22
Review of Policy	Page 22
Resources	Page 23



## 1. INTRODUCTION

The physical, emotional, and mental health and safety of all students, faculty, staff, members of the Board of Management, private contractors contracted by, or on behalf of the Edna Manley College of the Visual and Performing Arts (EMCVPA), or other third parties conducting business with the EMCVPA and interacting with its students and employees, is of paramount importance. This Sexual Harassment Policy (the Policy) was established to address any occurrence of sexual harassment at the EMCVPA.

All sexual harassment cases will be handled in a confidential manner to ensure that both the accused and the complainant's safety and privacy are protected. The Director of Student Services, in tandem with the Director of Human Resource Management and Development, will have oversight responsibility for the enforcement of the Policy and to mitigate any possible occurrence of incidents of sexual harassment and reprisal.

These Departments will monitor the occurrence of sexual harassment across the EMCVPA and take the necessary steps to ensure student and employee awareness of the Policy.

## 2. POLICY STATEMENT

Although there is no present legislation in Jamaica which recognises sexual harassment, the EMCVPA deems it necessary to address concerns about sexual harassment and therefore the purpose of this Policy is to address incidences of sexual harassment and its prevention. Sexual Harassment is contrary to the standards of the EMCVPA community. It may diminish individual dignity and could impede equal employment, educational opportunities and equal access to freedom of academic inquiry. Sexual Harassment is a barrier to fulfilling the EMCVPA's scholarly, research, educational, and service missions. It will not be tolerated at the EMCVPA.

The EMCVPA does not discriminate, or tolerate discrimination, on the basis of race, colour, nationality, sex, disability, religion, age, gender identity, marital status, sexual orientation, or any other characteristic protected by law in its educational programmes, activities, admissions or employment. It strives to foster an academic and work environment in which all members of the EMCVPA community are treated fairly, equitably and with respect. The EMCVPA seeks to maintain a workplace and academic setting free from unlawful discrimination of any kind, including intimidation, exploitation and freedom from sexual harassment for any discriminatory reason.

All members of the EMCVPA community are protected under this Policy and are expected to comply with the procedures for reporting complaints.

The Board of Management and Administration will take decisive steps to ensure the safety of all students, employees and workers, to prevent acts of sexual harassment from

occurring and to take corrective action where such acts have occurred. If an offence of this nature is committed, the Administration will apply the rules of natural justice and in this regard the Administration will be required to act without bias, to provide a fair hearing and to investigate and appropriately address the matter. Students, employees and workers will be provided with clear outlets for reporting these matters confidentially, without the threat of reprisals or victimisation as a result of their report. It is necessary for the purposes of investigating the complaint or taking disciplinary action in relation to the complaint.

The EMCVPA shall not disclose any information relating to a complainant, or the circumstances of a complaint to any person, except where the disclosure is necessary for the purposes of investigating the complaint or taking disciplinary action in relation to the complaint.

Appropriate information/education sessions will be facilitated through the Offices of Student Services and Human Resource Management and Development to (1) inform students, faculty, and staff about identifying sexual harassment and the problems they cause, (2) advise members of the EMCVPA community about their rights and responsibilities under this Policy, and (3) train personnel in the administration of this policy.

### 3. APPLICABILITY

All students, staff, employees, faculty, workers and Board of Management Members will be governed by the terms set out in this Policy. The Policy will be made available in the following manner:

- a) published on the EMCVPA's website;
- b) included in orientation materials for new students, parents/guardians, faculty staff and Board Members;
- c) e-mail advisory to students, faculty and staff;
- d) published on the EMCVPA G-drive which is accessed by faculty and staff; and
- e) printed copies will be made available in the Office of Student Services, Director Human Resource Management and Development and other appropriate locations on the campus.

Sexual Harassment in any form will not be tolerated, as the EMCVPA recognises that students, employees and workers are entitled to an environment that is free of sexual harassment. It is also expected that external partners who are required to work directly with EMCVPA staff and employees be made aware of the EMCVPA's Policy on this matter.

#### **PREVENTION**

As part of the zero-tolerance proactive response to sexual harassment, the need for prevention is paramount. In taking steps to prevent sexual harassment, management will facilitate education and public awareness sessions on prevention held with the collaboration of the human resource management and development department and the office of student services. These will include seminars, discussions, aide memoirs, the use

of social media and “town hall” meetings. These preventative steps will be on-going throughout the academic year and take different formats to continuously engage the students, staff and faculty of EMCVPA.

## 4. SCOPE

This Policy applies to all students, staff, faculty, members of the Board of Management, private contractors contracted by, or on behalf of the EMCVPA, and other third parties conducting business with the EMCVPA and interacting with its students and employees.

The Policy identifies any occurrence of “*unwanted sexual conduct*” as harassment. Therefore, harassment may occur frequently, intermittently, over an extended period of time or in a brief moment.

Matters reported under this Policy may lead to criminal proceedings under the Sexual Offences Act and any other applicable laws. These matters may be referred to the Jamaica Constabulary Force for independent investigations and proceedings.

A record of complaints and/or resolutions shall remain on file for the individual student, faculty or staff for seven (7) years.

## 5. DEFINITIONS

**Academic space or campus** – shall include all of the physical environs of the EMCVPA where students, employees, faculty or staff, and workers (among others) shall meet, halls of residence, the workplace, and other common areas used and/or occupied at any time by the foregoing.

**Board**- the Board of Management established by the Edna Manley College of the Visual and Performing Arts Scheme, 1999.

**Complainant** – means a person who makes a complaint.

**Complaint** – means a report, whether verbal or written, made alleging sexual harassment.

**“Conduct of a Sexual Nature”** includes a reference to the making, to or in the presence of a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

**Disciplinary Hearing** – means a formal hearing examining a complaint that has been made.

**Disciplinary Panel** – means the panel of persons responsible for the application of the disciplinary rules at a disciplinary hearing.

**EMCVPA** – means the Edna Manley College of the Visual and Performing Arts and will be used interchangeably with references to “the College”.

**Employee** – refers to faculty, adjunct faculty, and staff of the EMCVPA, and/or worker.

**Employer** – means the EMCVPA as the entity which engages, in any form, any employee or worker.

**Institution** – means the EMCVPA as a place of learning and/or training.

**Management**- means EMCVPA Senior and/or Middle Managers which include the Principal, Vice Principals, Registrar, Directors, Deans, College Librarian and Hall Manager.

**Respondent** – in relation to a complaint, means the person who is alleged to have committed the act to which the complaint relates.

**Sexual Advance** – includes any one or more of the following acts, forms of conduct or behaviour, namely –

- (a) physical contact of a sexual nature;
- (b) a demand or request or pressure for sex or for favours of a sexual nature;
- (c) the making of sexual suggestions, remarks or innuendos;
- (d) the showing of pornography or the display of images or objects of a sexual nature; and
- (e) any other physical, gestural, verbal, non-verbal or visual conduct of a sexual nature.

**Sexual Harassment** –the making of any unwelcome sexual advance towards a person, by another person, in the workplace, which is reasonably regarded as offensive or humiliating by the person towards whom the sexual advance is made; or has the effect of interfering unreasonably with the work performance of the person to whom the sexual advance is made (it creates an unacceptable working environment and is not conducive to learning); or creating and intimidating, offensive or a hostile work or learning environment. It shall also include all forms of sexual harassment, unwanted sexual conduct inclusive, such as indecent exposure, or suggestive propositions of a sexual nature and any sexually inappropriate contact. Sexual Harassment includes unwelcome conduct of a sexual nature, towards a person by another person in the workplace. References to the term “sexually harass” shall be construed accordingly.

**Sexual Harassment Dispute Committee (SHDC)** - a committee established within the EMCVPA to deal with complaints made by employees and students

**Student** – refers to all students enrolled at EMCVPA on a full-time, part-time or holiday basis; third party students who are neither full-time or part-time students, and are in the category of work experience, interns, e.g. HEART Trust NTA interns, etc.

**Supervisor** in relation to a worker, means a co-worker, who by virtue of the co-worker’s employment, is in a position of authority over that worker.

**Worker** – means and includes an employee, a person engaged under a contract for services, or a subcontractor of that person, a volunteer, a student gaining work experience, an apprentice, a trainee or an intern, a person whose service is procured, or arranged by a company which is in the business of supplying workers for the EMCVPA and who has been assigned to work in the EMCVPA (e.g. a person providing janitorial, electrical, plumbing, consulting and any other services)

**Workplace** - means a physical place in the academic space or campus where every room or space, closed or open, movable or stationary, where employees work, or which is frequently entered by an employee for business, including all rooms, lawns and surrounding areas that constitute parts of, or are connected with the place of work. It covers any place under the direct or indirect control of the employer that an employee needs to be present or go to in order to perform his/her duties. Workplace also includes all locations where employment obligations are discharged, or related business is conducted as a result of employment responsibilities or employment relationships, in locations such as work-related social functions, conference and training sessions, official business travel and lunches, dinner, or promotional campaigns, organised for clients or partners, as well as virtual locations, including telephone conversations, and communications through electronic media.

NB: A word in its singular form, shall also include the plural where the context permit (e.g. offence includes offences)

## 6. TYPES OF SEXUAL HARASSMENT

6.1. Sexual Harassment can take various forms including:

- a) **Intimidation/Bullying/Retaliation** - Persons often use non-sexual behaviour to accommodate sexual harassment. Therefore, any act of intimidation meant to prevent someone from reporting sexually harassing behaviour or to punish someone for reporting sexually harassing behaviour must be considered a type of sexual harassment;
- b) **Non-Verbal/Gestural Sexual Harassment** - includes sexually suggestive body language inclusive of, repeated winks (excluding medical conditions), gestures with fingers, licking of lips, throwing kisses, giving personal gifts or blocking a person's path;
- c) **Physical Sexual Harassment** - includes unwelcome touching in a sexual manner such as kissing, patting, and pinching, stroking, hugging, giving a massage around the neck or shoulders, touching the person's clothing, hair or body, standing close or brushing up against another person, cornering, impeding or blocking movements;

- d) **Psychological/Emotional Sexual Harassment** - consists of persistent proposals and unwelcome requests, unwanted invitations to go out on dates, insults, taunts or innuendos of a sexual nature;
- e) **Quid Pro Quo** – includes exploitation and/or coercive sexual behaviour within the work environment by a person in authority which is used to control, influence, or affect the employee’s career, salary or work environment (i.e. a promotion, training opportunity, wage increases, etc.);
- f) **Stalking/ Cyber Stalking** – Obsessively following, besetting, contacting and watching a person, either physically or using the internet, telephone, mail, and other media, motivated by what the perpetrator believes are feelings of desire and love but in fact, constitute sexual harassment;
- g) **Toxic Environment** – A combination of the above can create a toxic and oppressive environment for the direct target but also for other persons in shared environments who may not themselves be targeted. Even if a person is not the direct target of sexual harassment but is made uncomfortable and is offended by the creation of a toxic environment, they should be able to make a report of sexual harassment;
- h) **Verbal Sexual Harassment** - includes unwelcome comments about one’s private life, or body part or person’s appearance or attire, sexually suggestive jokes and comments, turning work discussions to sexual topics, repeated invitation for dates, or spreading rumours about a person’s sex life;
- i) **Visual/Written or Graphic Sexual Harassment** - includes display of pornographic materials, sexually explicit pictures, screen savers or posters, or harassment via emails, telephone calls and other modes of electronic communication;
- j) **Voyeurism (“Peeping Tom”)** – The act of watching, taping, recording or, photographing a person without their knowledge, while the person uses or inhabits a space where they have an expectation of privacy such as their domicile, a public bathroom, changing room etc.; or
- k) **any other form of unwelcome conduct**

**NB: Unintentional Sexual Harassment** - Acts or comments of a sexual nature, not intended to harass, can constitute sexual harassment if another person feels uncomfortable with such actions/subjects. Claiming to not understand or failing to know that an act is harassing does not mean that it is not in fact harassment. This conduct may be addressed utilising the informal resolution channel.

**Reasonableness of Conduct** - Measuring reasonableness in sexual harassment can be done by identifying whether the behaviour complained of, has the effect of making the complainant feel offended, ashamed or afraid. An objective test can be taken based on the condition that a person could have anticipated such conduct would have a humiliating



and intimidating effect. Further, the conduct must be considered within the context in which 'it occurs'. Certain conduct does not only refer to the frequency of occurrence or intimidated condition, but also refers to different situations.

**All forms of Sexual Harassment constitute prohibited conduct.**

**An employer or supervisor shall not make it appear that, the prospects or working conditions of that worker are contingent upon the worker's acceptance or tolerance of sexual advances from the employer or supervisor, or, that the worker will suffer any form of disadvantage in connection with employment unless the worker accepts or is tolerant of sexual advances from the employer or supervisor.**

**A worker shall not sexually harass a co-worker.**

**A prospective employer shall not sexually harass a person who is seeking employment.**

**A prospective employer shall not make it appear to a person seeking employment that the offer of employment to that person, or the terms on which employment is offered, or a benefit(s), are contingent on that person's acceptance of, or submission to, sexual advances from the prospective employer.**

**The above prohibitions apply equally (as applicable) with respect to Board Members in connection with employees, workers and students of the EMCVPA.**

**Likewise, no Board Member, employee or worker of the EMCVPA (EMCVPA representatives) shall make it appear to a student, or a prospective student, that their status at the EMCVPA in any particular (e.g. acceptance to, continuation with, advancement within, or assessed performance at the EMCVPA) is contingent on their acceptance of, or submission to sexual advances of said EMCVPA representatives. No benefit (e.g. the provision of accommodation) shall be offered, or made out to be offered, on the basis of acceptance of sexual advances.**

**No student shall sexually harass another student.**

**No one in the EMCVPA, regardless of whether they are in a position of authority over a student of the EMCVPA or not, shall sexually harass a student of the EMCVPA.**

**These cited instances of Sexual Harassment are not exhaustive.**

**Practice Note 1 - Touching Protocols During Instruction**

The nature of the EMCVPA as an arts institution in which many of the artistic processes involve touching, require the application of unique teaching methodologies and styles of teaching/learning such as multiple intelligences. Any person performing duties in the teaching, learning and working environment should advise of the requirement or intention to touch, outline what same will entail and seek consent before proceeding. Communication of any form of discomfort with touching experienced by an individual, should be shared with the executing party, even after consent is given. Should the practice persist a formal complaint may be made in keeping with this Policy.

Faculty, Staff and Students should be educated about the need for consent and should be encouraged to practice seeking consent for touching in their own working processes.

Nothing in this section shall be construed as preventing a complaint being made whenever an individual is of the view that they have been sexually harassed.

## **7. RESPONSIBILITY**

The following roles and responsibilities will apply under this Policy:

### **7.1. Management**

Management will have the responsibility to:

- 1) provide/ facilitate an academic and work environment that is free from all forms of sexual harassment;
- 2) take the necessary steps to prevent the occurrence or recurrence of sexual harassment as the case may be, in the workplace and/or eliminate sexual harassment if it occurs;
- 3) provide an environment which discourages victimisation;
- 4) demonstrate commitment to the Policy by leading by example and responding immediately and appropriately if the offence occurs in the workplace;
- 5) monitor and revise the Policy and education/information programmes based on changes in national and international policies and standards as necessary; and
- 6) provide staff and faculty with the appropriate sexual harassment training on an annual basis to prevent the occurrence of sexual harassment where possible.

### **7.2 Students, Faculty and Employees**

Students, faculty and employees will have the responsibility to:

- 1) report offences experienced or witnessed when they occur in keeping with the guidelines provided by this policy;
- 2) obtain and become familiar with the Policy;
- 3) ensure that behaviour conforms to the requirements of the organisation's sexual harassment Policy;
- 4) pay attention to the responses of others to avoid offence; and
- 5) examine their behaviour, gestures and comments.

### **7.3 Human Resource Department**

The EMVPPA Human Resource Department will have the responsibility to:

- 1) make all employees and volunteers aware of their obligations in relation to providing a workplace free from sexual harassment;
- 2) treat all complaints seriously and confidentially;
- 3) take immediate and appropriate corrective action in line with the Policy;
- 4) provide guidance and education where requested and/or appropriate, to cases and subsequent decisions relating to sexual harassment;
- 5) document and investigate all cases of sexual harassment. All documentation should be filed with the personnel files of both the complainant and accused; and
- 6) appropriately discipline employees who harass other employees or students and those who make false accusations.

### **7.4 Office of Student Services**

The Office of Student Services will have the responsibility to:

1. make all students aware of their obligations in relation to complying with the Policy and generally, to conduct themselves consistent with the objectives of promoting and maintaining a learning space free from sexual harassment;
2. treat all complaints seriously and confidentially;
3. take immediate and appropriate corrective action in line with the Policy;
4. educate and provide guidance to students where requested and/or appropriate or necessary in any circumstance, and in relation to decisions relating to sexual harassment;
5. document and investigate all cases of sexual harassment. All documentation should be filed in the files of both the complainant and accused; and
6. appropriately discipline students who sexually harass other students or employees, and those who make false accusations.

### **7.5 Sexual Harassment Dispute Committee (SHDC):**

**Where there is a reference to any member of faculty or staff, this provision refers equally to the substantive holder or anyone acting in that capacity.**

#### **7.5.1 The SHDC for Students Complaints**

The SHDC for Students Complaints will consist of the following:

- a) Vice Principal of Academic Affairs (Chair)
- b) Student Council Representative
- c) School Representative (Dean or Director)
- d) Dean of a school not involved i.e. neither accused nor complainant is located in the school of the serving Dean
- e) Registrar

#### 7.5.2 The SHDC for Faculty Complaints

The SHDC for Faculty Complaints will consist of the following:

- a) Vice Principal Academic Affairs (Chair)
- b) Dean of School
- c) Trade Union Representative
- d) A third party who may be co-opted from an external source
- e) Faculty representative

#### 7.5.3 The SHDC for Staff Complaints

The SHDC for Staff Complaints will consist of the following:

- a) Vice Principal Administration Resource Development (Chair)
- b) Staff Representative
- c) Union Representative
- d) A third party who may be co-opted from an external source
- e) Director of department/ Dean of School

**7.6** *Sexual harassment is a matter that often turns on power dynamics. Accordingly, in the interest of providing balance, the following provisions for merger of SHDCs are made below:*

- i) the merger of the SHDC for Students and the SHDC for Faculty, whenever Student and Faculty members are involved as the parties in the disciplinary matter being heard;*
- ii) the merger of the SHDC for Students and the SHDC for Staff, whenever student and staff members are involved as the parties in the disciplinary matter being heard; and*
- iii) the merger of the SHDC for Faculty and the SHDC for Staff, whenever Faculty and Staff members are involved as the parties in the disciplinary matter being heard.*

**7.7** *Wherever a student is engaged in the capacity of either faculty or staff and an allegation of sexual harassment is made by or against said individual, the individual will be deemed to be either faculty or staff for the purposes of the disciplinary proceedings.*

**7.8** Where any member of a SHDC is unavailable for a hearing, prior to the commencement made of same, such member shall appoint a designate who will represent the same section, cohort of persons (e.g. students, faculty, staff, registry,

Trade Union, etc.) at the appropriate level and to the prior, indicated satisfaction of the affected SHDC.

**7.9** For the purposes of Clause 7.5.2 and 7.5.3, should a complaint be made against a Dean, then the Dean of another School will be co-opted to the relevant SHDC.

**7.10** The respective SHDCs (and where the context permits, the Personnel Committee of the Board) will have the responsibility to:

- a) notify students and/or employees of their rights in relation to sexual harassment;
- b) notify the respondent of the charge;
- c) report the matter to the police where criminal proceedings are indicated;
- d) advise the complainant of the possible repercussions, if the complaint made is determined to be false, frivolous, or vexatious, to include a charge under the Code of Conduct, Disciplinary Code and Grievance Regulations, or other applicable policies, regulations, rules or any other governing instruments. ***There shall be no repercussion however for a Complainant merely because the complaint made was not found to meet the standard for Sexual Harassment and no disciplinary action is taken as a result, against the respondent;***
- e) conduct the proceedings and the deliberation thereof, in a manner that is independent, as well as impartial and fair to both parties;
- f) take into account matters, statements of the parties and their respective witnesses (if any), any supporting documentation or other material to include written (to include the electronic format), and otherwise recorded documentation; and/or recording(s), be it visual, audio, or audio visual, that is presented provide the accused Respondent with an opportunity to tell his/her version of the incident and to identify all supporting witnesses;
- g) advise the Respondent that if he/she refuses to respond or attend a hearing the matter will be heard in absentia, with or without their witness(es) or evidence, and a determination made;
- h) advise witnesses who fail to co-operate that they will be reprimanded;
- i) ensure the investigations and grievances relating to matters under their purview are handled in a manner that ensures the identities of the persons involved and all records relating to the harassment complaint are kept confidential, as far as is feasible in conducting an investigation; and
- j) ensure provisional working arrangements are made if necessary, to ensure the complainant and respondent continue working and learning in a safe environment while the case is being investigated. This could include a

temporary relocation of the accused/victim to a different academic or workspace.

## 8. REPORTING PROCEDURE

Incidents of sexual harassment should be reported as soon as practicable to the Office of Student Services, where the complainant is a student, and/or the Director Human Resource Management and Development, where the complainant is a member of faculty or staff. Any reports of incidents of sexual harassment, in respect to the Principal or a Vice Principal(s), are to be taken to the Board. All reports and complaints of sexual harassment should be committed to writing by the person taking the complaint, or where the complainant provides a written report, same should be forwarded to the Office of Student Services and/or the Director, Human Resource Management and Development as aforesaid by the person receiving the report or written complaint, or other appropriate authority. In all circumstances, the matter of sexual harassment, and reports and complaints in respect thereof shall be held and handled with the strictest confidentiality.

In any instance where the allegation is made with respect to a person to whom a complaint should ordinarily be referred, the complainant may direct the matter to the Board.

Further, wherever a complainant is of the view that a matter of sexual harassment has not been treated with in accordance with the procedures herein provided, or has been delayed for a period that is unreasonably long, or is being handled in any other manner which may prejudice the justice of the case, same may be brought to the attention of the Board.

A prompt investigation and appropriate action will be taken as soon as practicable after receiving a complaint. At any time during the reporting and resolution process, the Board may institute interim protective measures including, but not limited to, removal of an employee from his/her immediate work area, reassignment, temporary transfer, interdiction or suspension with pay or part thereof, if it is determined that circumstances require that such action be taken to protect the complainant, and/or the safety of the College community in general, or if it is prudent so to do, in order to conduct the investigation.

Interdiction/suspension should not be done without thoroughly considering alternatives and should be for the shortest possible time.

Removing an employee from office, is an option which should not be lightly exercised and should not be considered a penalty, but a measure to ensure that justice/the public interest is served and, the investigations are carried out in a manner with the least likelihood of interference.

Wherever behaviour that breaches the Policy occurs, students and employees are encouraged to report such breaches at the earliest possible time to ensure the College's ability to take corrective action in a timely manner. Alleged breaches may be dealt with using an informal or formal procedure.

The principles of natural justice will be followed in the handling of all procedures relating to sexual harassment. This will serve to ensure that all matters are handled objectively and that each party affected is given an equal opportunity to present their case in the matter. That is, as it relates to both the complainant and the respondent.

Resolution of all complaints will be conducted in an expeditious manner.

Students who have been affected by sexual harassment, are encouraged to lodge a complaint in writing to the Director of Student Services within 10 days of occurrence. However, complaints made beyond that period will nevertheless be valid once made within six (6) years of the occurrence of the alleged sexual harassment, or such longer period as applicable laws may permit from time to time.

Employees who have been affected by sexual harassment are encouraged to lodge a complaint in writing to the Director of Human Resource Management and Development within 10 days of occurrence. However, complaints made beyond that period will nevertheless be valid once made within six (6) years of the occurrence of the alleged sexual harassment, or such longer period as applicable laws may permit from time to time.

The complainant (whether student or employee) will be provided with the following options for resolution of the matter:

- Informal
- Formal

Even in instances where the matter is resolved informally, the complaint made must be committed to writing and placed on the file of the person against whom the complaint is being made. The notation on the file is not with respect to the veracity of the complaint but only to the fact that a complaint was made.

## 8.1 Reporting Procedure and Initial Steps

- **Step 1:** The complainant makes a report in-person by completing, or having completed on his or her behalf, the Sexual Harassment Complaint Form (the Report) and submitting same to the Director of Student Services (where the complaint made is against a student) or the Director of Human Resource and Development (where the complaint made is against an employee) within 10 working days of the incident. This constitutes the Complaint. In the instance of a Report having been completed on the complainant's behalf, the complainant is required to affix his or her signature to the Report where the contents have been read over by the complainant, and the complainant is satisfied that same represents a true and complete account of what had been conveyed to the person filling out the Report on his or her behalf. Complaints will however be accepted beyond this period, once same are made within six years of the alleged incident.

- **Step 2:** Once the Director of Student Services receives a Complaint, the Vice Principal of Administration and Resource Development must in turn be notified of same. The Vice Principal is obliged to notify the Principal accordingly, within 2 working days of having received notice of the complaint. Once the Director of Human Resource and Development receives a Complaint, said Director must notify the Principal, within 2 working days of having received the Complaint. The Principal will, in either event, be required to monitor the progress of the resolution or the determination of the Complaint, as it relates to the computation of/compliance with prescribed time herein only.

- **Step 3:** The Director of Student Services, or the Director of Human Resource and Development, as the case may be, within 2 days of receiving the Complaint at Step 1 above, shall advise the respondent of the Complaint in writing. The respondent must acknowledge receipt in writing, within ten (10) working days of receipt of a notice of a Complaint against him or her, and shall advise in writing, whether he or she intends to secure legal or other representation.

- **Step 4:** Where the respondent intends to provide a response to the Complaint, said response must be provided within ten (10) working days of receipt of the notice of a Complaint. The respondent's response may set out a reply to all the allegations made in the Complaint and include a list of any document or any other evidence that he or she intends to rely upon should the Formal Process be engaged. Where the respondent fails to provide a response within the time stipulated, the relevant procedures to resolve the matter may still be engaged.

**Step 5:** The Director of Student Services, or the Director of Human Resource and Development, as the case may be, will conduct separate meetings with the respondent and the complainant in relation to the allegation within 2 days of receipt of the respondent's written response to advise each party of his or her rights and obligations emanating from the Sexual Harassment Policy.

- **Step 6:** Following the convening and conduct of meetings as set out in Step 5 above, the Director of Student Services or the Director of Human Resource and Development, as the case may be, may recommend that the matter be resolved by engaging the Informal or Formal Procedures set out at Clause 11.2 and Clause 11.3 respectively herein, and/or recommend other solution(s). Notwithstanding, the recommendations made, the decision as to how to proceed remains the exclusive right of the complainant.

The recommendations by Director of Student Services, or the Director of Human Resource and Development, as the case may be, *may include* the following:

- a. that the matter be addressed via the Informal Procedure set out in Clause 11.2 herein, or the Formal Procedure set out in Clause 11.3 herein;
- b. that both parties agree to participate in mediation exercises;
- c. that the complainant engages external/internal counselling options;
- d. that the matter be referred to the Jamaica Constabulary Force where the complaint relates to behaviour prohibited under the Sexual Offences Act, or other applicable laws.



## 8.2 Informal Procedure

A complainant may elect to have the matter resolved through the Informal Procedure in his or her Complaint, following a recommendation by the Director of Student Services, or the Director of Human Resource and Development, as the case may be, to utilise the Informal Procedure under Step 6 above.

Where the complainant has elected to resolve the matter through the Informal Procedure, this procedure must commence no later than fourteen (14) days following the complainant's election to utilise this procedure and must be completed within fourteen (14) days of its commencement.

Where the Informal Procedure has been engaged, resolution of the matter may involve, but is not limited to, any one or more of the following:

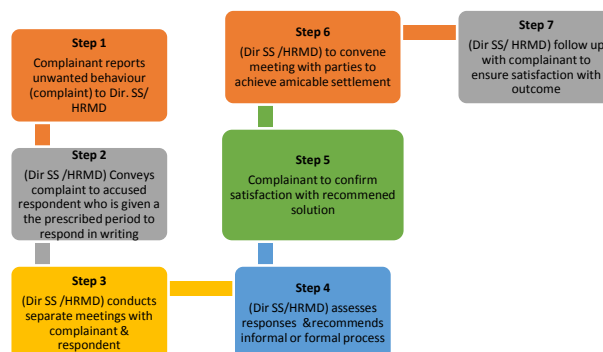
- i. mediation between the parties;
- ii. counselling for one, or both of the parties; or
- iii. training for one, or both of the parties.

Where mediation, counselling, training or any other resolution is proposed, each or both of the parties must confirm their agreement with same in writing.

The Director of Student Services, or the Director of Human Resource and Development, as the case may be, may convene a meeting with the complainant, respondent and a facilitator, if necessary, in accordance with the proposed informal resolutions.

The Director of Student Services or the Director of Human Resource and Development, as the case may be, will monitor compliance with the stated resolutions until the matter has been fully resolved. The complainant will be required to sign a statement indicating his or her satisfaction with the outcome. If the matter is not satisfactorily resolved, the complainant may elect to engage the Formal procedure.

### INFORMAL PROCESS MAP



### **8.3 Formal Procedure**

A student or employee will not be required to exhaust informal attempts or engage the Informal Procedure to resolve a matter before choosing to engage the Formal Procedure. [Steps 1-4 of the Reporting Procedure and Initial Steps are to be followed as outlined at Clause 11.1 above.]

A complainant may elect to have the matter resolved through the Formal Procedure in his or her Complaint, or no later than fourteen (14) working days following a recommendation by the Director of Student Services or the Director of Human Resource and Development, as the case may be, to utilise the Formal Procedure under Step 5 above.

Where the complainant has elected to resolve the matter through the Formal Procedure, the Director of Student Services, or the Director of Human Resource and Development must notify the Vice Principal of Administration and Resource Development, or the Principal, as the case may be, of the complainant's election. The Vice Principal of Administration and Resource Development, or the Principal, as the case may be, must establish and notify the relevant Sexual Harassment Dispute Committee within three (3) working days of receipt of the complainant's election to utilise the Formal Procedure and refer same to them.

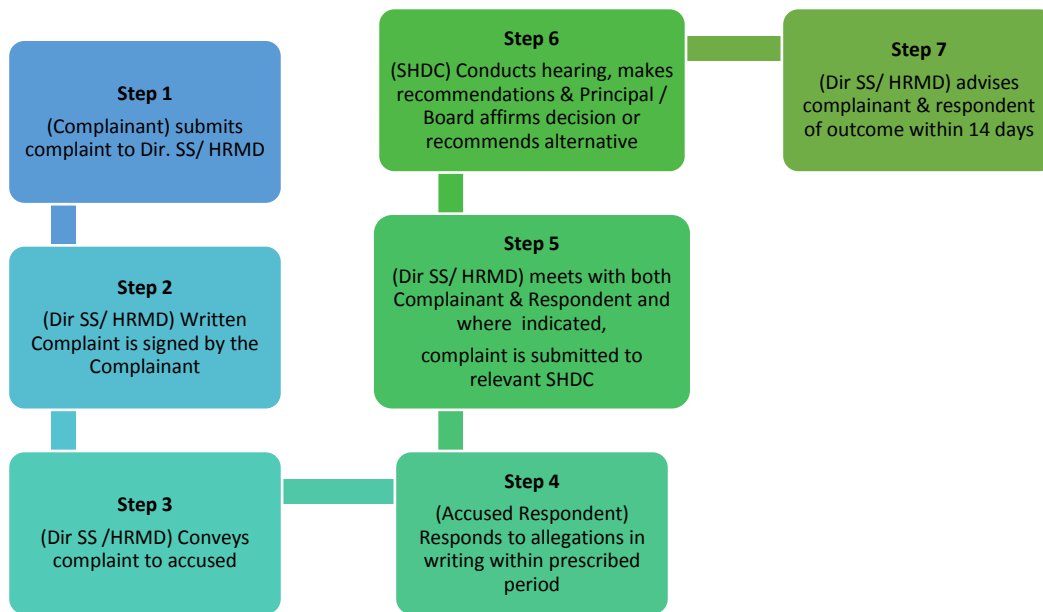
The Director of Student Services, or the Director of Human Resource and Development, as the case may be, must conduct an investigation and provide a report to the relevant Sexual Harassment Dispute Committee (SHDC) within ten (10) days of the last day on which the respondent may submit a response.

The relevant SHDC must produce a written report of the investigation process, evidence, findings and recommended outcome(s) to the Board of Management as relevant through the Personnel Committee depending on the nature of the complaint within fourteen (14) days of the conclusion of its deliberations.

Upon receipt of the recommendation(s) of the relevant SHDC, the Board may approve the recommendation(s) or decide on an alternate course of action. The Director of Student Services, or the Director of Human Resource and Development, as the case may be, will advise the complainant and the respondent of the outcome within fourteen (14) days of the Board's decision.

NB: The Board shall be notified by the Principal on a monthly basis, of any complaints made, whether formal or informal, regarding Sexual Harassment, and the Board shall receive reports as to the status of each case on a monthly basis thereafter.

## FORMAL PROCESS MAP



Where the respondent is a member of the Management Team (whether senior or middle management), the matter will be referred to the Personnel Committee of the Board of Management. Where the respondent is a member of the Board, the matter will be reported to the Permanent Secretary in the Office of the Minister of Education, Youth and Information.

*NB: Where the respondent confirms that the allegation made is correct, there may be no necessity to hold a Hearing. The matter of sanctions however, will be determined by the relevant SHDC or Personnel Committee of the Board as the case may be.*

*Further the procedures for Disciplinary Enquiries as set out in the Disciplinary Code of the EMCVA may be read as one with the Policy, with those requirements applying wherever the context permits; so however, where there is any conflict whatsoever, whether as to notice period or otherwise, the provisions and procedures of the Sexual Harassment Policy shall supersede the provisions of the Disciplinary Code of the EMCVA.*

*Additionally, it is acknowledged that over time, the nomenclature for posts may change; where that occurs, the responsibilities ascribed to a post existing at the time of this policy, once carried out by personnel in another post, the requirement/responsibility is to be understood to attach to the latter post.*

### COMPLAINANT SUPPORT & PROTECTION OF RESPONDENT

After a Complaint has been received but before a final determination of the matter, EMCVPA shall make reasonable effort to:

- a) offer counselling and/or other mental/physical health assistance to the complainant; and
- b) ensure that the Complaint, details thereof, and the fact of the existence of a Complaint are kept confidential in order to protect the respondent until a determination is made.

## 9. SANCTIONS / PENALTIES

Disciplinary measures will be taken against any person found to have committed sexual harassment, and also against any person who intentionally makes a malicious, frivolous, vexatious, or false claim of sexual harassment. This is distinct from a complainant whose Complaint is heard and the allegation is not found by the relevant Sexual Harassment Disciplinary Committee or Personnel Committee of the Board, to be made out/(sufficiently)substantiated.

Possible outcomes of a Hearing are:

- a) a finding that the allegations are not warranted or could not be substantiated; or
- b) a finding that the allegations are substantiated and constitute sexual harassment or inappropriate behaviour and, if so, report to the Board, with a recommendation(s) for corrective action/sanction.

**Depending on the outcome of a Hearing relating to Sexual Harassment, the relevant SHDC may recommend sanctions/penalties as outlined in this section of the Policy.**

Each case will be assessed based on the following:

- a) the severity or frequency of the harassment;
- b) the extent to which the respondent should have anticipated that such behaviour was unacceptable or unwanted;
- c) the level of remorse; or
- d) whether there have been any prior incidents or warnings.

### 9.1 Applicable Sanctions/Penalties

In order to determine whether any act, conduct or behaviour constitutes sexual harassment, all of the circumstances surrounding the behaviour shall be taken into consideration. It shall be considered whether the act, conduct or behaviour constituted a course of conduct or, if not, was a significant single instance sufficiently serious to be so determined, and the determination shall be based on the findings in the particular matter.

Each sexual harassment case will be assessed taking into consideration, among other things, the matters listed in Clause 9. The severity of the punishment will depend on the frequency and severity of the offence, and will take into account, any antecedent

history/past conduct. Depending on the issues, the sanctions to be applied by the EMCVPA *may include but not be limited to* the following:

**In the case of student matters:**

- 1) issuing a written warning or reprimand;
- 2) placing the student on probation;
- 3) suspending the student; or
- 4) expelling the student.

**In the case of employees (faculty or staff):**

- 1) issuing a written warning or reprimand;
- 2) issuing a transfer or reassignment of duties to the perpetrator (where this can be facilitated);
- 3) in serious cases and depending on the circumstances, suspension or termination of employment; or
- 4) training or counselling of the respondent as necessary, to ensure that the respondent understands why his or her conduct violated the EMCVPA's Sexual Harassment Policy.

**The requisite provisions of the Disciplinary Code of the EMCVPA as existing from time to time, or the Government's Disciplinary Policy for Public Bodies shall be applied in the case of sanctions against employees in the absence thereof.**

Where a complaint is made against any Board Member, alleging sexual harassment, the matter will be referred to the Chair of the Board, and in the instance of the Chair of the Board, to the Minister to be addressed. This shall not apply where the Board Member is engaged to the school as a member of the staff or faculty, or is a student of the EMCVA, in those eventualities, the relevant Sexual Harassment Disciplinary Committee shall treat with the allegation as set out herein.

Where persons have been found to be guilty of sexual harassment and remain engaged as students or employees at the EMCVPA, the Director of Student Services (for student matters) or the Director of Human Resource and Development (for employee matters) will monitor their conduct to ensure behavioural change.

**Practice Note 2**

Contracts issued to persons engaged to carry out work on the College Compound must include a clause on sexual harassment and be listed as grounds to terminate the contract in the event same occurs.

## **10. RIGHT TO REDRESS**

A complainant has the right to seek redress before a Tribunal under the Labour Relations and Industrial Disputes Act, any Tribunal established by law to treat with Sexual Harassment from time to time, or the Supreme Court of Jamaica. However it is encouraged, that all internal mechanisms are exhausted prior to any matter being referred to any Tribunal with jurisdiction for these matters, or the Supreme Court.

## **11. GENERAL**

### **a. Consensual Relationships**

Relationships between faculty and students, including sexual relationships, even mutually consenting ones, are a basic violation of professional ethics and responsibility when the faculty member has any professional responsibility for the student's academic performance, or professional future, or over a fellow employee's professional performance as the case may be. The EMCVPA faculty handbook precludes individuals from evaluating the work performance of others with whom they have an intimate, familial, or close personal relationships, with or from making hiring, salary, disciplinary, or similar financial decisions concerning such persons, without prior written approval.

Romantic or sexual relationships between employees and students which occur outside of the instructional or supervisory context may also lead to difficulties. Similar considerations would obtain for relationships between student and student, as well as employee and employee. The asymmetry of the faculty-student relationship means that any sexual relationship between a faculty member and a student is potentially exploitive and should be avoided. Faculty and staff engaged in such relationships should be sensitive to the constant possibility that they may unexpectedly be placed in a position of responsibility for the student's instruction or evaluation. In the event of a charge of sexual harassment in particular, the EMCVPA will in general be unsympathetic to a defence based upon consent, when the facts establish that a professional faculty-student, staff-student, or supervisor-employee power differential existed within the relationship.

### **b. Protection against Retaliation or Victimization**

Bullying, intimidation and threats which are meant to accommodate sexual harassment or retaliate against an individual(s) who has made a claim of sexual harassment or against anyone who sits on the relevant Sexual Harassment Dispute Resolution Committees, shall be treated accordingly, as an act of harassment, sexual harassment, or as another disciplinary matter.

### **c. Malicious Complaints & Non-Liability**

A complainant (whether student, faculty or employee) where found to have made a malicious, frivolous or vexatious claim of sexual harassment, shall be in breach of the Policy and may be subject to disciplinary action, in accordance with the Disciplinary Code, or other applicable policies, regulations, rules or any other governing instruments of the EMCVPA.

The College may exercise a discretion not to bring charges as aforesaid or apply the related sanctions where mitigating circumstances require such a consideration; so however, such circumstances will need to be of sufficient gravity to reasonably warrant the exercise of the discretion (e.g. the complainant has been medically diagnosed as having a psychological/mental, developmental, or emotional condition which would cause an altered perception of sexual harassment)

#### **d. Liability for Sexual Harassment**

A person(s) found to be in breach of this Policy shall be found liable and will be subject to disciplinary action, up to and including expulsion (in the case of students), termination or dismissal (in the case of employees and workers) from the EMCVPA.

#### **e. Confidentiality**

All claims of sexual harassment shall be documented and placed on a confidential file, thoroughly archived for the purposes of monitoring and evaluation. However, the EMCVPA will endeavour to protect the privacy of all parties involved throughout the course of the investigation.

As previously stated, the EMCVPA shall not disclose any information relating to a complainant, or the circumstances of a complaint to any person, except where the disclosure is necessary for the purposes of investigating the complaint or taking disciplinary action in relation to the complaint. **Any breach, will be viewed as an act of misconduct and will be sanctioned accordingly.**

#### **f. Legislation**

When a comprehensive piece of legislation is formally passed by the Government of Jamaica to address sexual harassment, this will become the instructive legislative framework for the Policy, with all mandatory provisions being read as one with the Policy.

## **12. REVIEW OF POLICY**

The Director of Student Services and the Director of Human Resource Management and Development will conduct joint reviews of this policy every two (2) years to ensure that it is in keeping with best practices and local/ international legislation on the matter. Findings will be referred to the Policy Committee of the Board in the first instance, who will make recommendations to the Board for amendment or otherwise, for the Board's ultimate approval.

## **Resources**

Government of Jamaica, *National Policy for Gender Equality (NPGE)* approved by Cabinet in 2011

Government of Jamaica, *Gender Sector Plan of the Vision 2030 National Development Plan*

Urban Development Corporation, **Sexual Harassment Policy**, April 14, 2019

Government of Jamaica, **Sexual Harassment Bill 2015**

International Labour Organization, **Convention No. 111 on Discrimination in Employment and Occupation**