

# Earlham College

## Policy on Sex/Gender Harassment, Discrimination and Misconduct

### Introduction

Earlham College is committed to the values clearly stated in our *Principles and Practices* document: respect for persons, integrity, peace and justice, simplicity and community. These principles undergird our Policy on Sex/Gender Harassment, Discrimination and Misconduct and guide the College disciplinary process. *Principles and Practices* not only tells us unambiguously that sex/gender harassment, discrimination and misconduct is intolerable behavior, but encourages us as a community to work actively toward creating an environment in which any inclination toward these behaviors is unthinkable.

Earlham College does not tolerate sex/gender harassment, discrimination or misconduct. All members of the College community, guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. Any member of our community, guests or visitors may be a victim of or perpetrator of unacceptable behavior and therefore this policy is gender neutral. All members of the campus community, guests and visitors are expected to conduct themselves in a manner that does not infringe upon the rights of others. We respond to and investigate all reports of sex/gender harassment, discrimination and misconduct both in Richmond and in off-campus programs (subject to the laws and policies of particular countries and host institutions), and will report crimes to local law enforcement consistent with the wishes of the victim and in compliance with the law.

The College believes in zero tolerance for sex/gender-based misconduct. Zero tolerance means that when an allegation of sex/gender misconduct is brought to an appropriate administrator's attention (i.e. "notice"), protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a responding party is found to have violated this policy. This policy is not gender binary and is created to reaffirm the values of Earlham College and the principles of equity and fairness and to provide recourse for those individuals whose rights have been violated.

The College's sex/gender harassment, discrimination and misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside

of the classroom that include controversial or sensitive subject matters protected by academic freedom. Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern.

The College uses the preponderance of the evidence (also known as “more likely than not”) as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like “guilt, “innocence” and “burdens of proof” are not applicable, but the College never automatically assumes a responding party is in violation of College policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources. The College will address all complaints/notice of sex/gender harassment, discrimination or misconduct that violate this policy, even if they are not criminal matters for law enforcement.

All complaints/notice will be addressed according to the practice of the College accountability processes, depending on the status of the accused: for students through the Student Conduct Council and for faculty/staff through the process established by the Grievance Procedure. Further, based on federal law and College policy all forms of retaliation against those reporting prohibited conduct or providing witness information is prohibited. Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of College policy.

### **College Assistance And The Role Of The Title IX Coordinator**

Earlham College supports any member of our community who becomes a victim of sex/gender-based misconduct (“Reporting Party”). We offer immediate help and referrals to appropriate persons and organizations, often including but not limited to, local police, hospitals, advocacy groups and counseling and crisis centers. The College provides a handout of resources and reporting information to all employees and to off-campus programs that identifies individuals and locations for reporting and for medical and confidential support. The College will provide immediate assistance and remedial support to any individual who experiences sex/gender harassment, discrimination or sexual misconduct, including living, working and academic arrangements as appropriate.

The College’s Title IX Coordinator oversees compliance with all aspects of the Sex/Gender Harassment, Discrimination and Misconduct Policy. The Coordinator

reports to the Vice President of Finance and Administration, and is housed in the office of Human Resources. Questions about this policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the College Title IX Coordinator:

Dana North  
Director of Human Resources/Title IX Coordinator  
008 Carpenter Hall  
765-983-1628  
northda.Earlham.edu

Trained members of the Investigative Team:  
Angela Hobkirk, Assistant Director of Residence Life  
Salina Hoque, Assistant Director of Human Resources  
Tom Kearns, Director of Public Safety  
Shane Peters, Associate Dean of Student Life

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:  
Office for Civil Rights (OCR)

U.S. Department of Education  
Citigroup Center  
500 W. Madison Street,  
Suite 1475  
Chicago, IL 60661-4544  
Telephone: (312) 730-1560  
Facsimile: (312) 730-1576  
Email: OCR.Chicago@ed.gov

**SEX/GENDER HARASSMENT, DISCRIMINATION AND MISCONDUCT OFFENSES  
INCLUDE, BUT ARE NOT LIMITED TO:**

- 1. Sexual Harassment**
- 2. Sex/Gender Discrimination**
- 3. Non-Consensual Sexual Contact (or attempts to commit same)**
- 4. Non-Consensual Sexual Intercourse (or attempts to commit same)**
- 5. Sexual Exploitation**

**1. SEXUAL HARASSMENT**

Sexual harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.<sup>1</sup>

Anyone experiencing sexual harassment in any College program is encouraged to report it immediately to the Title IX Coordinator or a team member. Remedies, education and/or training will be provided in response.

## 2. **SEX/GENDER DISCRIMINATION**

### Sex/Gender Discrimination is:

Sexual harassment becomes discriminatory and may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

### **Hostile Environment Harassment is:**

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
  - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's educational and/or employment, social and/or residential program.

### **Quid Pro Quo Harassment is:**

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- By a person having power or authority over another constitutes sexual harassment when
  - Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.
  - This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner

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<sup>1</sup> Purpose or intent is not an element of sexual harassment.

violence, stalking; gender-based bullying.<sup>2</sup>

Some examples of possible Discriminatory Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

### **3. NON-CONSENSUAL SEXUAL CONTACT**

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force<sup>3</sup>.

**Sexual Contact includes:**

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<sup>2</sup> These offenses are referenced and incorporated within sexual harassment, but also broken-out as stand-alone offenses, below.

<sup>3</sup> The use of force is not "worse" than the subjective experience of violation of someone who has sex without consent. However, the use of physical force constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restrict, battery, etc.) would face not just the sexual misconduct charge, but charges under the code for the additional assaultive behavior.

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

## **2. NON-CONSENSUAL SEXUAL INTERCOURSE**

Non-Consensual Sexual Intercourse is:

- any sexual intercourse
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force<sup>4</sup>.

### **Intercourse includes:**

- vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

## **4. SEXUAL EXPLOITATION**

Occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD or HIV to another person;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

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<sup>4</sup> *Id.*

**OTHER MISCONDUCT OFFENSES (WILL FALL UNDER TITLE IX WHEN SEX OR GENDER-BASED)**

1. **Threatening** or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. **Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in another;
3. **Hazing**, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
4. **Bullying**, defined as
  - a. Repeated and/or severe;
  - b. Aggressive behavior;
  - c. Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally;
  - d. That is not speech or conduct otherwise protected by the 1<sup>st</sup> Amendment.
5. **Intimate Partner Violence**, defined as violence or abuse between those in an intimate relationship to each other<sup>5</sup>;
6. **Stalking**
  - a. Stalking 1:
    - i. A course of conduct

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<sup>5</sup> Indiana Domestic Violence Laws: Indiana law seeks to protect spouses, cohabitating partners, and children from family violence, or domestic violence. When someone attacks a loved one, even if the Indiana domestic violence criminal laws don't apply, other Indiana laws that make the conduct illegal against a stranger can apply in a dating or intimate partnership situation. Overview of Domestic Violence Laws It's illegal in Indiana to beat or abuse your spouse. This crime is called "domestic battery." Domestic battery is to intentionally touch your spouse, partner, or co-parent in a rude or angry way that results in bodily injury. If domestic battery doesn't apply due to the relationship of the individuals (for example, teens in a dating relationship), regular battery or aggravated battery may apply. General battery is intentionally touching another in a rude or angry manner. Aggravated battery is creating a substantial risk of death or causing serious permanent disfigurement, impairment of bodily function, or loss of a fetus. Sometimes abusers will stalk their former romantic partners, which is illegal. Indiana's criminal stalking statute outlaws repeated harassment of another that would cause a reasonable person to feel intimidated or threatened and causes the victim to feel threatened or terrorized. Abusers can also be charged with a myriad of other crimes for their conduct done to terrorize their victims, including: Criminal confinement - intentionally confining a person without his or her consent Kidnapping - removing a person by fraud, force, or threat to another place Rape – having oral, anal, or vaginal sex by force, threat, or while the victim was incapacitated. Aggravating factors include using deadly force or weapon, causing serious bodily injury, or using date rape drugs.

- ii. Directed at a specific person
  - iii. On the basis of actual or perceived membership in a protected class
  - iv. That is unwelcome, AND
  - v. Would cause a reasonable person to feel fear
- b. Stalking 2:
- i. Repetitive and Menacing
  - ii. Pursuit, following, harassing and/or interfering with the peace and/or safety of another
7. Any other College policies may fall within this section when a violation is
- a. motivated by the actual or perceived membership of the reporting party's sex or gender.
  - b. Sexual in nature

### **Additional Policy Provisions**

**a. Attempted Violations**

In most circumstances, College will treat attempts to commit any of the violations listed in the *Gender-Misconduct Policy* as if those attempts had been completed.

**b. False Reports**

College will not tolerate intentional false reporting of incidents. It is a violation of the *Student Code of Conduct* to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

**c. Amnesty for Victims and Witnesses**

The College strongly encourages the reporting of misconduct and crimes by victims and witnesses. Sometimes, victims or witnesses are hesitant to report to College officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims of sexual misconduct as possible choose to report to College officials, and that witnesses come forward to share what they know. To encourage reporting, the College pursues a policy of offering victims of misconduct and witnesses amnesty from minor policy violations related to the incident. Specifically, the College does not charge witnesses or parties directly involved with a sexual misconduct case with minor alcohol offenses, such as underage consumption.



Additionally, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to the Public Safety). Per its Good Samaritan statement on alcohol, the College pursues a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the College will provide educational options, rather than punishment, to those who offer their assistance to others in need.

**d. Parental Notification**

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about individual conduct reports pursuant to the Family Educational Rights and Privacy Act.

**SANCTIONS**

The following sanctions may be imposed upon any member of the community found to have violated the Sex/Gender Harassment, Discrimination and Misconduct Policy. Factors considered in sanctioning are defined in Student Handbook, Faculty Handbook, Staff Handbook. The following are the sanctions that may be imposed upon students or organizations singly or in combination:

**Student Sanctions (listed below and defined in Student Handbook)**

- Warning
- Probation
- Suspension
- Expulsion
- Withholding Diploma
- Revocation of Degree
- Transcript Notation
- Organizational Sanctions
- Other Actions

### **Employee Sanctions (listed below and defined in Employee Handbook)**

- Warning – Written or Verbal
- Performance Improvement Plan
- Required Counseling
- Required Training or Education
- Demotion
- Loss of Annual Pay Increase
- Suspension without Pay
- Suspension with Pay
- Revocation of Tenure
- Termination

### **Sanctioning for Sexual Misconduct**

- Any person found responsible for violating the Non-Consensual Sexual Contact policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*
- Any person found responsible for violating the Non-Consensual Sexual Intercourse policy will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).\*
- Any person found responsible for violating the Sexual Exploitation or Sexual Harassment policies will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*

\*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

## APPENDIX

### APPLICABLE DEFINITIONS:

- **Consent<sup>6</sup>:**
  - Consent is
    - clear, and
    - knowing, and
    - voluntary [or affirmative, conscious and voluntary],
    - words or actions,
    - that give permission for specific sexual activity.
  - Consent is active, not passive.
  - Silence, in and of itself, cannot be interpreted as consent.
  - Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
  - Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
  - Previous relationships or prior consent cannot imply consent to future sexual acts.
  - Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
  - In order to give consent, one must be of legal age.
  - Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
    - Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.<sup>7</sup>

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<sup>6</sup> Indiana's legal definition of consent: Non-consensual sexual contact, whether rape or sexually touching an adult or child, is a crime in Indiana. Criminal penalties vary based on the violence, threat of force, weapons used, or other "aggravating" factors involved and the age of the victim and defendant. Aggravating circumstances increase penalties because of their serious or malicious nature. The age of consent in Indiana is 16. However, Indiana has a "Romeo and Juliet law" that permits 14 and 15 year olds to engage in non-forced sexual activity with peers who are no more than 4 years older.

<sup>7</sup> Blackout, as it is used in scholarly literature, refers to a period where memory formation is blocked. A period of consistent memory loss is termed a blackout, whereas periods where memory is both lost and formed intermittently can be referred to in the literature as a brownout. Neither state of blackout nor brownout automatically indicates incapacitation, but factual context can establish that a blackout or a brownout is occurring in an individual who is incapacitated (where incapacity is defined as an inability to make rational, reasonable decisions or judgments). It is a mistake to automatically associate memory loss with incapacitation; they are often coupled, but not always. (see e.g.: Mundt & Wetherill – 2012; NIH 2004)

The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party:

- Sober and exercising good judgment, would have known about the condition of the reporting party.
  - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
  - This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs. [Possession, use and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>].
- **Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you.” “Okay, don’t hit me, I’ll do what you want.”).
    - Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
    - NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
  - Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
  - This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.

## **OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT**

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity -- without actions demonstrating permission -- cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "no."

## **OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement,

this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student, supervisor-supervisee) are discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes Resident Advisors (RAs) and students over whom they have direct responsibility. While no relationships are prohibited by this policy (there are policies in place that do prohibit this), failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee<sup>8</sup>.

### **SEXUAL VIOLENCE -- RISK REDUCTION TIPS**

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.

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<sup>8</sup> When a consensual relationship gives rise to *quid pro quo* harassment allegations, those allegations are to be resolved in accord with the College’s policies on Title IX. When an employee fails to timely notify their supervisor under this policy, but no allegations of harassment are present, the resolution falls under the policy on “Failure to comply” in the employee/faculty handbook, and should be resolved as such.

- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drug use lowers your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Give thought to sharing your intimate content, pictures, images and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared or disseminated.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- **DON'T MAKE ASSUMPTIONS** about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. Your partner's consent should be affirmative and continuous. If there are any questions or ambiguity then you **DO NOT** have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Don't abuse that power.
- Do not share intimate content, pictures, images and videos that are shared with you.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.

- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

## **CONFIDENTIALITY, PRIVACY AND REPORTING POLICY**

### **Confidentiality and Reporting of Offenses Under This Policy**

All College employees (faculty, staff, and administrators) are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate College officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at College:

### **Confidential Reporting**

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- On-campus licensed professional counselors
- On-campus health service providers
- On-campus members of the clergy/chaplains working within the scope of their recording, licensure or ordination
- Off-campus:
  - Licensed professional counselors
  - Local rape crisis counselors
  - Domestic violence resources,
  - Local or state assistance agencies,
  - Clergy/Chaplains

All of the above employees will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors [and/or the Employee Assistance Program] are available to help free of charge and can be seen



on an emergency basis during normal business hours. These employees will submit timely anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client, patient or parishioner.

### **Formal Reporting Options**

All College employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or team member. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees. Remedial actions may result without formal College action.

If a victim does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator or a team member, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Division of Student Life, College Public Safety, and the Title IX Coordinator. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party’s rights and privacy. Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at <http://earlham.edu/public-safety/anonymous-tipinformation/> . Note that these anonymous reports may prompt a need for the institution to investigate.

Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

Dana North  
Director of Human Resources/Title IX Coordinator  
008 Carpenter Hall  
765-983-1628  
northda.Earlham.edu

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of College policy and can be subject to disciplinary action for failure to comply with College policies.

### **Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Safety Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus public safety regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus public safety, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

### **Federal Timely Warning Reporting Obligations**

Victims of sexual misconduct should also be aware that College administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The determination to issue a Timely Warning is made by the Director of Public Safety, according to federal guidelines. The College will ensure that a

victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

## **QUESTIONS AND ANSWERS**

Here are some of the most commonly asked questions regarding the College's sexual misconduct policy and procedures.

*Does information about a report remain private?*

The privacy of all parties to a report of sexual misconduct must be respected, except insofar as it interferes with the College's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. The College will not disseminate information and/or written materials to persons not involved in the resolution process without the consent of both parties. Witnesses are also required to maintain the privacy of information shared with them during interviews and/or hearings. Violations of the privacy of the reporting party or the responding party may lead to conduct action by the College, though both parties are allowed to share their perspectives and experiences. All parties, including witnesses, involved in an allegation are strongly encouraged to maintain the privacy of information and/or written materials.

In all resolutions of sexual misconduct, all parties will be informed of the outcome. In any instances for which the administration may also choose to make a brief public announcement of the nature of a violation and/or any action taken, care will be taken to avoid the use of the name or identifiable information of the alleged victim. Certain College administrators are informed of the outcome within the bounds of student privacy (e.g., the President of the College, Dean of Students, Director of Public Safety). If there is a report of an act of alleged sexual misconduct to a conduct officer, the institution must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an "Annual Security Report" of campus crime statistics. This statistical report does not include personally identifiable information.

*Will my parents be told?*

No, not unless you tell them. Whether you are the reporting party or the responding party, the College's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. College officials will directly inform parents when requested to do so by a student, in a life-threatening situation, or if an individual has signed the permission form at registration which allows such communication.

*Will the responding party know my identity?*

Yes, if the College determines there is reasonable cause to believe a violation has occurred and investigates the matter. The responding party has the right to know the identity of the reporting party. If there is a hearing, the College does provide options for questioning without confrontation, including closed-circuit testimony, Skype, using a room divider or using separate hearing rooms.

*Do I have to name the responding party?*

Yes, if you want formal disciplinary action to be taken against the responding party. You can report the incident without the identity of the responding party, but doing so may limit the institution's ability to respond comprehensively.

*What do I do if I am accused of sexual misconduct?*

DO NOT contact the reporting party. You may immediately want to contact someone who can act as your advisor; anyone may serve as your advisor. You may also contact the Student Life Office, which can explain the College's procedures for addressing sexual misconduct reports. You may also want to talk to a confidential counselor at the counseling center or seek other community assistance. See below regarding legal representation.

*Will I (as a victim) have to pay for counseling/or medical care?*

Not typically, if the institution provides these services already. If a victim is accessing community and non-institutional services, payment for these will be subject to state/local laws, insurance requirements, etc.

*What about legal advice?*

Victims of criminal sexual assault need not retain a private attorney to pursue criminal prosecution because representation will be handled by the District Attorney's [Prosecutor's] office. You may want to retain an attorney if you are considering filing a civil action or are the responding party. The responding party may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct proceeding. Both the responding party and the reporting party may also use an attorney as their advisor during the campus' resolution process. Attorneys are subject to the same restrictions as other advisors [in the process as described here

#### *How is a report of sexual misconduct decided?*

The College investigates allegations of sex/gender based harassment, discrimination or misconduct to determine whether there is evidence to indicate a policy violation is "more likely than not." This standard, called the preponderance of the evidence, corresponds to an amount of evidence indicating a policy violation is more than 50% likely.

#### *What about changing residence hall rooms?*

You may request a room change if you want to move. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you prefer that the responding party be moved to another residence hall, that request will be evaluated by the Title IX Coordinator along with appropriate members of the Investigative Team to determine if it can be honored. Other assistance and modifications available to you might include:

- Assistance from College support staff in completing a room relocation;
- Arranging to dissolve a housing contract;
- Assistance with or rescheduling an academic assignment (paper, exams, etc.) or otherwise implementing academic assistance;
- Taking an incomplete in a class;
- Assistance with transferring class sections;
- Temporary withdrawal;
- Assistance with alternative course completion options;
- On or off-campus counseling assistance;

- Other accommodations for safety as necessary.

*What should I do about preserving evidence of a sexual assault?*

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to the Reid Hospital Emergency Room, before washing yourself or your clothing.<sup>9</sup> A Student Life professional from the College can also meet you to the Hospital and Public Safety can assist with contacting taxi service for transportation. If a victim goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligate him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

For the Victim: the hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

*Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?*

No. The seriousness of sexual misconduct is a major concern and the College does not want any of the circumstances (e.g., drug or alcohol use) to inhibit

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<sup>9</sup> Reid Health Emergency Department has medical personnel available to assist.

the reporting of sexual misconduct. The College provides amnesty from any consequences for minor policy violations that occur during or come to light as the result of a victim's report of sexual misconduct.

*Will the use of drugs or alcohol affect the outcome of a sexual misconduct conduct resolution?*

The use of alcohol and/or drugs by either party will not diminish the responding party's responsibility. On the other hand, alcohol and/or drug use is likely to affect the reporting party's memory and, therefore, may affect the resolution of the reported misconduct. A reporting party must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove that policy was violated. If the reporting party does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the responding party without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by a responding party.

*Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?*

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present matter.

*What should I do if I am uncertain about what happened?*

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the institution's sexual misconduct policy, you should contact the institution's Title IX Coordinator (not confidential) or Counseling Services (confidential).