

Policy Prohibiting Sexual Misconduct

Last Updated: November 2019

General Statement of Policy and Notice of Non-Discrimination

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 Prohibiting Sexual Misconduct and guide the College disciplinary process. *Principles and Practice* informs us that sexual misconduct is intolerable behavior.

Earlham College recognizes that Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in educational programs and activities receiving Federal Financial Assistance. The College does not tolerate sexual misconduct and sex discrimination.

Scope of the Policy

This Policy sets forth how the College defines and addresses sexual misconduct. All members of the College community, guests, and visitors have the right to be free from all forms of sexual misconduct. 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. This applies to all incidents occurring on Earlham's campus, at Earlham's events off campus, and to any incidents occurring off campus that affect the educational environment for students.

We will respond to and investigate all reports of sexual misconduct and will report crimes to local law enforcement consistent with the wishes of the complainant and in compliance with the law. 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.

College Assistance

Earlham College has an obligation to address sexual misconduct when it knows or should have known about such instances. The College believes in zero tolerance for sexual misconduct. Zero tolerance means that when allegation has been brought to the attention of a responsible employee, 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 has been found in violation of this policy.

The College supports any member of our community who becomes a victim of sexual misconduct. 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 crises 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 sexual misconduct including living, working and academic arrangements as appropriate.

Title IX Coordinator

Earlham College has designated a Title Coordinator who has the authority to coordinate investigations into allegations of sexual misconduct. The College's Title IX Coordinator also oversees compliance with all aspects of this policy. The Title IX Coordinator has the authority to appoint deputy Title IX Coordinators and Title IX investigators, as necessary to fulfill the compliance obligations of Title IX. The Title IX Coordinator is also responsible for providing annual training to members of the Earlham community regarding the application and implementation of policy and procedures related to Title IX and the Campus SAVE Act.

The Title IX Coordinator reports to the Vice President of Student Life. Questions about this policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to a violation of this policy may do so by reporting the concern directly to the Title IX Coordinator.

The designated Title IX Coordinator for Earlham College is:

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Prohibited Conduct and Definitions

As required by law, Earlham College has developed the following definitions to provide guidance in the investigation and adjudication of cases reported under this policy.

Sexual Harassment is the unwelcome imposition of sexual attention often in the context of a relationship of unequal power. Sexual harassment is any conduct, physical or verbal that is sexual in nature and which has the effect of unreasonably interfering with an individual's or a group's educational or work performance, or which creates an intimidating, hostile, or abusive educational or work environment. It can include unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature made by someone from or in the workplace or educational setting.

Sexual Violence is any sexual act that is perpetrated against someone's will. Sexual Violence encompasses a range of offenses including but not limited to a completed or attempted nonconsensual sex act such as rape, abusive sexual contact such as unwanted touching, and non-contact sexual abuse such as threatened sexual violence, exhibitionism and verbal sexual harassment. All types involve victims who do not consent or who are unable to consent or refuse to allow the act.

Intimate Partner Violence sometimes referred to as domestic battery or dating violence describes physical, sexual, or psychological harm by a current or former partner or spouse. This type of violence can occur between individuals of heterosexual or same-sex couples and does not require sexual intimacy. Intimate partner violence can vary in frequency and severity. It occurs on a continuum, ranging from verbal abuse that may or may not impact the victim to chronic, severe battering. There are four main types of intimate partner violence including but not limited to:

Physical Violence is the intentional use of physical force with the potential for causing death, disability, or injury. Physical violence includes but is not limited to: scratching; pushing; shoving; throwing; grabbing; biting; choking; shaking; slapping; punching; burning; use of weapon; and use of restraints or one's body, size or strength against another person.

Sexual Violence is defined above.

Threats of Physical or Sexual Violence is the use of words, gestures, or weapons to communicate the intent to cause death, disability, or injury.

Psychological/Emotional Violence involves trauma to the victim caused by acts, threats of acts, or coercive tactics. Psychological/emotional abuse can include, but is not limited to: humiliating the victim, controlling what the victim can and cannot do, withholding information from the victim, deliberately doing something to make the victim feel diminished or embarrassed, isolating the victim from friends and family, and denying the victim access to money or other basic resources. It is also considered psychological/emotional violence when there has been prior physical or sexual violence or prior threat of physical or sexual violence.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. For the purpose of determining if stalking has occurred, the Title IX Coordinator will use the following definitions:

Course of Conduct means two or more acts including but not limited to acts in which the stalker directly, indirectly, or through third parties, by any action, method, device or means, follow, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Reasonable Person means an individual under similar circumstances and with similar identities to the victim.

Substantial Emotional Distress means significant mental suffering or anguish that may but does not necessarily, require medical or other professional treatment or counseling.

Consent is knowing, voluntary, and clear mutual agreement to engage in sexual activity. Consent must be freely and actively given, and communicated by clearly and mutually understandable words or actions to participate in each form of sexual activity. Consent may be withdrawn at any time. Consent to some sexual contact cannot be presumed to be consent for other sexual activity including previous consent or existence of a current or previous relationship. Silence or the absence of resistance does not mean consent.

Lack of Consent means: (1) the person has not given consent; or (2) the person is incapable of giving consent because of mental, developmental, or physical disability; or (3) force is used or threatened; or (4) the person is incapable of giving consent as a result of judgment-inhibiting intoxication without regard to the intoxicant; or (5) the person is not sufficiently conscious to provide consent; or (6) the person is not old enough to give consent. In Indiana, any person who has reason to believe that a child is a victim of child abuse or neglect has a duty to make a report to Child Protective Services or the police.

Responsible Employee is defined as any employee who has the authority to take action to address sexual misconduct; an employee who has been asked to report sexual misconduct; or any employee whom a student believes has the authority or duty to report sexual misconduct. College officers, teaching faculty, administrative faculty, staff, and resident assistants will generally be considered Responsible Employees. The Title IX Coordinator will annually notify those who are considered Responsible Employees under this policy. All Responsible Employees receiving reports of a potential violation of this policy must promptly contact the Title IX Coordinator.

Retaliation is defined as any adverse employment or educational action or creation of a hostile environment for individuals who report or participate in the investigation of violations of this policy.

Sex/Gender Discrimination/Harassment is treating someone unfavorably because of that person's sex. Discrimination against an individual because of gender identity, including transgender status or because of sexual orientation is discrimination because of sex in violation with Title VII. It is unlawful to harass a person because of that person's sex. Harassment can include sexual harassment or unwelcome sexual advances, requests for sexual favors or other verbal or physical harassment of a sexual nature. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. There are two types of sexual harassment claims: hostile work environment and quid pro quo.

Hostile Environment is created when the occurrence is (1) sufficiently severe; or (2) persistent; or (3) pervasive; or (4) 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 is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that involves a person having power or authority over another.

Sexual Exploitation occurs when one person takes a 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.

Confidential Reporting

Confidential Reporting for Students. If a student would like the details of an incident to be kept confidential, the student may speak with on-campus counselors, campus health services providers, campus athletic trainers, members of the Office of Religious Life. These individuals will maintain confidentiality except in extreme cases of immediacy of threat of danger, abuse of a minor, or as otherwise required by law. Students are also able to use off-campus confidential resources such as RAINN, the Genesis Shelter and Rape Crisis Center, licensed professional counselors, domestic violence resources, local or state assistance agencies, and clergy or chaplains.

Confidential Reporting for Employees. If an employee would like the details of an incident to be kept confidential, the employee may discuss the matter confidentially with the Employee Assistance Program or any off-campus licensed professional counselor, local rape crisis counselors, domestic violence resources, local or state assistance agencies, clergy or chaplains.

Non-Confidential Reporting

All College employees have a duty to report, unless they fall under 100.6 Confidential Reporting sections. Complainants may wish 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. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subject research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator. Remedial actions may result without formal College action. Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sexual misconduct of which they become aware, is a violation of College policy and can be subjected to disciplinary actions for failure to comply with College policies.

Privacy and Confidentiality

All initial contacts between the Title IX Coordinator and the complainant will be treated with the maximum possible privacy. In all cases, the College will give consideration to the complainant with respect to how the complaint is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution when an alleged victim chooses not to initiate or participate in a formal complaint.

Investigation

The Title IX Coordinator will assign a trained Title IX Investigator to all cases. The Title IX Investigator will conduct a prompt, adequate, reliable, and impartial investigation of all complaints, except in cases where a complainant has requested that the investigation not proceed and the Title IX Coordinator agrees. During the investigative phase, both the complainant and respondent will have the opportunity to give a statement, present witnesses and provide evidence. The Title IX Coordinator will publish investigative procedures on the Title IX webpage, which will guide investigations. Investigative procedures may differ based on the role of the respondent as a student, employee, or visitor to campus.

Interim Measures. Following a report of sexual misconduct involving students, Earlham will implement appropriate interim measures during the investigation period to provide for the safety of the complainant and the campus community and the avoidance of retaliation. In some cases, the College will initiate the interim measures without request. The Title IX Coordinator will work with appropriate officials in Residence Life, Academic Affairs, Human Resources, or others to ensure the implementation of appropriate interim measures. If appropriate interim measures are not provided, in the Title IX Coordinator's reasoned opinion, the Title IX Coordinator will report this information to the President or the appropriate Vice President for further determination.

Interim Measures for Student Complainants. Interim measures for students may be imposed regardless of whether formal disciplinary action is sought by the complainant or the College in order to ensure the preservation of the complainant's educational experience and the overall college environment. Interim measures for students may consist of counseling, housing assistance, academic assistance, no contact orders, or other assistance that the Title IX Coordinator deems appropriate.

Interim Measures for Employee Complainants. The Title IX Coordinator may implement interim support measures for employee complainants, which may include referrals for counseling, development of a safety plan, or other assistance that the Title IX Coordinator deems appropriate.

Support During the Investigation. Complainants and Respondents will have the opportunity to have a support person of their choice present during the investigation and appeal process. The Title IX Coordinator will issue annual guidance and training on the appropriate role of the support person.

Investigative Report. The Title IX Investigator will prepare an investigative report. The Complainant and the Respondent will have the opportunity to review and provide written responses to the report before a determination is made.

Equal Rights During Investigation and Appeal. Complainants and Respondents shall be given the same opportunities for notice and support during the investigation and appeal process.

Determinations and Disciplinary Outcomes

A four- member Title IX panel will determine if a student respondent has violated the policy and will impose disciplinary outcomes, if necessary. The members of the panel will be chosen by the Title IX Coordinator from the Conduct Council, consisting of full-time teaching faculty, administrative faculty and staff. Members may be removed at the will of the Title IX Coordinator.

Standard of Review. The standard of review for determination of a violation of this policy shall be a preponderance of the evidence or whether the respondent more likely than not violated the policy.

Review and Determination. Upon completion of the investigation, the Title IX Investigator will present the investigative report to the Title IX panel during a hearing. The panel will review the investigative report of the Title IX investigator and will have the opportunity to request additional information from the Title IX investigator, if necessary. The panel will then make a determination about whether or not it is more likely than not that the respondent violated the policy.

Outcome for Policy Violation for Students. The following sanctions may be imposed upon students found to have violated this policy. Factors considered in sanctioning are defined in the Student Standards of Community Respect. The following are the sanctions that may be imposed upon students or organizations singly or in combination: (1) Warning; (2) Probation; (3) Suspension; (4) Expulsion; or (5) other actions deemed appropriate.

Outcome for Policy Violation for Employees. The following sanctions may be imposed upon employees found to have violated this policy. Factors considered in sanctioning are defined in the Faculty Handbook and Staff Handbook. The following are the sanctions that may be imposed upon faculty or staff singly or in combination: (1) Warning-written or verbal; (2) Performance Improvement Plan; (3) or other actions deemed appropriate by the President.

Notification to Complainant and Respondent. Both the Complainant and the Respondent will be notified in writing of the determination made by the Panel.

Appeal. In cases involving student respondents, both the complainant and the respondent will have the opportunity to appeal the decision of the Panel to the Vice President of Student Life or designee within ten (10) academic days of notification of the Panel's decision. The only basis for appeal is the lack of procedural due process, which is defined as a notice of the investigation and the right to be heard or substantial new evidence that was not available during the time of the investigation and that has the ability to change the initial outcome.

No Retaliation.

Retaliation against an individual for reporting a violation of this policy, supporting a complainant or respondent, or participating in an investigation is a serious violation of this policy and will not be tolerated. A violation of this policy could result in possible suspension or expulsion for students or immediate termination for employees.

Amnesty for Complainants and Witnesses.

The College strongly encourages the reporting of sexual misconduct by Complainants and witnesses. Sometimes, Complainants 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 interest of this community that as many Complainants 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 Complainants of sexual 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 violation of this policy 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. Per its Good Amnesty statement on alcohol, the College pursues a policy of amnesty for students who offer help to other 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.

Prevention, Education, and Training.

Training for Individuals involved in Investigations. The Title IX Coordinator will provide or coordinate periodic, comprehensive training to Earlham employees who will be directly involved in processing, investigating and/or resolving complaints related to this policy.

Training for Prevention for Students. The Title IX Coordinator, in collaboration with the Division of Student Life and other campus partners, will direct mandatory training and prevention programs for students.

Training for Employees. The Title IX Coordinator, in conjunction with the Divisions of Student Life, Academic Affairs and Human Resources will direct mandatory training to College employees. Employees will be expected to complete training every two years.