

Earlham College Harassment and Grievance Policy

Preamble

The teaching and learning of the liberal arts at Earlham College rest on the principle of free inquiry and open discourse. This principle, however, does not imply that all manner of speech, whether vocal or online, must be tolerated. Various forms of verbal intimidation lie beyond the bounds of academic freedom. As the AAUP "Preliminary Report on Freedom of Expression and Campus Harassment Codes" states: "the commitment to reasoned discourse that is a defining characteristic of colleges and universities entails a corollary commitment to maintain an environment free from such impediments to intellectual exchange. Reasoned discourse depends upon common adherence to minimum standards of civility." (Academe, May-June 1991.24)

The testimonies of the Religious Society of Friends regarding equality, peace and social justice affirm the centrality of mutual respect in inquiry and social discourse. In the language of Earlham's Community Principles and Practices, "everyone is worthy of respect regardless of differences." Earlham seeks to create an environment in which members of the College community can express themselves and strive for excellence without fear of violence, oppression, intimidation, or abusive epithets.

Earlham is a community, and acts of physical violence are inimical to its social fabric. Such acts shall be dealt with promptly according to steps outlined in the Earlham College Student Handbook, the Faculty Handbook and the Staff Handbook for dealing with physical violence. Because Earlham is an intentional community, it will take steps to protect its members from harassment or harm arising from insensitivity or ignorance and assure the integrity of the College's commitment to free inquiry in a civil community. If harassment is judged to have occurred, disciplinary action will be determined by the relevant administrative area. Because Earlham is an educational institution, an important response to harassment or harm arising from insensitivity or ignorance is to educate the responsible party or parties and the rest of the community to clarify the nature of the offending behavior and reduce the likelihood of the recurrence of such behavior in the future. It is particularly important that the community undertake educational endeavors regarding the distinctions among freedom of expression, harassment, and insensitive or ignorant behavior.

While not hesitating to acknowledge and confront injustice and violence, whether interpersonal or institutional, we try to practice honest and fair speech that opens rather than forecloses dialogue. We seek to hold ourselves as well as others accountable, and recognize that the truth is reached through deep listening to one another. As we engage with one another to promote social justice and inclusion, we strive to do so in ways that encourage and justify trust, facilitate ongoing candid conversations, and strengthen the fabric of our community. When a grievance arises, the first step is to seek a mutually acceptable resolution through informal conversation and mediation. A member of the Ombuds Council could be asked to assist at this informal stage. The purpose of this mediation is not to establish guilt or innocence, or to provide for sanctions against anyone involved, but to reach mutual understanding. A separate process exists to deal with disciplinary consequences.

If informal mediation between the parties is declined or fails to resolve difficulties, the College will proceed with the formal harassment/grievance process as outlined in the “Process” section and flow chart. A complaint will be recorded and forwarded to the supervisor of the area relevant to the complaint, and also to the Ombuds Council, if the complainant or respondent chooses. As described by the Higher Learning Commission, the function of an Ombudsperson is to mediate disputes between individuals and the institution. In keeping with our collaborative approach to problem-solving, Earlham has elected to constitute a Council rather than designate an individual person. An example of when the Ombuds Council might be invoked would be when the supervisor of the relevant area is a subject of the complaint. Such mediation is available to any member of the Earlham community. The Ombuds Council will hear and mediate the complaint face to the face with the concerned parties either together or separately, as appropriate, and make a recommendation for resolution to the next level of supervisor in the area concerned.

Definition of Harassment

Harassment, broadly understood, is a pattern of unwelcome conduct or communication, including online, that unreasonably interferes with an individual's work or learning performance or creates an intimidating, hostile, or offensive work or learning environment. Under the law:

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.¹

Identifiers of legally protected status in addition to those listed above include: sexual orientation, marital status, veteran status, gender identity, gender expression, citizenship status, or any category protected under federal, state or local law.

¹ <https://www.eeoc.gov/laws/types/harassment.cfm> downloaded on November 3, 2016

The law does not prohibit simple teasing, offhand comments, or isolated incidents, as noted above. However, these behaviors should be addressed before a pattern of harassment emerges. The behavior legally becomes harassment when it is so frequent or severe that it creates a hostile or offensive work or learning environment or when it results in an adverse employment decision (such as the complainant being fired or demoted) or an adverse assessment of a student's performance.

While an isolated incident would not normally create a hostile work or learning environment, it could if it is severe (e.g., a racially motivated physical assault or a credible threat of one, etc.). Furthermore, an incident of harassment that is not severe on its own might, if repeated, create a hostile environment when frequently repeated.²

The expression of differing political opinions in the classroom, online, or on campus more widely, insofar as it does not directly disparage, threaten, or harm individuals, would not normally fall under harassment. In the language of the AAUP, "Much speech that may not be proscribed may nonetheless be morally objectionable... Threats and verbal assaults need not be tolerated, but ideas—however offensive and however offensively expressed—may be met only with other ideas." Regarding online conduct, *Earlham's Informational Technology Acceptable Use Policy* states: "Information technology resources may not be used for illegal or harmful purposes, including: intentional harassment of others." The distinction between offensive opinions and harassment might depend on context, and might need to be discerned in conversation with the Ombuds Council.

Harassment based upon discrimination can take a structural as well as interpersonal form. It includes judging and assessing the abilities and performance of a person according to their identity; exercising racial, gender, or other bias in determining allocation of resources; or terminating an employee for factors related to their identity.

The accused can be any member of the Earlham community, as well as vendors, guests or other visitors. An employer may be held liable for the harassing conduct of supervisors, coworkers, or non-employees (such as customers, students, or business associates) over whom the employer has control.

² Ibid.

Process

1. Initiating the Complaint

To file a complaint please contact one of the following members of the community who are formally trained to serve as contacts for complaints:

- Associate Dean of Students or designee (student-initiated complaints)
- Assistant Director of Human Resources (student-, faculty- or staff-initiated complaints)
- Senior Associate Vice President of Academic Affairs (student-, faculty- or staff-initiated complaints)

These individuals, Investigating Agents, are trained in documenting concerns and when appropriate, negotiating interim measures to address the behavior and remedy its effects. Complaints may be made in person or in writing. If informal methods of mediation are inappropriate or unsuccessful, the Investigating Agent will assist with putting oral complaints into writing and forwarding the written complaint for deliberation to the appropriate area and also to the Ombuds Council if requested.

If a complaint concerns one of the Investigating Agents, the complaint should be forwarded to that individual's supervisor.

2. Resolution of a Complaint

All complaints and resolution must be written, signed and submitted by the Investigating Agent and/or mediator to the Department of Human Resources, which is the office of record for all harassment complaints. In the case of an informal resolution, if the complaint or its circumstances are severe (e.g., pattern, predatory behavior, threat of violence, etc.) the College reserves the right to move forward with a formal resolution of the complaint. Working with the Investigating Agent and/or Ombuds Council, Human Resources determines in each case if any violation has occurred and if immediate disciplinary action is warranted.

a. Informal Resolution of Complaints

- Conversation between complainant and responding party
- Education for those seeking clarity about their experience or behavior
- Mediation between an individual member of the Ombuds Council and the reporting and responding parties

b. Formal Resolution of Complaints

- Students – Office of Student Life and Student Code of Conduct
<http://www.earlham.edu/policies-and-handbooks/community/student-code-of-conduct/>

- Faculty and Staff –Department of Human Resources
 - i. The Investigating Agent will meet with the reporting party, and request a written statement (complaints must be put in writing).
 - ii. Following receipt of the formal written complaint, the Investigating Agent will meet with the responding party (the individual accused of harassment) and ask for a written response.
 - iii. If complainant or respondent chooses an Ombuds Council, the complaint will be forwarded to the Council as well as the appropriate Administrator. The Council will convene within ten academic class days. The Ombuds Council will make a recommendation to the Administrator within 10 academic days during the academic year. The recommendation shall be made on the basis of a preponderance of evidence, that is, whether it is more likely than not that the accused party has engaged in harassing behavior.
 - iv. The College Administrator assigned to the area the complaint concerns will review the complaint and recommendation and respond in writing to the complainant within 15 academic days.
 - v. Human Resources will inform the responding party of the decision and any action that may be taken. This decision will be noted in the responding party's personnel file.

Note: Personnel matters will remain private. The decision noted in the personnel file contains private information which an individual can reasonably expect will not be made public. Information related to harassment or discrimination is shared only on a College operations need-to-know basis. Confidentiality is maintained whenever possible with regard to consultations and complaints. However, complete confidentiality is not possible in cases where illegality or gross malfeasance are alleged.

Ombuds Council Charge and Appointment

The Ombuds Council replaces the Harassment Board, which served the function of resolving complaints before Earlham had an Office of Human Resources. Its charge is approved by Nominating Committee. Unlike the Harassment Board, the function of the Ombuds Council is to mediate rather than adjudicate disputes. Adjudication now occurs via processes established by HR in conformity with federal law. The Ombuds Council will include two members from: Teaching Faculty, Administrative Faculty, Hourly Staff, and the Student Body as appropriate. The Council will be appointed by Nominating Committee, Employee Council, and Earlham Student Government. Its role is to hear and mediate complaints face to face with the concerned parties either together or separately, as appropriate, and to make a recommendation to the Administrator of the area concerned. The Ombuds Council will archive notes on informal as well as formal mediation and meet regularly with Human Resources to allow the College to track possible patterns of harassment and to pursue disciplinary action as appropriate. The Council will be trained in the necessary skills

needed to both resolve conflicts directly and assist parties in developing conflict resolution strategies for future conflicts.

3. Determination and Action

If the determination is that an act of harassment has occurred, appropriate action will be taken. This action may include, but is not limited to:

- Education/Counseling
- Written Reprimand
- Probation
- Termination of employment
- Suspension
- Expulsion
- If not an Earlham College community member, the person could be banned from College property.

False Allegations

Knowingly making a false report will subject the complainant to disciplinary action.

Retaliation

Any attempt to penalize or retaliate against members of the community involved is absolutely prohibited. A complaint of retaliation will result in a separate incident and be investigated.

Appeals

Complainant or respondent may file an appeal within 10 academic days of receipt of the administrator's decision. The only acceptable grounds for appeal are: a lapse of process that might have made a difference in the outcome, persuasive new evidence, or an inappropriate sanction.

A person may appeal by submitting the following:

- Copy of the original complaint in writing;
- Copy of the administrator's decision in writing;
- Statement of reasons for appeal.

This information should be submitted to the Vice President in the respective area of the initial complaint. If the administrator or focus of the complaint is the Vice President, the complainant or respondent may submit the appeal to the Director of Human Resources, who will determine an alternative administrator of the appeal, in consultation with the President. The complainant and respondent will receive the outcome of the appeal in writing within 30 academic days of the assignment of the appeal. The determination of the outcome of the appeal shall be made on the basis of a preponderance of evidence, that is, whether it is more likely than not that a lapse of

process might have made a difference in the outcome, persuasive new evidence might have made a difference in the outcome, or an inappropriate sanction was given.

Records of all formal complaints will be maintained by the Department of Human Resources.

Approved the Faculty 3 Mar 2017