SEXUAL HARASSMENT POLICY

for Earlham College and Earlham School of Religion
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General Statement of Policy and Notice of Non-Discrimination

Earlham College ("the College") and the Earlham School of Religion ("the School") are 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 Sexual Harassment Policy ("the Policy") and guide the College and School's conduct processes.

Earlham is committed to providing an educational and workplace environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Earlham has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual harassment, and for allegations of retaliation. Earlham values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

Scope of the Policy

The core purpose of the Policy is the prohibition of sexual harassment which includes: sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of the Policy is reported, the allegations are subject to grievance procedures detailed below (see page 28).

When the Respondent is a member of the Earlham community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Earlham community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers and invitees.

The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with the Policy.

Title IX Coordinator

The Senior Director of Title IX serves as the Title IX Coordinator and oversees implementation of Earlham's Sexual Harassment Policy. The Title IX Coordinator has the primary responsibility for coordinating Earlham's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under the Policy.
Independence and Conflict-of-Interest

The Title IX Coordinator manages the Office of Title IX and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. Members of the Office of Title IX are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Senior Vice President for Finance and Administration, Stacy Lutz Davidson at davidst@earlham.edu. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Senior Vice President of Finance and Administration, Stacy Lutz Davidson at davidst@earlham.edu or designee. Reports of misconduct or discrimination committed by any other member involved in a Title IX process should be reported to the Title IX Coordinator.

Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

**Jenelle M. Job, PhD, MEd, LSSP**
Title IX Coordinator
Division of Finance and Administration
Carpenter Hall, Suite 066
Phone: 765-983-1346
Email: titleix@earlham.edu
Website: https://earlham.edu/title-ix-information

**Cathryn Dickman, MPH**
Deputy Title IX Coordinator for Athletics
Athletics and Wellness Center, Office 2105
Phone: 765-983-1899
Email: cathrynd@earlham.edu

Inquiries may be made externally to:

**Office for Civil Rights (OCR)**
U.S. Department of Education
400 Maryland Avenue, SW Washington, D.C. 20202-1100
Customer Service Hotline #: 800-421-3481
Fax: 202-453-6012
TDD#: 877-521-2172
Email: OCR@ed.gov
Web: http://www.ed.gov/ocr
Office for Civil Rights (OCR)-Chicago Office
U.S. Department of Education
John C. Kluczynski Building
230 S. Dearborn Street, 37th Floor
Chicago, IL 60604
Telephone: 312-730-1560
Fax: 312-730-1576
TDD#: 800-877-8339
Email: ocr.chicago@ed.gov

For complaints involving employees, please refer to the Equal Employment Opportunity Commission (EEOC) of the United States Government. The EEOC has jurisdiction over Title IX employment claims. Please consult: http://www.eeoc.gov/field/index.cfm to locate the local office’s contact info.

Confidential Campus and Community Resources

Reports made to the Title IX Coordinator will be kept private but not confidential. For confidential communication, please contact one of the following on-campus or community confidential resources: Health Services, Counseling Services, Office of Religious Life, or Earlham College’s Ombudsperson.

Campus Resources
Title IX: 765-983-1346
Earlham’s Title IX website: https://earlham.edu/title-ix-information/
Public Safety: 765-983-1400 (24 Hours)

Health Services: 765-983-1328
Counseling Services: 765-983-1432
Religious Life/Ombudsperson: 765-983-1413

Community Resources
A Better Way Rape & Domestic Violence Crisis Center: 765-966-0538
Reid Hospital: 765-983-3000
Rape, Abuse, Incest National Hotline (RAINN): 1-800-656-HOPE (4673)

Notice/Complaints of Sexual Harassment, Sex- and Gender-Based Discrimination, and/or Retaliation

Notice or complaints of sexual harassment and/or retaliation may be made using any of the following options:

1) File a complaint with, or give verbal notice to, the Title IX Coordinator or Deputy Title IX Coordinator through the contact information listed above. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.

2) Report online using the reporting form posted here.
Anonymous reports are accepted but can give rise to a need to investigate. Earlham is mandated to offer supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as Earlham respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows Earlham to discuss and/or provide supportive measures.

A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the Recipient investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

Supportive Measures

Earlham will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the College or School’s education program or activity, including measures designed to protect the safety of all parties or Earlham’s educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Earlham will inform the Complainant, in writing, that they may file a formal complaint either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

Earlham will maintain the privacy of the supportive measures, provided that privacy does not impair Earlham’s ability to provide the supportive measures. Earlham will act to ensure as minimal an academic impact on the parties as possible. Earlham will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Visa and immigration assistance
• Student financial aid counseling
• Education to the community or community subgroup(s)
• Altering campus housing assignment(s)
• Altering work arrangements for employees or student-employees
• Safety planning
• Providing campus safety escorts
• Providing transportation accommodations
• Implementing contact limitations (no contact directives) between the parties
• Academic support, extensions of deadlines, or other course/program-related adjustments
• Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) order
• Class schedule modifications, withdrawals, or leaves of absence
• Increased security and monitoring of certain areas of the campus
• Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

Orders of Protection, No Contact Directives, Restraining Orders, or Similar Lawful Orders

Earlham College complies with Indiana law in recognizing Order of Protection, No Contact Directives, Restraining Orders, or other similar lawful orders.

If a campus community member or visitor has a valid court order, please inform Earlham’s Department of Public Safety. Provide a copy of the valid order to Earlham’s Department of Public Safety and to the Title IX Office so the order is on file. If an individual wishes to file for an Order of Protection, this can be done at the Wayne County Courthouse in Richmond, IN.

A No Contact Directive (NCD) may be issued by the Title IX Coordinator as a supportive measure, informal resolution item, or sanction when there is a reasonable fear of safety for the victim, including where there is the potential for bullying, intimidation, threat, or retaliation due to previous experience or other patterns of conduct. A violation of the terms of the NCD will result in a referral to the student conduct process outlined in Earlham’s Student Code of Conduct.

Emergency Removal

Earlham can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Threat Assessment Team using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student, or employee, will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why
the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within five (5) academic days, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

Earlham will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student’s or employee’s access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student’s participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

**Promptness**

All allegations are acted upon promptly by Earlham once it has received notice or a formal complaint. Complaints can take sixty-ninety (60-90) academic days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but Earlham will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in Earlham’s procedures will be delayed, Earlham will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

**Privacy and Confidentiality**

Every effort is made by Earlham to preserve the privacy of reports. Earlham will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as
required by law; or to carry out the purposes of federal law 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

Earlham reserves the right to designate which Earlham officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA). Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: the Office of Student Life, the Office of Academic Affairs, the Office of Finance and Administration, the Department of Public Safety, and the Department of Counseling Services. Information will be shared as necessary with Investigators, Hearing Panel members, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties’ rights and privacy.

Earlham may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below.

**Jurisdiction of Earlham**

This policy applies to the education program and activities of Earlham College and Earlham School of Religion, to conduct that takes place on the campus or on property owned or controlled by Earlham, at Earlham-sponsored events, or in buildings owned or controlled by Earlham recognized student organizations. The Respondent must be a member of Earlham’s community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Earlham’s educational program. Earlham may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines it is necessary.

Regardless of where the conduct occurred, Earlham will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.

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1 For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of Earlham’s employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in Earlham’s response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. Student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA) and related Earlham’s policies. Employee records will be protected in accordance with Human Resources policies.

**Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. Earlham has designated individuals who have the ability to have privileged communications as Confidential Resources. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.
A substantial Earlham interest includes:

a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;

b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;

c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or

d. Any situation that is detrimental to the educational interests or mission of Earlham.

If the Respondent is unknown or is not a member of the Earlham community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of Earlham’s community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

In addition, Earlham may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Earlham’s property and/or events.

All vendors serving Earlham through third-party contracts are subject to the policies and procedures of their employers and to these policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution’s policies.

Similarly, the Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences sexual harassment in an externship, study abroad program, or other environment external to Earlham where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

**Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to Earlham’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or
engage in informal or formal action, as appropriate.

When notice/complaint is affected by a significant time delay, Earlham will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.²

**Online Harassment and Misconduct**

The policies of Earlham are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on Earlham’s education program and activities or use Earlham networks, technology, or equipment.

While Earlham may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to Earlham, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of Earlham’s community. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by Earlham only when such speech is made in an employee’s official or work-related capacity.

**Definitions of Sexual Misconduct**

The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Indiana regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

In line with Earlham has adopted the following definition of sexual harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

As a result of the U.S. Department of Education’s Final Rule under Title IX of the Education Amendments of 1972 issued on May 19, 2020, Earlham must narrow both the geographic scope of its authority to act under Title IX and the types of sexual harassment that it must subject to its

²There is an argument to be made to apply current policy definitions to past misconduct, but such an approach would have to be consented to by the parties and/or carefully vetted with legal counsel.
Title IX investigation and formal grievance process. **Only** incidents falling within the Final Rule’s definition of sexual harassment will be investigated and, if appropriate, brought to a formal hearing for adjudication of policy violation.

Earlham College and the Office of Title IX remain committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule. To the extent that alleged misconduct falls outside the Sexual Harassment Policy, or misconduct falling outside the Sexual Harassment Policy is discovered in the course of investigating covered sexual misconduct, Earlham retains authority to refer involved parties to the appropriate student or employee conduct process. Alleged academic and social conduct violations for students will be addressed per the Student Code of Conduct and associated processes. Alleged misconduct of employees will be addressed per the Faculty and Staff handbooks and associated college policies and processes as appropriate.

**Sexual Harassment**, as an umbrella category, includes the offenses of sexual harassment, sexual assault, intimate partner violence (domestic violence and dating violence), and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

- **Quid Pro Quo:**
  a. an employee of Earlham,
  b. conditions the provision of an aid, benefit, or service of Earlham,
  c. on an individual’s participation in unwelcome sexual conduct; and/or

- **Sexual Harassment:**
  a. unwelcome conduct,
  b. determined by a reasonable person,
  c. to be so severe, and
  d. pervasive, and,
  e. objectively offensive,
  f. that it effectively denies a person equal access to Earlham’s education program or activity.

**Sexual assault**, defined as:

- **Sex Offenses, Forcible:**
  a. Any sexual act directed against another person,
  b. without the consent of the Complainant,
  c. including instances in which the Complainant is incapable of giving consent.

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3 Unwelcome sexual or other conduct is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, persuasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.
Forcible Rape:
   a. Penetration,
   b. no matter how slight,
   c. of the vagina or anus with any body part or object, or
   d. oral penetration by a sex organ of another person,
   e. without the consent of the Complainant.

Forcible Sodomy:
   a. Oral or anal sexual intercourse with another person,
   b. forcibly,
   c. and/or against that person’s will (non-consensually), or
   d. not forcibly or against the person’s will in instances in which the
      Complainant is incapable of giving consent due to age or temporary or
      permanent mental or physical incapacity.

Sexual Assault with an Object:
   a. The use of an object or instrument to penetrate,
   b. however slightly,
   c. the genital or anal opening of the body of another person,
   d. forcibly,
   e. and/or against that person’s will (non-consensually),
   f. or not forcibly or against the person’s will in instances in which the
      Complainant is incapable of giving consent due to age or temporary or
      permanent mental or physical incapacity.

Forcible Fondling:
   a. The touching of the private body parts of another person (buttocks, groin, breasts),
   b. for the purpose of sexual gratification,
   c. forcibly,
   d. and/or against that person’s will (non-consensually),
   e. or not forcibly or against the person’s will in instances in which the
      Complainant is incapable of giving consent due to age or temporary or
      permanent mental or physical incapacity.

Sex Offenses, Non-forcible:
   a. Incest:
      i. Non-forcible sexual intercourse,
      ii. between persons who are related to each other,
      iii. within the degrees wherein marriage is prohibited by Indiana law.

   b. Statutory Rape:
      i. Non-forcible sexual intercourse,
      ii. with a person who is under the statutory age of consent of 16

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4 Per the state of Indiana.
Intimate Partner Violence, as an umbrella term, encompasses dating violence and domestic violence, and is defined as:

Dating Violence, defined as:
   a. violence,
   b. on the basis of sex,
   c. committed by a person,
   d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition:
   i. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
   ii. Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence, defined as:
   a. violence,
   b. on the basis of sex,
   c. committed by a current or former spouse or intimate partner of the Complainant,
   d. by a person with whom the Complainant shares a child in common, or
   e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
   f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Indiana or
   g. by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of Indiana.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

Stalking, defined as:
   1. engaging in a course of conduct,
   2. on the basis of sex,
   3. directed at a specific person, that
      i. would cause a reasonable person to fear for the person’s safety, or
      ii. the safety of others; or
      iii. suffer substantial emotional distress.
For the purposes of this definition:

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

ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

iii. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Earlham reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

**Force, Coercion, Consent, and Incapacitation**

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, 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.

**Consent:** Consent is an unambiguous, affirmative, and conscious decision by each person to engage in mutually agreed-upon sexual activity. Consent is knowing, voluntary, clear, active, and ongoing permission by word or action to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity and with each new sexual act in advance of initiation. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to
explicitly obtain *their* consent to being kissed back.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction, but clear communication from the outset is strongly encouraged. Consent can also be withdrawn once given with withdrawal reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease immediately.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Earlham to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to Bondage, discipline/dominance, submission/sadism, and/or masochism (BDSM) or other forms of sexual kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Earlham’s evaluation of communication in kink situations should be guided by reasonableness rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

**Other Civil Rights Offenses**

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, Earlham additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class.
a. **Sexual Exploitation**, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy.

Examples of Sexual Exploitation include, but are not limited to:

i. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed).

ii. Invasion of sexual privacy.

iii. Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent), including the making or posting of revenge pornography.

iv. Prostitution.

v. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection.

vi. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity.

vii. Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections.

b. **Threat** of causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;

c. **Sex- or gender-based discrimination**, defined as actions that deprive, limit, or deny, on the basis of sex or gender, other members of the community of educational or employment access, benefits, or opportunities;
d. **Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in another;

e. **Hazing**, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Earlham community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;

f. **Bullying**, defined as an ongoing and deliberate misuse of power in relationships through repeated verbal, physical and/or social behavior that intends to cause physical, social and/or psychological harm. It can involve an individual or a group misusing their power, or perceived power, over one or more persons who feel unable to stop it from happening.

Bullying can happen in person or online via various digital platforms.

Bullying is:

i. Repeated, deliberate, and/or severe;

ii. Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally;

iii. obvious (overt) or hidden (covert);

iv. not speech or conduct otherwise protected by the First Amendment.

Violation of any other Earlham policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion or termination.

**Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Earlham is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for Earlham or any member of Earlham’s community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of
sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliaton.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

**Mandatory Reporting**

Earlham employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, 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 and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared. If a Complainant expects formal action in response to their allegations, reporting to any Mandatory Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at Earlham for a Complainant or third-party (including parents/guardians when appropriate):

**Confidential Resources**

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

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination
- On-campus Ombudsperson(s)
- Off-campus (non-employees):
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains/Spiritual Leaders
  - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of
their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individuals with a disability, or when required to disclose by law or court order.

Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Earlham employees who are confidential will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

**Anonymous Notice to Mandatory Reporters**

At the request of a Complainant, notice may be given by a Mandatory Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandatory Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandatory Reporter maintain the Complainant’s anonymity, the Mandatory Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandatory Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by Earlham to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous notice typically limits the Recipient’s ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant’s personally identifiable information may be withheld by a Mandatory Reporter, but all other details must be shared with the Title IX Coordinator. Mandatory reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.

**When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has final discretion over whether Earlham proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator’s decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires Earlham to pursue formal action to protect the community.
A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Earlham may be compelled to act on alleged employee misconduct irrespective of a Complainant’s wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and Earlham’s ability to pursue a formal grievance process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When Earlham proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

Note that Earlham’s ability to remedy and respond to notice may be limited if the Complainant does not want the College to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College’s obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Earlham to honor that request, the College will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by Earlham, and to have the incidents investigated and properly resolved through these procedures.

**Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Earlham must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. Earlham will ensure that a Complainant’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 potential danger.

**False Allegations and Evidence**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action. Additionally, witnesses and parties knowingly providing false evidence, tampering with, or destroying evidence after being directed to preserve such evidence or
deliberately misleading an official conducting an investigation can be subject to discipline under the appropriate conduct policies and procedures.

**Amnesty for Complainants and Witnesses**

Earlham encourages the reporting of misconduct and crimes by Complainants and Witnesses. Sometimes, Complainants or witnesses are hesitant to report to officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the Earlham community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process. To encourage reporting and participation in the process, Earlham maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

**Students:** Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual misconduct to Public Safety.

Earlham maintains a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the Recipient may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

**Employees:** Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the sexual relationship with student policy and is then assaulted in the course of that relationship might hesitate to report the incident to Earlham officials.

Earlham may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and Witnesses on a case-by-case basis.

**Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities (CSAs) – have a duty to report the following for federal statistical reporting purposes (Clery Act):

a. All “primary crimes,” which include homicide, sexual assault, robbery, aggravated
assault, burglary, motor vehicle theft, and arson;

b. Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;

c. VAWA-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and

d. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to Public Safety regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

CSAs include: student life/student conduct staff, public safety, local police, coaches, athletic directors, residence life staff, student engagement staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

\[^{a}\text{VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.}\]
GRIEVANCE PROCEDURES FOR ALLEGED VIOLATIONS OF THE SEXUAL HARASSMENT POLICY

for Earlham College and Earlham School of Religion
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Grievance Procedures for Alleged Violations of the Sexual Harassment Policy

Responsible office: Finance and Administration
Responsible party: Title IX
Adopted: July 20, 2020
Last revision: October 10, 2022

Overview

Earlham will act on any formal or informal notice/complaint of violation of the policy on Sexual Harassment (“the Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures.

The procedures below apply only to qualifying allegations of sexual harassment, including sexual assault, dating violence, domestic violence, and stalking, and other Civil Rights offenses, as defined above, involving students, staff, administrators, faculty members, or visitors. When a complaint of sexual misconduct does not fall within the policy definitions for adjudication under the Policy, the Title IX Coordinator will facilitate referral to the appropriate student or employee conduct process.

Unionized/other categorized employees are subject to the terms of their agreements/employees’ rights to the extent those agreements do not conflict with federal or state compliance obligations.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the student, faculty, and staff handbooks.

Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, Earlham initiates a prompt initial assessment to determine the next steps the College needs to take.

The College will initiate at least one of three (3) responses:

1. Offering supportive measures because the Complainant does not want to proceed formally; and/or
2. An informal resolution; and/or
3. A formal grievance process including an investigation and a hearing.

The investigation and grievance process will determine whether or not the Policy has been violated. If so, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.
Assessment of Notice/Complaints

Initial Assessment for the Determination of Jurisdiction

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator\(^1\) engages in an initial assessment, which is typically one (1) to five (5) academic days in duration. The steps in an initial assessment can include:

1. If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired. If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment (VRA) indicates a compelling threat to health and/or safety.

2. If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is accurate and complete.

3. The Title IX Coordinator reaches out to the Complainant to offer supportive measures.

4. The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.

5. The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.

   - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. No formal grievance process is initiated, though the Complainant can elect to initiate one later, if desired.

   - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available and may seek to determine if the Respondent is also willing to engage in informal resolution.

   - If a formal grievance process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:

     - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
       - an incident, and/or
       - a pattern of alleged misconduct, and/or
       - a culture/climate issue, based on the nature of the complaint.

     - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will "dismiss" that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly. Please note that dismissing a complaint under Title IX is just procedural, and does not limit Earlham’s authority to address a complaint with an appropriate process and remedies.

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\(^1\)If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.
**Violence Risk Assessment**

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Threat Assessment Team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other Threat Assessment Team members. A VRA authorized by the Title IX Coordinator should occur in collaboration with the Threat Assessment Team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

More about the Recipient’s process for VRA can be found below in Appendix D.

**Complaint Dismissal**

**Mandatory Dismissal**: Earlham must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

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2 These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.
1. The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy, even if proved; and/or

2. The conduct did not occur in an educational program or activity controlled by Earlham (including buildings or property controlled by recognized student organizations), and/or Earlham does not have control of the Respondent; and/or

3. The conduct did not occur against a person in the United States; and/or

4. At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the recipient.

**Discretionary Dismissal:** Earlham **may** dismiss a formal complaint or any allegations if, at any time during the investigation or hearing:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or

2. The Respondent is no longer enrolled in or employed by the recipient; or

3. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the College will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

**Counterclaims**

Earlham is obligated to ensure that the grievance process is not abused for retaliatory purposes. The College permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they are considered retaliatory and constitute a violation of the Policy.
Right to an Advisor

The parties may each have one Advisor\(^3\) of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available\(^4\).

Choosing an Advisor who is also a witness creates the potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Hearing Chair.

Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the Earlham community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the College, the Advisor will be trained by Earlham and be familiar with the College’s resolution process.

If the parties choose an Advisor from outside the pool of those identified by Earlham, the Advisor may not have been trained by the College and may not be familiar with College’s policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

Advisors in Hearings/Earlham-Appointed Advisor

Under the Title IX Final Rule (34 CFR Part 106), cross-examination is required during the hearing phase of the formal grievance process. The parties are not permitted to directly cross-examine each other or any witness(es). Cross-examination must be conducted by the parties’ Advisors.

If a party does not have an Advisor for a hearing, the Title IX Coordinator will appoint a trained Advisor for the limited purpose of pre-hearing preparation, cross-examination, and advisement during the hearing. A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party’s Advisor will not conduct cross-examination, Earlham will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Hearing Panel during the hearing.

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\(^3\) This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally.

\(^4\) “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Faculty or staff who serve the student in other roles are also not permitted to be an Advisor (e.g., a counselor seeing the Complainant for counseling or the Dean of Student adjudicating a student conduct appeal).
Role of an Advisor

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Earlham cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, Earlham is not obligated to provide an attorney.

Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Earlham’s policies and procedures.

Advisor Violations of Earlham’s Policy

All Advisors are subject to the same policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Earlham officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor’s non-compliance and future role.

Sharing Information with an Advisor

Earlham expects that the parties may wish to have the College share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

Earlham also provides a consent form that authorizes the College to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before Earlham is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, Earlham will
comply with that request at the discretion of the Title IX Coordinator.

*Privacy of Records Shared with an Advisor*

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Earlham. Earlham may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.

*Expectations of an Advisor*

The College generally expects an Advisor to adjust their schedule to allow them to attend meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The College may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

*Expectations of the Parties with Respect to Advisors*

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) academic days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) academic days before the hearing.

*Resolution Options*

Under Title IX, schools are required to offer prompt and equitable grievance processes designed to resolve incidents of sexual misconduct. Earlham recognizes that there is not one universal resolution process that best meets the needs of our students and campus community. To adequately address reports of sexual harassment, three (3) different resolution options are offered:

1. Record of complaint and/or a supportive and remedial response
2. Informal resolution
3. Formal grievance process

*Record of Complaint and/or a Supportive and Remedial Response*

A Complainant wishes to submit notice/complaint to the Title IX Coordinator without pursuit of either the informal resolution or formal grievance process. This record of sexual misconduct supports monitoring of behavior that may lend itself to patterns of perpetration with subsequent reports of misconduct by the same Respondent(s).
In addition to the request to a complaint on record, a Complainant may wish to receive supportive measures to remedy the personal effects of the discrimination, harassment, and/or retaliation. The Title IX Coordinator can offer supportive measures to support a Complainant without enacting any resolution process. If the Complainant elects to take no action, they can change that decision at a later date through filing a formal complaint with the Title IX Coordinator.

**Informal Resolution**

As an option to resolve a complaint of sexual harassment under Title IX, the parties may request to attempt informal resolution. Informal resolution is a voluntary and informed resolution process that may be pursued after the filing of a formal complaint. Both parties must agree to pursue informal resolution, and this agreement must be provided in writing. At any time prior to the completion of the informal resolution process, the Complainant and/or Respondent may choose to withdraw from informal resolution. Address of the complaint will then follow the formal grievance process or the complaint will be dismissed at the request of the Complainant.

Informal resolution includes three (3) different approaches:

1. The parties agree to resolve the matter through an alternative dispute resolution mechanism, such as mediation, facilitated dialogue, or restorative practices;
2. The Respondent accepts full or partial responsibility for violating policy and accepts an administrative sanction to end the resolution process; or
3. The Complainant and Respondent negotiate a resolution agreement facilitated by the Title IX Coordinator that outlines expectations for activity and behavior of the parties including, but not limited to, residence change, restricted social activity, completion of educational workshops, changes to class schedule, institution or continuation of an NCD, restricted access to buildings and/or other campus spaces and/or campus service.

To initiate informal resolution, a Complainant needs to submit a formal complaint, as defined above. If a Respondent wishes to initiate this option, they should contact the Title IX Coordinator who will communicate this request to the Complainant.

Prior to implementing informal resolution, the Title IX Coordinator will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College.

The Title IX Coordinator will obtain voluntary, written confirmation that all parties wish to resolve the matter through informal resolution before proceeding and will not pressure the parties to participate in this process.

The Complainant and/or Respondent may have an Advisor of their choice attend any meetings as part of the informal resolution as non-participatory, support persons. The parties are responsible for presenting their own information and Advisors are not permitted to question any party or to participate directly in the informal resolution process. Should either party wish to consult with their Advisor during one of the approaches listed above, the party should make this request to the Title IX Coordinator or alternative Mediator/Facilitator so they can pause any discussion or meeting to allow for external consultation.
The content of any discussions or meetings held as part of the informal resolution process will be kept as confidential and cannot be introduced as evidence in any formal resolution process should informal resolution be unsuccessful.

It is not necessary to pursue informal resolution first in order to pursue a formal grievance process, and any party participating in informal resolution can stop the process at any time and begin or resume the formal grievance process by sending this request to the Title IX Coordinator in writing. The decision by the Complainant or Respondent to participate, refuse to participate, or request to end informal resolution and return to the formal grievance process will not be a factor in any determination made by the Hearing Panel as to whether a policy violation occurred.

Parties may attempt more than one form of informal resolution. For example, if an attempt is made to participate in facilitated dialogue but the results are not satisfactory to both parties, the Complainant or Respondent may request a transition to a negotiated resolution agreement. If both parties agree, an attempt at negotiated resolution will be made.

Once informal resolution has been finalized, the terms of the agreement are binding on both parties and failure to abide by the terms of the resolution may be referred to the appropriate conduct process for review and possible application of responsive action or sanction(s). Results of complaints resolved by informal resolution are not appealable.

Should informal resolution be unsuccessful, the formal grievance process will resume at the same point where it was paused unless the Complainant requests a dismissal of their complaint in writing.

**Approach #1: Alternative Dispute Resolution**

Alternate Dispute Resolution is an informal process including mediation, facilitated dialogue, or restorative practices by which a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of alternate dispute resolution.

The ultimate determination of whether alternate dispute resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator may look to the following factors to assess whether alternate dispute resolution is appropriate or which form may be most successful for the parties:

- The parties’ amenability to alternate dispute resolution;
- Likelihood of potential resolution considering any power dynamics between the parties;
- The parties’ motivation to participate;
- Civility of the parties;
- Cleared violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Skill of the Alternate Resolution facilitator with this type of complaint;
- Complaint complexity;
- Emotional investment/intelligence of the parties;
• Rationality of the parties;
• Goals of the parties;
• Adequate resources to invest in Alternate Resolution (time, staff, etc.)

Mediation

This form of alternative dispute resolution is most appropriate when the parties are unlikely to reach a solution without support. Mediation involves a neutral mediator who seeks to improve the parties’ relationship through assisting them in understanding one another, introducing possible solutions to the problem, and making suggestions for improved communication.

**Step 1:** Mediator schedules private meetings with each party individually; guidelines for mediation will be presented to both parties.

**Step 2:** Mediator assesses appropriateness of mediation as a conflict resolution technique, and if appropriate schedules a joint meeting with all parties.

**Step 3:** Meeting is held to allow parties to share their views with one another without interruption, followed by an interactive mediator-guided discussion to determine a resolution, if possible.

**Step 4:** If resolution is reached between the parties, each party will review and sign a binding resolution agreement, which will outline terms of the resolution and expectations of the parties moving forward.

Facilitated Dialogue

This form of alternative dispute resolution is most appropriate when both parties are comfortable with direct interaction and management of the discussion but prefer the presence of a neutral third party. The process typically begins with a brief conversation between the neutral facilitator and each party to allow for an assessment of the situation. Once these conversations have occurred, the facilitator then schedules a meeting with the parties together.

During this meeting, the Complainant and Respondent participate in a facilitated discussion with the purpose being to develop a shared agreement regarding how to correct the harm perceived or realized by the Complainant. The parties work together to develop an agreement that resolves the issue and repairs relationships that were damaged by the conduct. The neutral facilitator acts as a buffer should emotions run high or the parties need assistance in maintaining focus on the primary issue(s). The facilitator may suggest breaks or interject comments/questions designed to redirect dialogue in a productive manner; however, the conversation is led by the parties.

Restorative Practices

Restorative Practices are grounded in the concepts and principles of Restorative Justice. While restorative justice is primarily viewed as reactive, responding to problem behavior and wrongdoing after the misconduct occurs, restorative practices focuses on processes that are proactive, building relationships and a sense of belonging and community to prevent further or ongoing conflict, harm, or misconduct. This form of alternative dispute resolution is most appropriate when there has been harm sustained by the Complainant that extends to the campus
community through a pattern of discriminatory or harassing behavior that has broken community relationships or trust in the Respondent to do no harm.

Restorative practices are processes by which the Respondent acknowledges wrongdoing, accepts responsibility for their decisions and actions, and takes steps to repair the harm caused to the Complainant and/or larger campus community. An intentional restorative approach addresses misconduct and harm in ways that strengthen relationships focuses in the harm that was realized rather than on the policy rule that was broken. Restorative practices give a voice to the person harmed, engaging conflict resolution practices with the goal of psychologically healing the Complainant while informing the Respondent of the harm they inflicted.

Approach #2: Respondent Accepts Responsibility for the Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether informal resolution can be used according to the criteria in that section above.

If informal resolution is applicable, the Title IX Coordinator will determine whether all parties and the College are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of Earlham policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the formal grievance process will resume at the same point where it was paused unless the Complainant requests a dismissal of their complaint in writing.

When a resolution is accomplished, the appropriate sanction(s) or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the misconduct both on the Complainant and the campus community.

Approach #3: Negotiated Resolution

Should it be determined that direct contact between the parties is not possible or not recommended due to concerns with safety, intimidation, retaliation, emotional distress, or discomfort, the Complainant or Respondent may request a negotiated resolution agreement to be facilitated by the Title IX Coordinator. Either party may request this resolution option in writing. The negotiated resolution agreement is a document that outlines expectations for activity and behavior dictated and agreed upon by the parties for an informal resolution of the allegations. Each party may submit to the Title IX Coordinator items for the agreement, which will be presented in writing to the opposing party until such time as a written resolution agreement satisfies the parties.

Examples of items that can be requested as part of a negotiated resolution agreement include but are not limited to:

- A change in residence or dorm room for one or more parties
• Restricted participation in social events or sports competitions
• Completion of online educational workshops on sexual harassment or related misconduct
• Change in class schedule (either in restricted course enrollment or a request for one party to drop a class or change a section)
• Institution or continuation of an NCD
• Restricted access to buildings and/or other campus spaces
• Campus community service

Negotiated resolution agreements are not appealable once the parties indicate their written assent to all agreed upon terms of resolution and sign the resolution document. When the parties cannot agree on all terms of resolution, the formal grievance process will resume at the same point where it was paused unless the Complainant requests a dismissal of their complaint in writing.

Negotiated resolution agreements are confidential and only shared with departments that have a need to know of certain expectations and activities in the event of a violation of the terms of the agreement. For example, if a Respondent agrees not to visit the residence hall of the Complainant, both the Department of Public Safety and Office of Residence Life would be informed of this stipulation.

**Formal Grievance Process**

For allegations of sexual harassment that cannot be resolved informally, a formal grievance process is available for complaint resolution. The formal grievance process involves an investigation of the alleged policy violation(s), a written report by the Investigator(s), a discovery period for parties and their Advisors to review and comment on the written investigative report and all relevant evidence, and a live hearing with cross-examination of the parties by the Advisors.

**Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the formal grievance process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

• A meaningful summary of all of the allegations
• The identity of the involved parties (if known)
• The precise misconduct being alleged
• The date and location of the alleged incident(s) (if known)
• The specific policies implicated
• A description of the applicable procedures
• A statement of the potential sanctions/responsive actions that could result
• A statement that Earlham presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination

• A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the discovery period

• A statement about Earlham’s policy on retaliation

• Information about the privacy of the process

• Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor

• A statement informing the parties that Earlham’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process

• Detail on how the party may request disability accommodations during the interview process

• A link to or copy of Earlham’s VAWA Brochure

• The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have

• An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Earlham records, or through a secure case management system. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Resolution Timeline

Earlham will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) academic day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate as well as an estimate of how much additional time will be needed to complete the process.

Appointment of Investigator(s)

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints one or more Investigators to conduct the investigation usually within two (2) academic days of determining that an investigation should proceed.
Ensuring Impartiality

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), Hearing Panelists, and Hearing Chair, may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

Unless there is a conflict of interest or bias identified by the parties, the Title IX Coordinator will serve as investigator in most cases. Any perceived bias or conflict of interest should be expressed in writing to the Title IX Coordinator’s supervisor so they can determine whether there is reasonable and supportable cause for appointment of an alternative Investigator. In the event the Title IX Coordinator cannot serve as the Investigator, they will assign one or more alternative trained Investigator(s), ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Senior Vice President for Finance and Administration. All reasonable and supportable conflicts of interest or disqualifying biases will be remedied.

The formal grievance process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual’s status or participation as a Complainant, Respondent, or Witness.

Earlham operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for one or more policy violations by the applicable standard of proof.

Investigation Timeline

Investigations are completed expeditiously, normally within thirty-four-to-five (30-45) academic days with some investigations taking additional time depending on the nature, extent, and complexity of the allegations, availability and responsiveness of the parties, Advisors, and/or witnesses, police involvement, etc.

Earlham will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

Delays in the Investigation Process and Interactions with Law Enforcement

Earlham may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, involvement of legal representation for either party, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.
Earlham will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The College or School will promptly resume its investigation and formal grievance process as soon as is feasible. During such a delay, the College will implement supportive measures as deemed appropriate. Earlham’s action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information as necessary.

Parties are afforded due process in resolution of a complaint of sexual harassment under Title IX. All parties have a full and fair opportunity through the investigation process to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps in investigation, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Initiate or assist with any necessary supportive measures in coordination with the Title IX Coordinator and other campus partners
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Provide each interviewed party and witness an opportunity to review and verify the Investigator’s summary notes of the relevant evidence/testimony from their respective interviews and meetings (or transcript if recorded)
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the
Investigator(s) to ask

- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors with the list of participating and non-participating witnesses
- Write a comprehensive investigative report fully summarizing the investigation, party and witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, render no determinations of alleged policy violation(s), and offer no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors a secured, electronic or hard copy of the draft investigative report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the Recipient does not intend to rely in reaching a determination and any directly related evidence that was not included in the report, for a ten (10) academic day review and comment period (“the Discovery Period”) so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days of the discovery period.
- Separate copies of the draft investigative report will be shared with the parties and their Advisors (if so desired by the parties) watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant’s Advisor, Respondent’s Advisor)
- The Investigator(s) may elect to respond in writing in the investigative report to the parties’ submitted responses and/or share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties’ written responses into the final investigative report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document rationale for any changes made after the review and comment period and provide this document to the parties and their Advisors
- The Investigator(s) shares the report with the Title IX Coordinator for their review and feedback
- The Investigator will incorporate any relevant feedback before sharing the final report with the parties and their Advisors through secure, electronic transmission or hard copy at least ten (10) academic days prior to the live hearing.

*Role and Participation of Witnesses in the Investigation*

Witnesses (as distinguished from the parties) who are employees of the College or School are
expected to cooperate with and participate in the investigation and formal grievance process. Failure of such witnesses to cooperate with and/or participate in the investigation or formal grievance process constitutes a violation of policy and may warrant administrative consequence or sanction.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. Earlham will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions if deemed appropriate by the Investigator(s). If a witness submits a written statement but is not present for cross-examination at the live hearing, their written statement can still be considered in the Hearing Panel’s deliberation.

**Recording of Interviews**

No unauthorized audio- or video-recording of any kind is permitted during investigation meetings. The Investigator will provide the option of interview audio recording to all involved parties. Should any party wish to be audio-recorded, this recording will become a part of the official case file to be shared openly during the discovery period of the formal grievance process (if applicable). Recordings will be made available to parties upon written request to the Title IX Coordinator until the conclusion of the formal grievance process.

**Evidentiary Considerations in the Investigation**

The investigation does not consider:

1. incidents not directly related to the possible violation, unless they evidence a pattern;
2. the character of the parties; or
3. questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

**Referral for Hearing**

Upon submission of the final investigative report to the parties and their Advisors, the Title IX Coordinator will refer the matter for a live hearing, which permits third-party adjudication of the alleged misconduct by a Hearing Panel. The hearing cannot be less than ten (10) academic days from the conclusion of the investigation unless all parties, their Advisors, and the Hearing Chair agree to an expedited timeline. The hearing will convene at a time determined by the Chair and agreeable to all parties and their Advisors as well as the selected hearing panelists.
**Hearing Panel**

The formal grievance process relies on a pool of administrators (“the Pool”) to carry out the hearing process. Members of the Pool are announced in an annual distribution of the Policy to all students, parents/guardians of students, employees, prospective students, and prospective employees. The Title IX Coordinator will select an appropriate Hearing Panel from the Pool depending on whether the Respondent is an employee or a student.

**Hearing Panel Composition**

The Title IX Coordinator will designate a three-member Hearing Panel from the Pool with one alternate panelist to serve as a replacement in the event of panelist bias during the hearing. In addition to the three (3) hearing panelists, a Hearing Chair will preside over the hearing. This administrative faculty member will remain the same for all Title IX hearings unless bias or conflict of interest necessitates their replacement.

Pool members who have served as Investigators will be witnesses in the hearing and therefore, may not serve on the panel. Pool members acting as Advisors for any party are also not permitted to serve on the panel. Equally, the Title IX Coordinator may not serve as a hearing panelist but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest.

It is the responsibility of the Hearing Panel to objectively evaluate all relevant evidence, both inculpatory and exculpatory, reach a determination regarding policy violation using the preponderance of evidence standard (i.e., whether it is more likely than not that the Respondent violated the Policy as alleged), and make recommendations for sanctioning. The Hearing Chair will receive the hearing panelists’ determination(s), assign sanction(s), and provide a Notice of the Outcome to the parties and their Advisors.

**Hearing Panel Roles**

Members of the Pool can serve in the following roles at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a mediator or facilitator role in informal resolution if appropriately trained in the resolution modality selected by the parties (i.e., mediation, facilitated dialogue, or restorative practices)
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a hearing panelist or Hearing Chair
- To serve as an Appeal Decision-Maker
Hearing Panel Appointment

Earlham’s Nominating Committee appoints the hearing panelists and the Title IX Coordinator appoints the other members of the Pool, which acts with independence and impartiality. While members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, Earlham can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of specialized skills, aptitudes, interests, or talents identified in members of the Pool that make them best suited to particular roles. If necessary, the Title IX Coordinator reserves the right to select external members to serve in a role within the Pool, ensuring appropriate annual training.

Hearing Panel Training

Members of the Hearing Panel receive annual training. This training includes but is not limited to:

- The scope of the Sexual Harassment Policy and Grievance Procedures for Alleged Violations of the Sexual Harassment Policy
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the College with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of
interest, and bias

- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

Specific training is also provided for Appeal Decision-Makers, Investigators, Advisors (who are Earlham’s employees), and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted on the Title IX website.

Evidentiary Considerations in the Hearing

Any evidence that the Hearing Chair determines is relevant and credible may be considered with a few exceptions.

The hearing does not consider:

1. incidents not directly related to the possible violation, unless they evidence a pattern;
2. the character of the parties; or
3. questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

After post-hearing deliberation, the Hearing Panel renders a determination based on the preponderance of the evidence and recommends to the Hearing Chair potential sanction(s). The Hearing Chair assigns sanctions according to the panelists’ decision appropriate to the Policy violation(s).

The parties may each submit a written impact statement prior to the hearing for the consideration of the Hearing Chair at the sanction stage of the process when a determination of responsibility is reached by the hearing panel. Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the formal grievance process.

Notice of the Hearing

No less than ten (10) academic days prior to the live hearing, the Title IX Coordinator will send notice of the hearing (“the NOH”) to the parties. Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Earlham records, or through a secure case.
management system. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The NOH will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities
- Any technology that will be used to facilitate the hearing
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Hearing Panel, Hearing Chair, parties, Advisors, and witnesses to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) academic days prior to the hearing
- A list of all those who will attend the hearing, along with an invitation to object to any hearing panelist or the Hearing Chair on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) academic days prior to the hearing. Prior to sending notice, the Title IX Coordinator will submit to the parties names of potential hearing panelists from the Pool requesting response on concerns of bias or conflict of interest. Despite this initial vetting of the Pool, parties have a second opportunity to object to any hearing panelist once assigned
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party’s or witness’s testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor (or if there will be a change in Advisor), so that they may appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Hearing Panel and Chair about the matter, unless they have been provided this already.
- An invitation to each party to submit to the Hearing Chair an impact statement pre-hearing that they will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least five (5) academic days prior to the hearing.
- Whether parties can or cannot bring mobile phones/devices into the hearing.
Hearings for alleged Policy violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline unless there is an agreement by the parties and their Advisors to pause the process until the start of the next academic year.

If the Respondent is a graduating student, a hold will be placed on graduation and/or receipt of official transcripts until the matter is fully resolved including any appeal. A student facing allegations under this Policy is not in good standing to graduate.

**Alternative Hearing Participation Options**

If either party prefers not to/cannot attend the hearing in person, they should request alternative arrangements from the Title IX Coordinator at least five (5) academic days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know at least five (5) academic days prior to the hearing so that appropriate arrangements can be made.

**Pre-Hearing Preparation**

The Chair, after any necessary consultation with the parties, Investigator, and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least 10 academic days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator or have provided a written statement or answered written questions, unless all parties and the Chair assent to the witness’s participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the hearing panelists at least 5 academic days in advance of the hearing. All objections to any panelist must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two days prior to the hearing. Hearing panelists will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

Similarly, the Title IX Coordinator will give the hearing panelists a list of the names of all parties, witnesses, and Advisors at least 5 academic days in advance of the hearing. Any panelist who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a panelist is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible but no later than 2 days before the hearing.
During the 10 academic day review (discovery) period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

**Pre-Hearing Meetings**

The Title IX Coordinator will offer a pre-hearing meeting with the Hearing Chair to all parties and their Advisors for the purposes of hearing preparation and submission of questions they wish to ask during cross-examination at the hearing. These questions may be submitted at the pre-hearing meeting or at a date that is no less than five (5) days before the hearing so that the Hearing Chair can rule on their relevance to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. The Hearing Chair must document and share their rationale for any exclusion or inclusion of questions to the party and their Advisor at least two (2) days before the hearing.

The advance submission of questions for cross-examination does not preclude the Advisors from asking for a reconsideration of any previously submitted or new question based on new information or testimony offered at the hearing. These must be submitted to the Hearing Chair in advance of asking so a ruling of relevance can be made. The Hearing Chair will inform the parties and their Advisors as to how to submit new questions and allow for review time and decision during the hearing.

The Hearing Chair may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigative report or during the hearing. This decision must be agreed upon by the parties.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigative report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Hearing Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Hearing Chair may consult with the Title IX Coordinator or ask the Title IX Coordinator to attend the pre-hearing meetings.

No pre-hearing meeting will be recorded.

**Hearing Procedures**

At the hearing, the Hearing Panel has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Harassment, and Nondiscrimination.

Participants at the hearing will include the Hearing Panel and Chair, one alternate panelist, the
Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations or assistive services.

The Hearing Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Hearing Chair will allow witnesses who have relevant information to appear at a portion of the live hearing in order to respond to specific questions from the Advisors and hearing panelists before being excused.

**Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same Respondent of substantially similar sexual misconduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged violation of the Policy.

**Order of the Hearing**

**Introductions and Explanation of Procedure**

The Hearing Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of a hearing panelist on the basis of bias or conflict of interest. The Hearing Chair will rule on any such challenge unless they are the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Hearing Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by the Title IX Coordinator, who will act as a non-voting hearing facilitator.

The hearing facilitator may attend to:

- logistics of rooms for various parties/witnesses as they wait
- flow of parties/witnesses in and out of the hearing space
- ensuring recording and/or virtual conferencing technology is working as intended
- copying and distributing materials to participants, as appropriate
- managing time for breaks and additional review requested by the Hearing Chair
- providing space for consultation as necessary between the parties and their Advisors
Investigator Presents the Final Investigation Report

The Investigator(s) will then present a summary of the final investigative report, including items that are contested and those that are not, and will be subject to questioning by the Hearing Panel and the parties’ Advisors. The Investigator(s) will be present during the entire hearing process, but not during Hearing Panel deliberations.

Neither the parties nor the Hearing Panel should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

Testimony and Questioning

Once the Investigator(s) present the investigative report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in an order determined by the Hearing Chair. The parties and witnesses will submit to questioning by the Hearing Panel and then by the parties through their Advisors. This process is referred to as cross-examination during the live hearing.

All questions are subject to a relevance determination by the Hearing Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Hearing Chair upon request or agreed to by the parties and the Hearing Chair), the proceedings will pause to allow the Hearing Chair time to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased. Questions not submitted in advance of the live hearing should not be asked outright but should be submitted to the Hearing Chair in writing or electronically so that a ruling of relevance can be made.

The Hearing Chair may explore arguments regarding relevance with the Advisors if they so choose. The Hearing Chair will then state their decision on the question for the record and advise the party or witness to whom the question was directed, accordingly. The Hearing Chair will explain any decision to exclude a question as not relevant or to reframe it for relevance.

The Hearing Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Chair has final say on all questions and determinations of relevance subject to any appeal. The Hearing Chair may consult with legal counsel on any questions of admissibility. The Hearing Chair may also ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once they have ruled on a question.

If the parties raise an issue of bias or conflict of interest for an Investigator or hearing panelist at the hearing, the Hearing Chair may elect to address those issues, consult with legal counsel, refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not a stated issue by the parties, the Hearing Chair should not permit irrelevant questions that probe for bias.
Refusal to Submit to Cross-Examination and Inferences

If a party chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting or they attend but refuse to participate in questioning, then the Hearing Panel may not rely on any prior statement made by that party at the hearing (including those contained in the investigative report) in the ultimate determination of responsibility. The Hearing Panel must disregard the statement in its entirety. Evidence provided that is something other than a statement by the party may be considered.

If a party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. The Hearing Panel may not draw any inference solely from a party or witness’ absence from the hearing or refusal to answer cross-examination or other questions.

If an Advisor refuses to comply with Earlham’s established rules of decorum for the hearing, the Hearing Chair may require the party to use a different Advisor. This may include postponing a hearing or pausing proceedings to allow for time for alternative selection or appointment.

Recording the Hearing

The live hearing as part of the formal grievance process is recorded by Earlham for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Hearing Chair, Hearing Panel, the parties, their Advisors, and the Appeal Decision-Maker(s) will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or permitted to make a copy of the recording without the permission of the Title IX Coordinator.

Deliberation, Decision-making, and Standard of Proof

After the conclusion of the live hearing, the Hearing Chair and panelists will deliberate in a closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used.

Considering all of the evidence presented, the Hearing Panel makes their determination of responsibility and submits this to the Hearing Chair for sanctioning. The Hearing Panel is permitted to provide recommendations for sanction(s) for consideration by the Hearing Chair.

When there is a finding of responsibility on one or more of the allegations of sexual harassment, the Hearing Chair may then consider the previously submitted party impact statements in determining appropriate sanction(s). The Hearing Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by another party. The Hearing Chair will
review the statements and any pertinent conduct history provided and will assign sanction(s) appropriate to the policy violations and any conduct history considered.

The Hearing Chair will submit a written deliberation statement to the Title IX Coordinator, detailing the Hearing Panel’s determination and rationale, including the evidence used in support of the determination, the evidence disregarded, and any credibility assessments, and the sanction(s) assigned (if applicable). A typical deliberation statement should not exceed 5 pages in length and must be submitted to the Title IX Coordinator within two (2) academic days of the end of deliberations unless the Title IX Coordinator grants an extension for reasonable delay. If an extension is granted, the Title IX Coordinator will notify the parties and their Advisors of the new timeline for decision and the reason for delay.

Notice of Outcome

Using the written deliberation statement, the Title IX Coordinator will work with the Hearing Chair to prepare a Notice of Outcome (“the NOO”). The Title IX Coordinator will then share the NOO, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within five (5) academic days of receiving the Hearing Chair’s deliberation statement.

The NOO will be shared with the parties simultaneously. Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Earlham records, or through a secure case management system. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The NOO will contain:

- the specific policy (or policies) reported to have been violated, including the relevant policy section
- a description of the procedural steps taken by Earlham from the receipt of the sexual harassment complaint to the determination of responsibility, including any and all notifications to the parties, interviews with parties and witnesses, methods used to obtain evidence, meetings, and hearing(s) held
- the finding on each alleged policy violation
- the findings of fact that support the determination
- conclusions regarding the application of the relevant policy to the facts at issue
- a statement of, and rationale for, the result of each allegation to the extent the Recipient is permitted to share such information under state or federal law
- any sanction(s) issued which the Recipient is permitted to share according to state or federal law
- any remedies provided to the Complainant designed to ensure access to Earlham’s educational or employment program or activity to the extent the Recipient is permitted to share such information under state or federal law. Note: this information is not typically shared with the Respondent unless the remedy directly relates to the Respondent.
- information on when the results are considered by the College or School to be final
• any changes that occur prior to finalization
• relevant procedures and bases for any available appeal options

Statement of the Rights of the Parties (see Appendix C)

Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

• The nature, severity of, and circumstances surrounding the violation(s)
• The Respondent’s conduct history
• Previous allegations or allegations involving similar conduct
• The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
• The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
• The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
• The impact on the parties
• Any other information deemed relevant by the Hearing Chair

The sanctions will be implemented as soon as is feasible either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in the Policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities or other conduct processes.

Student Sanctions

The following are sanctions/responsive actions that may be imposed upon students:

• Warning: A formal statement that the conduct was unacceptable and a warning that further violation of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.
• Required Counseling: A mandate to meet with and engage in either Earlham-sponsored or external counseling to better comprehend the misconduct and its effects.
• Probation: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
• **Suspension:** Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Earlham.

• **Expulsion:** Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Earlham-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student’s official transcript.

• **Other Actions:** In addition to or in place of the above sanctions, the Earlham may assign any other sanctions as deemed appropriate.

**Employee Sanctions**

The following are sanctions/responsive actions that may be imposed upon employees:

• **Warning – Verbal or Written**

• **Performance Improvement/Management Process**

• **Required Counseling**

• **Required Training or Education**

• **Probation**

• **Loss of Annual Pay Increase**

• **Loss of Oversight or Supervisory Responsibility**

• **Demotion**

• **Suspension with pay**

• **Suspension without pay**

• **Termination**

• **Other actions or sanctions as deemed appropriate**

**Leave, Withdrawal, Resignation, or Termination Prior to Complaint Resolution**

**Student Leave or Withdrawal**

If a student has an allegation pending for violation of the Policy, Earlham will place a hold on graduation and/or receipt of official transcript(s)/diploma.

Should a student decide not to participate in any resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from Earlham, the resolution process ends as the College no longer has jurisdiction over the withdrawn student. A student Respondent who withdraws or leaves prior to complaint resolution may not return to the College or School. A hold will be placed on their ability to be readmitted and a notation will be placed on their student file indicating that the student withdrew or left during a pending Title IX process. The student Respondent may also be barred from Earlham property and/or events. Additionally, any institution to request transfer information about the withdrawn or departed student Respondent student will be provided written notice that they left
or withdrew during a pending Title IX process.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to Earlham prior to the conclusion of the resolution process. Any sanction(s) assigned must also be satisfied before a student Respondent may return to the College or School.

Regardless of non-participation, leave, or withdrawal of a student engaged in a Title IX process, Earlham will continue to address and remedy any systemic issues or variables that may have contributed to the alleged policy violation(s) and any ongoing effects of the alleged sexual harassment, discrimination, and/or retaliation.

**Employee Resignation, Termination, or Contract Completion**

Should an employee Respondent resign, be terminated, or complete their employment contract with unresolved allegations of policy violation(s) pending, the resolution process ends as the College no longer has disciplinary jurisdiction over the employee. An employee Respondent who resigns or is terminated prior to complaint resolution is not eligible for rehire with Earlham College or Earlham School of Religion. A notation will be placed in their employee file indicating that the employee resigned or was terminated during a pending Title IX process. The employee Respondent may also be barred from Earlham property and/or events. All Earlham responses to future inquiries regarding employment references for an employee Respondent who resigns or is terminated during a pending resolution process will reflect this fact.

An employee Respondent whose contract ends prior to conclusion of the resolution process may continue participation at their discretion. Should the employee choose to participate and be found not responsible of any policy violation, no record of their engagement in a Title IX process will be included in their employee file. Additionally, Earlham will not disclose the matter with any future employer requesting a reference for the employee found not responsible.

Regardless of resignation, termination, or contract completion of an employee engaged in a Title IX process, Earlham will continue to address and remedy any systemic issues or variables that may have contributed to the alleged policy violation(s) and any ongoing effects of the alleged sexual harassment, discrimination, and/or retaliation.

**Appeals**

Any party may file a request for appeal, but it must be submitted in writing to the Title IX Coordinator within three (3) academic days of the delivery of the NOO. A single Appeal Decision-Maker will decide the appeal unless the request for appeal provides reasonable cause for additional Appeal Decision-Makers. This decision will be made by the Title IX Coordinator. If the cause submitted is substantiated, the Title IX Coordinator will assign two additional Appeal Decision-Makers to ensure a majority decision. No Appeal Decision-Maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal (“the RFA”) will be forwarded to the Appeal Decision-Maker(s) for consideration to determine if the request meets the grounds for appeal (i.e., a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to
whether the request meets the grounds and is timely filed.

**Grounds for Appeal**

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;

2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

3. The Title IX Coordinator, Investigator(s), Hearing Panel, or Hearing Chair had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the RFA do not meet the grounds in the Policy, that request will be denied by the Appeal Decision-Maker(s) and the parties and their Advisors will be notified in writing of the denial and rationale for this decision within seven (7) days of receipt of the appeal request by the Appeal Decision-Maker(s).

If any of the grounds in the RFA meet the grounds in the Policy, the Appeal Decision-Maker(s) will notify all parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the Hearing Panel and Chair in writing of the approval and rationale for this decision within seven (7) days of receipt of the appeal request by the Appeal Decision-Maker(s). Recipients of this notification may submit a response to the portion of the appeal that was approved and involves them within three (3) academic days. Responses are to be sent to the Title IX Coordinator for forward to the Appeal Decision-Maker(s) and the parties and their Advisors for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Decision-Maker(s) and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s), and/or the Hearing Panel and Chair, as appropriate, who will submit their responses within three (3) academic days. Responses are to be sent to the Title IX Coordinator for forward to the Appeal Decision-Maker(s) and the parties and their Advisors for review and comment.

Neither party may submit any new requests for appeal after this time period. The Appeal Decision-Maker(s) will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than seven (7) academic days, barring exigent circumstances. All decisions apply the preponderance of evidence standard.

**Notice of Appeal Outcome**

A Notice of Appeal Outcome (“the NOAO”) will be sent to all parties simultaneously including the decision on each approved ground and rationale. The NOAO will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that
may result and to the extent the Recipient is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the Recipient is permitted to share under state or federal law.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Earlham records, or through a secure case management system. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

**Sanction Status During the Appeal**

Any sanction(s) imposed as a result of the live hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above. If any of the sanctions are to be implemented immediately post-hearing then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

Earlham may still place holds on official transcript(s), diploma, graduation, and course enrollment pending the outcome of an appeal when the original sanction(s) included separation.

**Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

- Appeals are not intended to provide for a full re-hearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

- An appeal is not an opportunity for the Appeal Decision-Maker(s) to substitute their judgment for that of the original Hearing Panel and Chair merely because they disagree with the finding and/or sanction(s).

- The Appeal Decision-Maker(s) may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.

- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Hearing Panel and Chair for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.

- **Once an appeal is decided, the outcome is final.** Further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).

- In rare cases where a procedural error cannot be cured by the original Hearing Panel and/or Chair (as in cases of bias), the appeal may order a new hearing with a new Hearing Panel and/or Chair.

- The results of a remand to a Hearing Panel and Chair cannot be appealed. The results of
a new hearing can be appealed, once, on any of the three (3) available appeal grounds.

- In cases in which the appeal results in reinstatement to the College or School or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short-term.

**Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by the College or School to the Respondent to ensure no effective denial of educational access.

Earlham will maintain the privacy of any long-term remedies/actions/measures provided privacy does not impair the College or School’s ability to provide these services.

**Failure to Comply with Sanctions and/or Interim and Long-Term Remedies/Other Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Hearing Panel and Chair and/or Appeal Decision-Maker(s).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the College or School and may be noted on a student’s official
transcript(s) or Dean’s certification.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

**Recordkeeping**

In accordance with federal regulations 34 C.F.R. § 106.45(b)(10), Earlham will maintain for a period of 7 years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the College’s education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Hearing Panelists and Chairs, and any person who facilitates an informal resolution process. Earlham will make these training materials publicly available on the College’s and School’s website.
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
   a. The basis for all conclusions that the response was not deliberately indifferent;
   b. Any measures designed to restore or preserve equal access to the College’s or School’s education program or activity; and
   c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Earlham will also maintain any and all records in accordance with state and federal laws.

**Disability Accommodation in the Resolution Process**

Earlham is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to Title IX resolution processes.

Anyone needing such accommodations or support should contact the Office of Disability and Accessibility (students) or Human Resources (employees or visitors) who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are reasonable for full participation in the process.

**Revision of the Policy and Grievance Procedures**

This Policy and procedures supersedes any previous policies addressing sexual harassment,
discrimination, retaliation, and other Civil Rights offenses and will be reviewed and updated annually by the Title IX Coordinator. Earlham reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the informal resolution or formal grievance process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party such as to accommodate summer schedules or reasonable requests for delay. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and grievance procedures.

If government laws or regulations change—or court decisions alter—the requirements in a way that impacts this document, this document will be updated to comply with the most recent government regulations or holdings. Where updates are not possible in a timely manner, the Title IX Coordinator will make parties aware of the changes to policy or procedure, citing applicable legal or regulatory documents.

This document does not create legally enforceable protections beyond the protection of state and federal laws which frame applicable codes and the Policy and grievance procedures, generally.

**Glossary of Policy and Procedural Terms**

*Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.

*Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.

*Complaint (formal)* means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the recipient investigate the allegation.

*Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).

*Education program or activity* means locations, events, or circumstances where Earlham exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Earlham.

*Final Determination:* A conclusion by the preponderance of evidence that the alleged conduct occurred and whether it did or did not violate policy.

*Finding:* A conclusion by the preponderance of evidence that the conduct did or did not occur as alleged.
Formal Grievance Process refers to a method of formal resolution designated by the recipient to address conduct that falls within the policies included below, and which complies with the federal requirements of 34 CFR Part 106.45.

Hearing Pool includes any Investigators, Hearing Panelists, Appeal Decision-Makers, Hearing Chairs, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).

Hearing Panel refers to those who have decision-making and sanctioning authority within Earlham’s formal grievance process.

Investigator means the person or persons charged by Earlham with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.

Notice means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

Official with Authority (OWA) means an employee of Earlham explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of Earlham.

Parties include the Complainant(s) and Respondent(s), collectively.

Recipient means a postsecondary education program that is a recipient of federal funding.

Remedies are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Earlham’s educational program.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.

Resolution means the result of an informal resolution or formal grievance process.

Sanction means a consequence imposed by the Recipient on a Respondent who is found to have violated this policy.

Sexual Harassment is the umbrella category including the offenses of sexual harassment, sexual assault, dating violence and domestic violence, and stalking.

Title IX Coordinator is at least one official designated by Earlham to ensure compliance with Title IX and Earlham’s Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
APPENDIX A: POLICY EXAMPLES

Some examples of possible sexual harassment include:

1. A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.

2. A student repeatedly sends graphic, sexually-oriented jokes and pictures around campus via social media to hundreds of other students. Many don’t find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.

3. A professor engages students in class in discussions about the students’ past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor enquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.

4. An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.

5. Chris has recently transitioned from male to non-binary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being non-binary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo at the bar. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Coordinator and alleges that Chris is sexually harassing him.

\(^5\) ATIXA recommends incorporation of examples into policy as an educational and preventive tool. Some campuses may prefer to break these out into separate documents or resources.
Examples of Stalking:

1. Students A and B were friends with benefits. Student A wanted a more serious relationship, which caused student B to break it off. Student A could not let go, and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if they had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.

2. A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor’s car, both on-campus and at home. Asked again to stop, the student stated by email, “You can ask me to stop, but I’m not giving up. We are meant to be together, and I’ll do anything to make you have the feelings for me that I have for you.” When the tutor did not respond, the student emailed again, “You cannot escape me. I will track you to the ends of the earth. If I can’t have you, no one will.”

Examples of Sexual Assault:

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being “a prude.” He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to “jerk him off” (hand to genital contact). Amanda would have never done it but for Bill's incessant advances. He feels that he successfully seduced her and that she wanted to do it all along but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left.

2. Jiang is a junior. Beth is a sophomore. Jiang comes to Beth’s residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses,
and begins to have intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.

3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it’s a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other’s clothes, and they end up in John’s bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can’t help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he came to again. When Kevin runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

Examples of Retaliation:

1. Student-athlete A alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete’s playing time without a legitimate justification.

2. A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes his approval for her to attend a national conference, citing the faculty member’s tendency to “ruffle feathers.”

3. A student from Organization A participates in a sexual misconduct investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.
APPENDIX B: RECOMMENDED CARE FOR VICTIMS OF SEXUAL ASSAULT AND INTIMATE PARTNER VIOLENCE

Immediate steps a victim of sexual or intimate partner violence may take

- Get to a safe place as soon as possible
- Seek medical attention

After an incident of sexual assault, dating violence, or domestic violence, the victim should consider seeking medical attention as soon as possible, even if there are no obvious signs of physical injury. You may wish to consult with medical personnel quickly regarding: prevention of sexually transmitted infections, pregnancy, evidence collection, and toxicology testing if there are signs that drugs or alcohol may have facilitated the assault. Individuals of any gender can be victims of sexual assault, dating violence, domestic violence or stalking. Earlham encourages victims to seek medical attention at the emergency room of the local hospital.

Local Hospital
Reid Hospital
1100 Reid Parkway
Richmond, IN 47374
765-983-3000
www.reidhospital.org

Reid Hospital has trained Sexual Assault Nurse Examiners (SANE) who conduct forensic examinations and collect the evidence for the sexual assault kits. In Indiana, evidence may be collected even if you choose not to make a report to law enforcement.

SANE services are provided free of charge to all victims, regardless of your decision to involve law enforcement. The SANE program is staffed by registered nurses who have completed specialized education and clinical preparation in the medical forensic care of a patient who has experienced sexual assault or abuse.

Things to know about the SANE exam

- During the exam you can expect to be examined for internal and external injuries, foreign hair samples, and semen or other body fluids.
- If possible, bring an extra set of clothes and a friend or another supportive person.
- If you think you may want to file a police report in the future, do not shower, drink, eat, douche, or change your clothes prior to the exam. These activities can destroy important physical evidence that is useful should you decide to make a police report. If you’ve already showered or changed, it’s still okay to go to a SANE for an exam.
- Document everything you remember happening with as much detail as possible. If you have changed your clothes, please bring the clothes you were wearing to the hospital.
- You can choose to have forensic evidence collected without immediately filing a police report.

In the event an adult victim chooses not to report the sexual assault incident to law enforcement,
evidence obtained from the examination will be securely stored for the period of one year using only a confidential number. In circumstances of sexual assault, if victims do not opt for forensic evidence collection, health care providers can still treat injuries and take steps to address concerns of pregnancy and or sexually transmitted infections.

Victims of sexual assault, domestic violence, dating violence, and stalking are encouraged to also preserve evidence by saving text messages, instant messages, social networking pages, other communications, pictures, logs, copies of documents, that would be useful, if applicable, to College adjudicators and investigators, in addition to the police.

**Preserve Evidence**

The best way to preserve evidence after an incident has occurred is to immediately seek medical attention after the event. As time passes, evidence may dissipate or become lost or unavailable, thereby making investigations, possible prosecution, disciplinary proceedings, or obtaining protection from abuse orders related to the incident more difficult.

If a victim chooses not to make a complaint regarding an incident with the Title IX Office, they should consider speaking with Richmond Police Department to preserve evidence in the event that the victim decides to report the incident to the College at a later date. This preservation of evidence may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order.

If you wish to press charges or seek a protective order, it is important to preserve and record evidence including: recording a description of the perpetrator (including type of clothing, race, age, height, weight, hair color, eye color, distinguishing marks, etc.), details of events, where events occurred, and the direction of travel of any vehicle involved. Best practices to preserve evidence with respect to sexual offenses include seeking medical attention shortly after the event.

**Reporting alleged offenses to law enforcement**

If the victim of a sexual assault or intimate partner violence wishes to seek the assistance of law enforcement, the victim should contact Earlham Public Safety immediately by calling 765-983-1400. If the individual is off-campus, immediately call 9-1-1 or contact the appropriate law enforcement agency:

- Richmond Police Dept. 765-983-7247
- Wayne County Sheriff 765-973-9393
- Indiana State Police 765-778-2121

Talk with an advocate or counselor or contact someone you trust to be with you and support you.
APPENDIX C: STATEMENT OF RIGHTS OF THE PARTIES

1. The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to Recipient officials.

2. The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.

3. The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.

4. The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.

5. The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.

6. The right to be treated with respect by Recipient officials.

7. The right to have Recipient policies and procedures followed without material deviation.

8. The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.

9. The right not to be discouraged by Recipient officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.

10. The right to be informed by Recipient officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by Recipient authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.

11. The right to have allegations of violations of this Policy responded to promptly and with sensitivity by Recipient law enforcement and/or other Recipient officials.

12. The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.

13. The right to a Recipient -implemented no-contact directive (NCD) [or a no trespass directive against a non-affiliated third party] when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others.
14. The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:

- Relocating an on-campus student’s housing to a different on-campus location
- Assistance from Recipient staff in completing the relocation
- Changing an employee’s work environment (e.g., reporting structure, office/workspace relocation)
- Transportation accommodations
- Visa/immigration assistance
- Arranging to dissolve a housing contract and a pro-rated refund
- Exam, paper, and/or assignment rescheduling or adjustment
- Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
- Transferring class sections
- Temporary withdrawal/leave of absence (may be retroactive)
- Campus safety escorts
- Alternative course completion options.

15. The right to have the Recipient maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the Recipient’s ability to provide the supportive measures.

16. The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.

17. The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.

18. The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.

19. The right not to have irrelevant prior sexual history or character admitted as evidence.

20. The right to know the relevant and directly related evidence obtained and to respond to that evidence. The right to fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.

21. The right to receive a copy of the investigation report, including all factual, policy,
and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.

22. The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.

23. The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.

24. The right to regular updates on the status of the investigation and/or resolution.

25. The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received at least 8 hour of relevant annual training.

26. The right to a Hearing Panel that is not single-sex in its composition, if a panel is used.

27. The right to preservation of privacy, to the extent possible and permitted by law.

28. The right to meetings, interviews, and/or hearings that are closed to the public.

29. The right to petition that any Recipient representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.

30. The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.

31. The right to the use of the appropriate standard of evidence to make a finding after an objective evaluation of all relevant evidence.

32. The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.

33. The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.

34. The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.

35. The right to be informed in writing of when a decision by the Recipient is considered final and any changes to the sanction(s) that occur before the decision is finalized.
36. The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the Recipient.

37. The right to a fundamentally fair resolution as defined in these procedures.

*Sexual Assault Victims’ Bill of Rights*


Victim’s Bill of Rights from the Indiana Constitution as amended in 2016: [www.iga.in.gov/legislative/laws/const](http://www.iga.in.gov/legislative/laws/const)

Victims are afforded rights by the federal government, the state, and the College. All students have the right to emotional and physical safety.

Federal law entitles sexual assault victims to the following rights:

- The accuser and accused have the same opportunity to have others present throughout disciplinary proceedings.
- Both parties shall be informed of the outcome of any disciplinary proceeding.
- At no time can a victim be required to keep the outcome confidential.
- Victims shall be informed of their options to notify law enforcement.
- Victims shall be notified of counseling services available on and off campus.
- Victims shall be notified of options for changing academic and living situations.
- Victims may obtain a free forensic exam from Reid Hospital by a Sexual Assault Nurse Examiner without filing a police report or involving the police in any way. Other hospital charges may apply.

Indiana state law outlines the following rights:

- A victim has the right to be treated with fairness, dignity and respect throughout the criminal justice process.
- A victim has the right to be informed, upon request, when a person who is accused of committing or convicted of committing a crime perpetrated directly against the victim, is released from custody or has escaped. This includes release or escape from a mental health facilities.
- A victim has the right to have the victims’ safety considered in determining release from custody of a person accused of committing a crime against the victim.
- A victim has the right to information, upon request, about the disposition of the criminal case involving the victim or the conviction, sentence and release of a person accused of committing a crime against the victim.
- A victim has the right to be heard at any proceeding involving sentence or a post-conviction release decision. A victim’s right to be heard may be exercised, at the victim’s
discretion, through an oral or written statement, or submission of a statement through audiotape or videotape.

- A victim has the right to make a written or oral statements for use in preparation of the presentence report. The victim also has the right to read pre-sentence reports relating to the crime committed.

- The alleged felony or misdemeanor was committed against the victim by a person who:
  - Is or was a spouse of the victim;
  - Is or was living as if a spouse of the victim; or
  - Has a child in common with the victim

- A victim has the right to confer with a representative of the prosecuting attorney’s office after a crime allegedly committed against the victim has been charged; before the trial of a crime allegedly committed against the victim; and before any disposition of a criminal case involving the victim. This right applies in the following situations:
  - The alleged felony was directly committed against the victim.
  - The alleged felony or misdemeanor was an offense against the person, which includes the crimes of: battery, domestic battery, aggravated battery, battery by body waste, criminal recklessness, intimidation, harassment, invasion of privacy, or pointing a firearm.
APPENDIX D: VIOLENCE RISK ASSESSMENT (VRA)

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A Violence Risk Assessment (VRA) is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other Behavioral Intervention Team (BIT) (sometimes also known as CARE teams) members.

A VRA occurs in collaboration with the BIT, CARE, and or threat assessment team and must be understood as an on-going process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

1. an appraisal of risk factors that escalate the potential for violence;
2. a determination of stabilizing influences that reduce the risk of violence;
3. a contextual analysis of violence risk by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
4. the application of intervention and management approaches to reduce the risk of violence.

To assess an individual’s level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the Threat Assessment Team. The Threat Assessment Team will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case. The Threat Assessment Team conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to health and/or safety of an individual or the community.

The VRA is conducted independently from the Title IX process, free from outcome pressure, but is informed by it. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

Some examples of formalized approaches to the VRA process include: The NaBITA Risk Rubric, The Structured Interview for Violence Risk Assessment (SIVRA-35), The Extremist Risk Intervention Scale (ERIS), Looking Glass, Workplace Assessment of Violence Risk (WAVR-21), Historical Clinical Risk Management (HCR-20), and MOSAIC.
6 www.nabita.org/tools
7 www.nabita.org/resources/assessment-tools/sivra-35/
8 www.nabita.org/resources/assessment-tools/eris/
9 www.nabita.org/looking-glass
10 www.wavr21.com
11 hcr-20.com
12 www.mosaicmethod.com