

# Earlham

## COLLEGE

### Discrimination and Harassment Grievance Procedures

1 August 2024

## **Policy Specifications**

**Responsible Office:** Office of the President  
Office of Title IX  
Human Resources  
Student Life

**Responsible Parties:** Chief Diversity Officer  
Chief Human Resources Officer  
Title IX Coordinator  
Student Conduct Officer  
Section 504 Coordinator

**Approval Body:** President  
**Approval Date:** March 3, 2017  
**Revision Date:** August 1, 2024

**Approved by:**

**Related Policies:** Nondiscrimination and Anti-Harassment Policy  
Sex Discrimination and Sex-Based Harassment  
Notice of Nondiscrimination  
Policy on Accommodation of Students with Disabilities  
Pregnancy and Related Conditions, and Parenting Students

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## I. Scope

These procedures apply to all alleged Prohibited Conduct as described in Earlham's [Nondiscrimination and Anti-Harassment Policy](#), as well as its policy on Sex Discrimination and Sex-based Harassment, when involving Earlham College and Earlham School of Religion ("Earlham") students, staff, teaching and administrative faculty members, or third parties engaging in or attempting to engage in an Earlham Educational Program and Activity.

## II. Statement on Application of these Procedures

- A. Consistent with its commitment to addressing unlawful discrimination and harassment, Earlham College complies with multiple laws that prohibit discrimination and harassment, including but not limited to Titles VI and VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990, as amended; the Age Discrimination Act of 1975; and relevant state and local laws.
- B. These procedures describe an administrative process to resolve complaints of alleged violation of Earlham's [Nondiscrimination and Anti-Harassment Policy](#) and its policy on Sex Discrimination and Sex-based Harassment. (Reference to "the Policy" includes both policies, unless one policy is specifically identified).
- C. Employees or students found responsible for engaging in Prohibited Conduct are subject to disciplinary action as described in these procedures.
- D. The procedures below may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported discrimination and harassment. In such circumstances, the Responsible Compliance Officer may consult with Earlham officials who oversee such conduct (e.g., Human Resources, Student Conduct, Academic Affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of Responsible Compliance Officer. All other allegations of misconduct unrelated to incidents covered by the Policy will be referred to the

appropriate process and addressed separately through procedures described in Earlham's *Student Handbook*, *Faculty Handbook* (College or School of Religion), or *Employee Manual*.

### III. Definitions

- A. **Administrative Resolution:** A process by which a Responsible Administrator assigns sanctions as appropriate in instances in which a Respondent voluntarily accepts responsibility and chooses not to dispute the claims in a grievance.
- B. **Advisor:** Any person chosen by a party, or appointed by the institution, who may accompany the party to all meetings related to the Resolution Process and advise the party on that process. In a hearing, the advisor poses questions on behalf of the parties.
- C. **Appeal Decision-maker:** The person or panel who accepts or rejects a submitted appeal request, determines whether any of the grounds for appeal are met, and directs responsive action(s), accordingly.
- D. **Collateral Misconduct:** Potential violations of other Earlham policies not incorporated into the Nondiscrimination and Anti-Harassment Policy or policy on Sex Discrimination and Harassment that occur in conjunction with alleged violations of those Policies, or that arise through the course of an investigation, for which it reasonable and appropriate to provide one resolution for all charges.
- E. **Complainant:** The individual who is alleged to be the victim of conduct that could constitute a violation of Earlham's nondiscrimination and anti-harassment policies.
- F. **Complaint:** An oral or written request to Earlham that can objectively be understood as a request for Earlham to investigate and make a determination about alleged Policy violation(s).



### G. **Confidential Employee:**

1. An employee whose communications are privileged or confidential under federal or state law. The employee's confidential status, for purposes of this definition, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
2. An employee whom Earlham has designated as confidential for the purpose of providing services to persons related to discrimination, harassment, or retaliation. If the employee also has a duty not associated with providing those services, the employee's confidential status only applies with respect to information received about discrimination, harassment, or retaliation in connection with providing those services; or
3. An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about discrimination, harassment, or retaliation. The employee's confidential status only applies with respect to information received while conducting the study.
4. These individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.

H. **Counter-complaints:** Claims by a Respondent against a Complainant, typically filed in answer to an original complaint.

I. **Day:** All references to days in these Procedures refer to business days unless specifically noted as calendar days.

J. **Decision-maker:** The person or panel who hears evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.

- K. **Disciplinary Sanctions:** See *Sanction*
- L. **Education Program or Activity:** Locations, events, or circumstances where Earlham exercises substantial control over the context in which the discrimination, harassment, and/or retaliation occurs and also includes any building owned or controlled by a student organization that Earlham officially recognizes. This includes Clery-defined campus jurisdiction, as well as off-campus locations required as part of Earlham’s curricular and co-curricular activity.
- M. **Employee:** A person employed by Earlham either full- or part-time, including student employees when acting within the scope of their employment.
- N. **Final Determination:** A conclusion by the preponderance of the evidence standard of proof that the alleged conduct did or did not violate Policy.
- O. **Finding:** A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- P. **Grievance:** A formal complaint due to a perceived violation of Earlham’s nondiscrimination and anti-harassment policies.
- Q. **Informal Resolution:** A resolution process that is an alternative to a formal grievance process. Informal resolution is agreed to by the Parties and approved by the Responsible Compliance Officer prior to a Final Determination in the Resolution Process.
- R. **Investigator:** The Earlham official or external consultant who is trained to investigate allegations of policy violations.
- S. **Knowledge:** When Earlham receives Notice of conduct that reasonably may constitute harassment, discrimination, or retaliation in its Education Program or Activity.
- T. **Mandated Reporter:** An individual with a duty to report any actual or suspected conduct that may reasonably constitute discrimination or harassment or other prohibited conduct. This duty to report extends to all Earlham employees, student workers (including teaching assistants, resident

assistants, graduate assistants, etc.,) contract workers on Earlham's campus, and volunteers.

- U. **Notice:** When an employee, student, or third party informs the Responsible Compliance Officer of the alleged occurrence of discriminatory, harassing, and/or retaliatory conduct.
- V. **Parties:** The Complainant(s) and Respondent(s), collectively.
- W. **Pregnancy or Related Conditions:** Pregnancy, childbirth, termination of pregnancy, or lactation; medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
- X. **Preponderance of the Evidence:** The standard of proof that must be met to determine responsibility for a violation of Earlham Policy. To prove an element by a preponderance of the evidence means to prove that something is "more likely than not." In other words, when making a determination a Decision-maker will be asked whether, in light of the evidence and the policy, they believe each element of a claim or counterclaim is more likely to be true than not.
- Y. **Prohibited Conduct:** Any discrimination on the basis of a protected characteristic, harassment on the basis of a preselected characteristic, sexual harassment, bullying, and retaliation, as defined in the [Nondiscrimination and Anti-Harassment Policy](#) and the policy on Sex Discrimination and Sex-based Harassment.
- Z. **Protected Categories:** Personal traits, characteristics and/or beliefs that are defined by applicable state law, federal law or Earlham policy as protected from discrimination and/or harassment, including race, color, national origin, and religion; sex, including gender, gender identity, sexual orientation, pregnancy, childbirth, and related medical conditions; age; disability; veterans and past or present service members (Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; Age Discrimination Act of 1975; Vietnam Era Veterans' Readjustment Assistance Act of 1974; Uniform Services Employment and Reemployment Rights Act of

1994). Indiana law also prohibits discrimination in employment on the basis of off-duty tobacco use, and sealed or expunged arrest or conviction record (Indiana Code § 22-5-4-1, Indiana Code § 35-38-9-10).

**AA. Relevant Evidence:** Evidence that may aid a Decision-maker in determining whether the alleged discrimination, harassment, or retaliation occurred, or in determining the credibility of the Parties or witnesses.

**BB. Remedies:** Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to Earlham's Education Program and Activity.

**CC. Resolution Process:** The investigation and resolution of allegations of prohibited conduct under Earlham policies on discrimination and harassment, including Informal Resolution, Administrative Resolution, and/or Hearing Resolution.

**DD. Respondent:** An individual who is alleged to have committed Prohibited Conduct.

**EE. Responsible Administrator:** The College administrator with delegated responsibility for management or supervision of a department, unit or division of the institution in which the Respondent is employed or has primary affiliation.

**FF. Responsible Compliance Officer(s):** Employees who are responsible for ensuring Earlham nondiscrimination and anti-harassment policies and related procedures are followed. As used in these policies and procedures, the "Responsible Compliance Officer" also includes their designee(s). Responsible Compliance Officers include:

1. **Chief Diversity Officer:** The Cabinet-level Earlham administrator with responsibility for the development and implementation of diversity, equity and inclusion (DEI) initiatives within the organization. The Chief Diversity Officer receives complaints of discrimination and harassment (not based on sex or disability)

involving employee respondents. The Chief Diversity Officer is appointed by the president.

2. **Chief Human Resources Officer:** The Earlham administrator with oversight over Human Resources management, labor relations policies, practices and operations. Human Resources coordinates institutional responses to employee-related discrimination and harassment complaints with the Chief Diversity Officer or the Title IX Coordinator, whichever is appropriate.
3. **Student Conduct Officer:** The Conduct Officer is the Associate Vice President for Student Life (AVP) or designee who is responsible for initiating an investigation of alleged student violation of Earlham policy, including discrimination and harassment (not based on sex or disability), and coordinating the College's response. The Student Conduct Officer collaborates with the Chief Diversity Officer and/or Title IX Coordinator, when appropriate, on institutional responses to discrimination and harassment involving students.
4. **Title IX Coordinator:** The Earlham employee with designated Title IX compliance authority. This individual has the primary responsibility for coordinating intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sex discrimination, sex-based harassment, and retaliation prohibited under the Policy.
5. **Section 504 Coordinator:** The Earlham employee with designated responsibility for preventing discrimination against students, employees, and others based on a disability and ensuring compliance with all procedures and procedural safeguards required under Section 504 of the Rehabilitation Act, the Fair Housing Act, and the Americans with Disabilities Act.

GG. **Sanction:** A formal Earlham response or punishment should a Respondent be found Responsible for violation of Earlham policy.

HH. **Sex:** Sex assigned at birth, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

II. **Student:** Any person who is admitted, enrolled, or registered for study at Earlham College, both undergraduate and graduate, for any academic period and/or those who may attend other educational institutions but reside in an Earlham residence facility. Those who are not officially enrolled for a specific term but who have a continuing relationship with, or an educational interest in, Earlham College are considered “students.” A person also shall be regarded as a student during any period in which the student is under suspension from the institution or when the person is attending or participating in any preparatory activity before the beginning of a school term, including, but not limited to, pre-orientation experiences, orientation, placement testing, and residence hall check-in.

JJ. **Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

#### IV. **Institutional Contacts for Discrimination and Harassment Reports**

##### A. **For discrimination and harassment (not based on sex or disability)**

The following individuals receive complaints of discrimination and harassment (not based on sex or disability) involving employee respondents.

*The Chief Diversity Officer coordinates institutional response in collaboration with the offices of Human Resources or the Provost.*

##### **Office of the President**

Gariot P. Louima, PhD

Vice President for Strategic and Diversity Initiatives

Office of the President

Phone: 765-983-1208

Email: [louimga@earlham.edu](mailto:louimga@earlham.edu)

*The Office of Human Resources determines reasonable accommodations for qualified employees with disabilities.*

**Office of Human Resources**

Tracy Amyx  
Human Resources Director  
Phone: 765-983-1628  
Email: [amyxtr@earlham.edu](mailto:amyxtr@earlham.edu)

*The Associate Vice President for Student Life serves as the Student Conduct Officer, with responsibility for initiating an investigation of alleged student violation of Earlham policy.*

**Student Life**

Shane Peters, MS.Ed.  
Associate Vice President for Student Life  
(Student Conduct Officer)  
Phone: 765-983-1317  
Email: [petersh@earlham.edu](mailto:petersh@earlham.edu)

**B. For sex discrimination and sex-based harassment allegations**

*The Office of Title IX receives and coordinates all institutional responses to complaints of sex discrimination and sex-based harassment.*

**General Contact for the Office of Title IX**

Visit <https://earlham.edu/title-ix-information>  
Email [titleix@earlham.edu](mailto:titleix@earlham.edu)

**Title IX Coordinator**

Beth M. Birky, Ph.D.  
Director of Title IX and Equal  
Opportunity  
Title IX Office  
Human Resources 301  
Phone: 765-983-1346  
Email: [birkybe@earlham.edu](mailto:birkybe@earlham.edu)

**Deputy Title IX Coordinator for Athletics**

Cathryn Dickman, MPH  
Athletics and Wellness Center,  
Office 2105  
Phone: 765-983-1889  
Email: [cathrynd@earlham.edu](mailto:cathrynd@earlham.edu)

### **C. For student disability accommodations and related policy violation allegations**

*The Section 504 Coordinator determines reasonable accommodations for qualified students with disabilities.*

#### **Section 504 Coordinator**

Jennifer James  
Director of Disability and Access Services  
Phone: 765-983-1390  
Email: [jamesje@earlham.edu](mailto:jamesje@earlham.edu)

### **D. To Report Externally**

*Concerns about the Earlham's application of this Policy and compliance with certain federal civil rights laws may also be addressed 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](mailto: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, 37<sup>th</sup> Floor  
Chicago, IL 60604  
Telephone: 312-730-1560  
Fax: 312-730-1576  
TDD#: 800-877-8339  
Email: [ocr.chicago@ed.gov](mailto:ocr.chicago@ed.gov)

For complaints involving employee-on-employee conduct: Equal Employment Opportunity Commission (EEOC). Visit <https://www.eeoc.gov/contact-eeoc>.

### **V. Confidential Campus Resources**

The following individuals are either confidential under Indiana law or designated confidential by Earlham. An Employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties



to which privilege or confidentiality applies (i.e., confidential status applies when the individual is serving in the role listed below):

**A. Student Counseling Services**

*Confidential under Indiana law and professional licensure*

**General Contact**

Earlham Hall (1<sup>st</sup> floor – West Wing)

Phone: 765-983-1328

Office hours: 8:30 a.m. to 4:30 p.m. on weekdays year-round, except major holidays

**Alisa Damholt, MSW, LCSW**

Director of Counseling Services

Phone: 765-983-1432

Email: [alisad@earlham.edu](mailto:alisad@earlham.edu)

**Darcey Meridith, MSW, LCSW**

Contract Counselor

Phone: 765-983-1608

Email: [dkmerid90@earlham.edu](mailto:dkmerid90@earlham.edu)

**Shamara A. Dickenson, MS,  
CWHC**

Wellness and Health Coach

Phone: 765-983-1449

Email: [dickesh@earlham.edu](mailto:dickesh@earlham.edu)

**Desiree Tharp-Davis, MS, LPC  
Counselor**

Phone: 765-983-1608

Email: [tharpde@earlham.edu](mailto:tharpde@earlham.edu)

**Barbie Will, MSW, LCSW**

Contract Counselor

Phone: 765-983-1609

Email: [willba@earlham.edu](mailto:willba@earlham.edu)

**B. Health Services**

*Confidential under Indiana law and professional licensure*

**General Contact**

Office: Earlham Hall (1<sup>st</sup> floor – West Wing)

Phone: 765-983-1328

Fax: 765-983-1488

Email: [healthservices@earlham.edu](mailto:healthservices@earlham.edu)

Office hours: 8:30 a.m. to 4:30 p.m. on weekdays year-round, except major holidays

**Courtney Skaggs PMHNP-BC**  
Psychiatric Nurse Practitioner  
Email: [skaggco@earlham.edu](mailto:skaggco@earlham.edu)

**Windel Stracener, M.D.**  
Campus Physician  
Phone: 765.983.1328

**Amanda Wright, R.N.**  
Nurse  
Office: 765.983.1328  
Email: [wriham@earlham.edu](mailto:wriham@earlham.edu)

### **C. Ombudsperson**

*Designated confidential by Earlham*

**Lailul Ikram, M.S.**  
Ombudsperson  
Location: Virginia Cottage  
Phone: 765.983.1875  
Email: [ikramla@earlham.edu](mailto:ikramla@earlham.edu)

### **D. Chaplaincy**

*Confidential under Indiana law*

**Mimi Holland**  
Coordinator of Quaker Life and Assistant Chaplain  
Location: 201 Virginia Cottage  
Phone: 765-983-1753  
Email: [hollame@earlham.edu](mailto:hollame@earlham.edu)

## **VI. Initial Notice or Complaint**

A. Upon receipt of Notice, a Complaint, or Knowledge of an alleged Policy violation, the Responsible Compliance Officer (see [Definitions: Responsible Compliance Officers](#)) will initiate a prompt initial evaluation to determine appropriate steps to address alleged discrimination or harassment. The Officer will contact the Complainant/source of the Notice to offer supportive

measures, provide information regarding resolution options, and determine how the Complainant wishes to proceed.

- B. Notice or Complaints of alleged violations to the [Nondiscrimination and Anti-Harassment Policy](#) and/or the policy on Sex Discrimination and Sex-based Harassment may be made verbally or in writing to the Responsible Earlham Officer named in [Institutional Contacts for Discrimination and Harassment Reports](#) in these Procedures or through the online reporting form at <https://earlham.edu/report>.
- C. All acts of violence, as well as incidents that pose or might pose an immediate threat to a member or members of the Earlham community should immediately be reported to Public Safety at 765-983-1400 or to law enforcement.

## VII. Initial Evaluation

- A. Following receipt of notice or complaint, the Responsible Compliance Officer conducts an initial evaluation, typically within five (5) business days of receiving notice or complaint of alleged misconduct.
- B. The initial evaluation typically includes:
  - 1. Assessment for risk of a substantial, compelling, and/or immediate risk to health and/or safety of an individual or the community. When circumstances of a report indicate a potential threat to safety of an individual or campus, the Responsible Compliance Officer will work with the Public Safety Director, VP for Student Life or designee, and other relevant College offices to determine whether any emergency actions are required. This may include Clery Act Timely Warning, Emergency Removal, or other reasonable emergency steps.
  - 2. Assessment of whether the reported conduct may reasonably constitute a violation of the Policy. If the conduct does not reasonably constitute a violation of the Policy, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another grievance process, if applicable.

3. Determining whether Earlham has jurisdiction over the reported conduct, as defined in the Policy. If the conduct is not within Earlham's jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures.
  4. Offering and coordinating supportive measures for the Complainant. See [\*Supportive Measures\*](#).
  5. Notifying the Complainant, or the person who reported the allegation(s), of the resolution options, including a supportive and remedial response, an Informal Resolution option, or the Formal Resolution Process described below.
  6. Determining whether the Complainant wishes to make a Complaint.
  7. The Responsible Compliance Officer will provide the Complainant with a written Summary of Allegation, which includes information about the policy and procedures, supportive measures, the option to file a Complaint, resolution options, privacy information and prohibition of retaliation, as well as decision to refer the report to a grievance process when appropriate.
  8. If the Complainant requests supportive measures or chooses to file a Complaint, the Responsible Compliance Officer will notify the Respondent of the resolution processes; provide supportive measures to both Parties, and provide parties with resolution options.
- C. At the conclusion of an initial evaluation, the Responsible Compliance Officer will make one of the following determinations:
1. **Information is Sufficient and Compelling.** There is sufficient and compelling evidence to warrant further investigation of allegation of discrimination, harassment or other Prohibited Conduct.
  2. **Refer to Another Process.** Behavior was inappropriate but not a violation of Earlham policies on discrimination and harassment. Refer to Student Conduct or Employee disciplinary process, as appropriate.

3. **Information is Insufficient.** There is insufficient information to warrant further investigation. Dismiss complaint. Option of continued supportive measures. See [Dismissal](#).
- D. Where there is sufficient and compelling information upon initial evaluation, and if the Complainant indicates in writing or verbally that they wish to initiate a Complaint, the Responsible Compliance Officer will help to facilitate the Complaint, which will include working with the Complainant to pursue one of the available resolution pathways:
1. [Informal Resolution](#), which includes Supportive Resolution, Educational Conversation, or Alternative Resolution (such as mediation); or
  2. **Formal Resolution**, which may include an [Administrative Alternative Resolution](#) or a [Hearing Resolution](#).
- E. The Responsible Compliance Officer will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation. See [Earlham's Authority to Initiate a Complaint](#) for more information about circumstances when this step would be appropriate or necessary.
- F. If the Complainant elects for the Formal Resolution Process, the Responsible Compliance Officer will provide the Parties with a Notice of Investigation and Allegation(s), and will initiate an investigation consistent with these Procedures.
- G. If all Parties indicates (either verbally or in writing) that they want to pursue an [Informal Resolution option](#), the Responsible Compliance Officer will assess whether the matter is suitable for Informal Resolution and initiate that process, accordingly.
- H. If the Complainant indicates (either verbally or in writing) that they do not want any action taken, no Resolution Process will be initiated (unless deemed necessary by the Responsible Compliance Officer), though the Complainant can elect to initiate one later, if desired. The Complainant may request

appropriate and reasonable supportive and remedial measures to preserve their access to Earlham’s Education Program or Activity, even when they ask that no Resolution Process be initiated.

## VIII. Initial Assessment Under Title IX

Following receipt of notice or a complaint of an alleged sex-based harassment, the Title IX Coordinator<sup>1</sup> engages in an initial assessment. In addition to the steps noted in [Initial Evaluation](#) above, the assessment will include a determination of whether the alleged misconduct falls within the scope of Title IX as defined in the 2020 Final Rule<sup>2</sup>:

- A. **If it does**, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
  - 1. an incident, and/or a pattern of alleged misconduct, and/or
  - 2. a culture/climate issue, based on the nature of the complaint.
  
- B. **If it does not**, the Title IX Coordinator will “dismiss” that aspect of the complaint, assesses which policies may apply, and proceed accordingly. Dismissing a complaint under Title IX is procedural and does not limit Earlham’s authority to address a complaint with an appropriate process and remedies.

## IX. Supportive Measures

- A. Earlham will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged discrimination, harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to the Earlham’s education program or activity, including measures designed

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<sup>1</sup> If circumstances require, the Chief Diversity Officer 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.

<sup>2</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. 34 C.F.R. § 106. <https://www.federalregister.gov/d/2020-10512>

- to protect the safety of all Parties and/or the Earlham's educational environment and/or to deter discrimination, harassment, and/or retaliation.
- B. The Responsible Compliance Officer promptly makes supportive measures available to the Complainant upon receipt of notice or complaint, and to Respondent after the Respondent is notified of an allegation.
- C. At the time that supportive measures are offered, Earlham will inform the Complainant, in writing, that they may file a Complaint either at that time or in the future, if they have not done so already. The Responsible Compliance Officer works with a Party to ensure that their wishes are considered with respect to any planned or implemented supportive measures.
- D. A Responsible Compliance Officer will document supportive and remedial measures in the Summary of Allegations.
- E. Earlham will maintain the privacy of supportive measures, only sharing limited information to individuals whom the College determines are necessary to provide supportive measures to parties.
- F. Earlham will act to ensure minimal academic and/or occupational impact on the Parties. Earlham will implement measures in a way that does not unreasonably burden any party.
- G. Supportive measures may include but are not limited to:
- Referral to counseling, medical, and/or other healthcare service
  - Referral to the Employee Assistance Program
  - Referral to community-based service providers
  - Visa and immigration assistance
  - Student financial aid counseling
  - Education to the institutional 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 assistance

- Implementing contact limitations (no contact orders) 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) orders
- Timely warnings
- 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 Responsible Compliance Officer

H. Parties are provided with a timely opportunity to seek modification or reversal of the Earlham's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Responsible Compliance Officer.

I. The Chief Diversity Officer, in consultation with the Student Conduct Officer or Human Resources, has authority to modify or reverse the decision to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the definition of supportive measures.

**X. Earlham's Authority to Initiate a Complaint**

A. If the Complainant does not wish to file a Complaint, the Responsible Compliance Officer will offer supportive measures and determine whether to initiate a Complaint on behalf of Earlham. To make this determination, the Responsible Compliance Officer will assess whether the approved supportive measures will adequately ensure safety and preserve individual and community equal access to education without initiating a Complaint. The Responsible Compliance Officer will consider the following non-exhaustive factors to determine whether to file a Complaint:

1. The Complainant's request not to proceed with initiation of a Complaint;



2. A risk assessment of situation for potential threat to the safety of the Parties or the campus community, as well as the Complainant's reasonable safety concerns regarding initiation of a Complaint;
  3. The risk that additional acts of discrimination or harassment would occur if a Complaint is not initiated;
  4. The severity of the alleged discrimination or harassment, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
  5. The age and relationship of the Parties, including whether the Respondent is an Earlham employee;
  6. The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals;
  7. The availability of evidence to assist a Decision-maker in determining whether discrimination occurred;
  8. Whether Earlham could end the alleged discrimination and prevent its recurrence without initiating its resolution process.
- B. If deemed necessary, the Responsible Compliance Officer may consult with appropriate Earlham employees, and/or conduct an additional risk assessment to aid their determination whether to initiate a Complaint.
- C. When the Responsible Compliance Officer initiates a Complaint on behalf of the College, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy.

## **XI. Dismissal**

### **A. Mandatory Dismissal under Title IX**

Earlham must dismiss a formal complaint of Title IX sexual harassment if, at any time during the investigation or hearing, it is determined that<sup>3</sup>:

1. The conduct, even if true, does not meet the definition of sexual harassment under Title IX;
2. The conduct did not occur in an educational program or activity controlled by Earlham;
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 was not participating in or attempting to participate in an Earlham education program or activity.

A mandatory dismissal under Title IX is a procedural matter that does not preclude Earlham from addressing, as appropriate, any conduct alleged to be a violation of Earlham policy.

### **B. Discretionary Dismissal**

The Responsible Compliance Officer may dismiss a Complaint if, at any time during an investigation or resolution process, one or more of the following grounds are met:

1. Earlham is unable to identify the Respondent after taking reasonable steps to do so, or
2. Earlham no longer enrolls or employs the Respondent, or

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<sup>3</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. 34 C.F.R. § 106.45(b)(3)(i). <https://www.federalregister.gov/d/2020-10512/p-3361>

3. A Complainant voluntarily withdraws any or all of the allegations in the Complaint, and the Responsible Compliance Officer declines to initiate a Complaint, or
4. Earlham determines the conduct alleged in the Complaint would not constitute a policy violation, if proven, or
5. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

#### **C. Dismissal After Formal Resolution Process Has Begun**

Even after a Formal Resolution Process has begun, a Decision-maker can recommend dismissal to the Responsible Compliance Officer, if they believe the grounds are met. A Complainant who decides to withdraw a Complaint may later request to reinstate or refile it.

#### **D. Notice of Dismissal**

Upon any dismissal, Earlham will promptly send the Complainant written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, Earlham will also notify the Respondent of the dismissal.

#### **E. Appeal of Dismissal**

1. A dismissal decision is appealable by either party. The Complainant may appeal a dismissal of their Complaint. The Respondent may also appeal the dismissal of the Complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal appeal requests must be made in writing to the Responsible Compliance Officer within three (3) business days of the notification of the dismissal.
2. The Responsible Compliance Officer will notify the Parties of any appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint, the Responsible

Compliance Officer must notify the Respondent of the Complainant's allegation and appeal, and provide the Respondent with an opportunity to respond.

3. Throughout the dismissal appeal process, Earlham will:
  - 3.1. Implement dismissal appeal procedures equally for the Parties;
  - 3.2. Assign a Dismissal Appeal Panel to include three Responsible Compliance Officers who did not take part in the investigation of the allegations or dismissal of the Complaint;
  - 3.3. Provide the Parties with a reasonable and equal opportunity to provide a written statement in support of, or challenging, the dismissal; and
  - 3.4. Notify the Parties in writing of the result of the appeal and the rationale for the result.
4. The grounds for dismissal appeals are limited to:
  - 4.1. Procedural irregularity that would change the dismissal outcome;
  - 4.2. New evidence that would change the outcome and that was not reasonably available when the dismissal was decided;
  - 4.3. The Responsible Compliance Officer, Investigator, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.
5. Upon receipt of a dismissal appeal in writing from one or more Parties, the Responsible Compliance Officer will share the request with the other party and provide three (3) business days for other Parties to respond to the request. The appeal should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. This appeal will be provided in writing to the other Parties, who will be invited to respond in writing. At the

conclusion of the response period, the Responsible Compliance Officer will forward the appeal, as well as any response provided by the other Parties to the Dismissal Appeal Panel for consideration.

6. If the Request for Appeal does not provide information that meets the grounds in these Procedures, the request will be denied by the Dismissal Appeal Panel, and the Parties, their Advisors, and the Responsible Compliance Officer will be notified in writing of the denial and the rationale.
7. If any of the asserted grounds in the appeal satisfy the grounds described in these Procedures, one of the Dismissal Appeal Panel will notify all Parties and their Advisors, and the Responsible Compliance Officer, of their decision and rationale in writing. The effect will be to reinstate the Complaint.
8. In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Panel has seven (7) business days to review and decide on the appeal, though extensions can be granted at the discretion of the Responsible Compliance Officer, and the Parties will be notified of any extension.
9. Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.
10. The Dismissal Appeal Panel may consult with the Responsible Compliance Officer and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Responsible Compliance Officer will maintain documentation of all such consultation.

## **XII. Emergency Removal**

- A. Earlham can act to remove a Respondent from its education program or activity, partially or entirely, 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. This risk analysis

- is performed by the Responsible Compliance Officer in conjunction with the Associate Vice President of Student Life and/or the Chief Safety Officer<sup>4</sup>, or their designees using a standard and objective violence risk assessment.
- B. Employees are subject to existing procedures for interim actions and leaves as described in the *Employee Handbook*.
  - C. In all cases in which an emergency removal is imposed, the Respondent will be given written notice of the action, which will include a rationale, specific conditions of the removal process, and the option to challenge the emergency removal or interim suspension within two (2) business days of the notification. Individuals subject to Emergency Removal have the option to request a meeting with the Responsible Compliance Officer 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.
  - D. When a Respondent does not challenge an emergency removal within two (2) days of notification, objections to the emergency removal or interim suspension will be deemed waived.
  - E. A “show cause” 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, should be modified, or lifted. The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Responsible Compliance Office for review.
  - F. An emergency removal may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Responsible Compliance Office will communicate the final decision in writing, typically within three (3) business days of the review meeting. A Respondent may later request a meeting to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed.

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<sup>4</sup> The Chief Safety Officer refers to the administrator, whatever their title might be, who is responsible for management and oversight of Public Safety and institutional risk management.

- G. There is no appeal process for emergency removal decisions, though the Chief Safety Officer has the final discretion under these procedures to implement or stay an emergency removal and to determine the conditions and duration of such action/removal.
- H. Violation of an emergency removal under these Procedures will be grounds for discipline, which may include expulsion or termination.
- I. At the discretion of the Responsible Compliance Officer, and in conjunction with the Associate Academic Dean for Students, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.
- J. Emergency removal is not “relevant evidence” that can be considered in reaching a determination. See [Evidence](#) and [Evidentiary Considerations for a Hearing](#).

### **XIII. Counter-complaints**

- A. Earlham is obligated to ensure that the resolution process is not abused for retaliatory purposes. Although Earlham permits the filing of Counter-complaints, the Responsible Compliance Officer will use [an initial evaluation](#), described above, to assess whether the allegations in the Counter-complaints are made in good faith. When Counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a violation of Earlham Policy.
- B. Counter-complaints determined to have been reported in good faith will be processed using the appropriate Resolution Process. At the Responsible Compliance Officer’s discretion, investigation of such claims may take place concurrently or after resolution of the initial Complaint.

### **XIV. Advisors in the Resolution Process**

#### **A. Selection of Advisor**

- 1. Complainants and Respondents may be accompanied to any meeting, Informal Resolution session, interview, and/or hearing related to the

Resolution procedures outlined in these Procedures, by an Advisor of their choice. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available, meaning they have the inclination and time to fulfill the expectations of an advisor.

- 1.1 Advisors cannot have institutionally conflicting roles, such as being an administrator who has an active role in the matter or a supervisor who must monitor and implement sanctions.
  - 1.2 Individuals serving as Confidential Resources may not serve as Advisors, although they may continue to provide supportive measures for the Parties.
  - 1.3 Choosing an Advisor who is also a witness in the process creates potential for bias and conflicts of interest. In a Formal Resolution process, the Decision-maker(s) will address issues of potential bias and credibility in witness testimony, because of the information the witness may have accessed through their role as Advisor.
  - 1.4 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 to advise that party.
2. The Responsible Compliance Officer will offer to assign a trained Advisor to any party if the party chooses.
  3. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Responsible Compliance Officer with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.
  4. Earlham may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request to the Responsible



Compliance Officer. The decision to grant this request is at the Responsible Compliance Officer's sole discretion and will be granted equitably to all Parties.

## **B. Advisor Responsibilities**

1. When parties elect to have an Advisor, the Advisor is required to attend a meeting with the Responsible Compliance Officer to review these procedures and the role of an advisor and privacy considerations outlined below.
2. The purpose of an Advisor is to help the Party navigate the grievance process. Advisors should help Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.
3. Employees serving as Advisors remain Mandated Reporters and should assist the Parties they are advising with reporting additional policy violations or crimes when they gain Knowledge of such violations or crimes.
4. Parties are expected to ask and respond to questions on their own behalf in meetings and interviews. 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. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.
5. Both parties are required to have an Advisor for a hearing to facilitate the review and questioning of evidence in a hearing. If a party does not have an advisor present at the live hearing, Earlham will provide, without fee or charge to that party, a trained Advisor of Earlham's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.
6. Each party's Advisor will have an opportunity to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

7. Advisors may not provide testimony or speak on behalf of their advisee in meetings.
8. Earlham generally expects an Advisor to adjust their schedule to allow them to attend meetings, interviews, and/or hearings during the resolution process.
  - 8.1. Earlham may change scheduled meetings, interviews, and/or hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.
  - 8.2. Earlham may also make reasonable provisions to allow an Advisor who cannot be present in person to attend meetings, interviews, and/or hearings by telephone, video conferencing, or other similar technologies. Parties should request this exception in writing from the Responsible Compliance Officer.

### **C. Records Shared with Advisors**

1. Advisors will receive access to the investigation report that contains the report narrative and all submitted evidence produced in the investigation, unless the party they are advising indicates in writing that the advisor should not be able to access the evidence.
2. Advisors are expected to maintain the confidentiality of the records the College shares with them (see [Appendix B: Privacy, Privilege, and Confidentiality](#)). Advisors may not disclose any Earlham work product or evidence obtained solely through the Resolution Process for any purpose not explicitly authorized by Earlham.
3. Accordingly, Advisors will be asked to sign Non-Disclosure Agreements (NDAs). Earlham may decline to share materials with any Advisor who has not executed an NDA.
4. Earlham may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by Earlham's confidentiality and privacy guidelines.

## **D. Advisor Policy Violations**

Any Advisor who oversteps their role as defined by these Procedures, who discloses information or evidence in a manner inconsistent with Earlham Policy, or who refuses to comply with the Earlham's established rules of decorum, will be warned one time. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting, interview and/or hearing may be ended, or other appropriate measures will be implemented, including requiring the party to use a different Advisor or providing a different Earlham-appointed Advisor. Subsequently, the Responsible Compliance Officer will determine how to address the Advisor's non-compliance and future role.

## **XV. Resolution Timeline**

- A. Earlham will conduct prompt, thorough, and equitable resolution processes. Generally, the Resolution Process within sixty to ninety (60-90) business days, including any appeals, which can be extended as necessary for appropriate cause by the Responsible Compliance Officer. The Parties will receive regular updates on the progress of the Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.
- B. Investigations are completed expeditiously, although some investigations may take longer, depending on issues such as the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.
- C. If a party or witness chooses not to participate in the Resolution Process or becomes unresponsive, Earlham reserves the right to continue the resolution process without their participation to ensure a prompt resolution. Earlham will make reasonable attempts to reach an unresponsive party. The Responsible Compliance Officer will provide non-participatory or unresponsive Parties written notification that they retain the rights outlined in these Procedures and continue to have the opportunity to participate in the Resolution Process.

- D. 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 delay the investigation temporarily, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. Earlham will promptly resume its Resolution Process as soon as feasible. During such a delay, Earlham will implement and maintain supportive measures for the Parties as deemed appropriate.
- E. Earlham action(s) or processes 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.
- F. Earlham will make a good faith effort to complete the Resolution Process as promptly as circumstances permit, while still preserving its commitment to a thorough and equitable resolution process. The Responsible Compliance Officer will communicate regularly with the Parties to update them on the progress and timing of the process.

**XVI. Ensuring Impartiality**

- A. Any individual materially involved in the administration of the Resolution Process, including the Responsible Compliance Officer, Investigator(s), and Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.
- B. The Responsible Compliance Officer will vet the assigned Investigator(s), Decision-maker(s), and Appeals officers for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the Parties may raise a concern in writing regarding bias or conflict of interest, and the Responsible Compliance Officer will determine whether the concern is reasonable and supportable. If so, the Responsible Compliance Officer will assign a new and equally trained Investigator(s), Decision-maker(s), or Appeals Officer, and the impact of the bias or conflict, if any, will be remedied.

- C. Parties should raise a concern about the impartiality of the Responsible Compliance officer with the appropriate supervisor.
- D. The Resolution Process involves an objective evaluation of all available relevant and not otherwise impermissible evidence, including evidence that supports that the Respondent engaged in a Policy violation and evidence that 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. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

## **XVII. Resolution Options**

Earlham offers three processes for resolution of grievances:

- [Informal Resolution](#)
- [Administrative Resolution](#) (a formal resolution)
- [Hearing Resolution](#) (a formal resolution)

Earlham considers the preferences of the Complainant in selecting the process by which any grievance is resolved; however, the Responsible Compliance Officer, after careful evaluation of the factors described in these procedures, has the ultimate discretion to determine the most appropriate process.

## **XVIII. Resolution Options for Title IX Sexual Harassment**

- A. To adequately address reports of sexual harassment, the following options are offered (after filing a formal Complaint):
  - Record of complaint followed by supportive and remedial response
  - [Informal Resolution](#)
  - [Hearing Resolution](#) (a formal resolution)

- B. In order to pursue Informal Resolution or Hearing Resolution under Title IX, Earlham is legally required to have a signed formal Complaint.
- C. Informal Resolution is not an appropriate process for resolving complaints of Title IX sexual harassment when the Complainant is a Student and the Respondent is an Employee.

## **XIX. Informal Resolution**

### **A. Availability of Informal Resolution Process**

1. An Informal Resolution Process is a voluntary, structured interaction between Parties to resolve concerns raised in the Complaint. Informal resolution includes conflict resolution practices with the goal of helping the participants identify and achieve effective and just outcomes. The process generally involves examination of attitudes and behaviors that contributed to the conflict or harm and an effort to identify accountability measures that could repair harm and discourage future harm.
2. Informal Resolution does not result in College-mandated disciplinary action against the Respondent, although the Parties may agree upon sanctions as part of an Informal Resolution Agreement.
3. The College will support the Parties in implementing appropriate and reasonable outcomes identified in a signed resolution agreement.
4. Informal Resolution is unavailable if either Party does not want to participate in that process or if the Responsible Compliance Officer determines an Informal Resolution is not appropriate for the circumstances.
5. While a specific violation may be addressed through Informal Resolution Process, the Responsible Compliance Officer must take other appropriate, prompt, and effective steps to ensure that discrimination and harassment does not continue or recur within Earlham's education program or activity.

## **B. Request for Informal Resolution**

1. To initiate Informal Resolution, a Complainant may request an Informal Resolution process as part of the Complaint. If a Formal Resolution process is underway, a Respondent may make such a request to the Responsible Compliance Officer at any time prior to a Final Determination, or the Responsible Compliance Officer may offer the option to the Parties, in writing, if appropriate.
2. Earlham will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure Parties to participate in Informal Resolution.
  - 2.1 Earlham will not require a waiver of the right to an investigation and determination of a Complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.
  - 2.2 It is not necessary to pursue Informal Resolution first in order to pursue an Administrative Resolution or Hearing Resolution. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the Administrative Resolution or Hearing Resolution.

## **C. Assessment for Availability of Informal Resolution**

1. The Responsible Compliance Officer will determine whether Informal Resolution is appropriate, or which form of Informal Resolution may be most successful for the Parties. The assessment may include the following factors:
  - 1.1 The nature and severity of the alleged misconduct, including Complaint complexity.
  - 1.2 The results of a risk assessment indicating potential threat to individuals and the community, the need for an emergency

removal or other interim action, or the Respondent's disciplinary history or evidence of a pattern of conduct.

- 1.3 The Parties' goals and motivation to participate in Informal Resolution, including the level of civility and the emotional investment/capability of the Parties.
- 1.4 Any power dynamics between the Parties that may have an impact on the Parties' equal access to Earlham's education program or activity. (For example, Informal Resolution may not be an appropriate process when the Respondent is an employee and the Complainant is a student.)
- 1.5 Adequate resources to invest in a particular Informal Resolution option (e.g., time, staff, skill of facilitator with the type of Complaint, etc.).

#### **D. Notice of Informal Resolution**

1. If the above conditions are met and both Parties willingly agree to participate in an Informal Resolution process, the Responsible Compliance Officer will work with the Parties and, as appropriate, a trained facilitator, which may be a College employee or external trained professional. Together, they will design and draft a written agreement to facilitate the appropriate resolution process and/or accept the Parties' proposed resolution. The Responsible Compliance Office will provide the Parties and their Advisors with a Notice of Informal Resolution (NIR) that explains:
  - 1.1 A summary of allegations;
  - 1.2 Assurance that all parties have access to appropriate supportive measures;
  - 1.3 Information about choice of Advisor and the role of an Advisor in an Informal Resolution;



- 1.4 Information regarding participation in good faith, and prohibition of false statements;
  - 1.5 The requirements of the process, including goals and agreed-upon ground rules;
  - 1.6 Assurance that any party has the right to withdraw from the Informal Resolution process and to initiate or resume Earlham's Administrative Resolution or Hearing Resolution Process;
  - 1.7 That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the Parties from initiating or resuming the resolution process arising from the same allegations;
  - 1.8 The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement, are binding only on the Parties;
  - 1.9 Prohibition of retaliation and unauthorized disclosures, including the terms of confidentiality, release, and non-disparagement.
  - 1.10 Earlham's recordkeeping policy, and whether and how Earlham could disclose such information for use in a Formal Resolution Process.
2. Written notice will be sent to the parties' College-issued email, along with an invitation to meet with the Responsible Compliance Officer and/or trained facilitator. Once emailed and/or received in-person, the notice will be presumptively delivered. If a Party does not contact the Responsible Compliance Officer within three (3) business days of delivery of notice, Earlham may use other methods of contact, such as in person or by mail to local or permanent address(es) of the parties as indicated in official College records.
  3. Both parties must meet with the Responsible Compliance Officer and/or trained facilitator to review the NIR and explain the process, requirements, and potential outcome.

4. Both parties must sign the written agreement in advance and agree to abide by the leadership of the facilitator.
5. If the parties agree to an Informal Resolution process, Earlham assures that the process will be handled in a civil, age-appropriate, culturally-competent manner and be reflective of power imbalances. Both parties will have access to supportive measures before, during, and following an informal resolution process as appropriate to their needs and the situation.

#### **E. Categories of Informal Resolution**

Earlham offers the following options for Informal Resolution, all of which include a written Notice of Informal Resolution and Informal Resolution Agreement, along with steps to remedy the discrimination or harassment and prevent future violations of Policy.

1. **Supportive Resolution:** When the Responsible Compliance Officer can resolve the matter informally by providing supportive measures (only) designed to remedy the situation. Such measures are non-disciplinary and non-punitive.
2. **Educational Conversation:** When the Responsible Compliance Officer can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations or can accompany the Complainant in their desire to discuss the conduct with the Respondent. Such a conversation is non-disciplinary and non-punitive. If a conversation takes place, a summary of the conversation will be documented in the Informal Resolution Agreement. The Responsible Compliance Officer may also implement remedial actions to ensure that Earlham policies are clear and to minimize the risk of recurrence of any behaviors that may not align with Policy. Future incidents would not be eligible for educational conversation.
3. **Alternative Resolution:** When Parties agree to resolve the matter through an alternative resolution mechanism (which could include,

but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

- 3.1. Facilitated Dialogue: A structured and facilitated conversation between two or more individuals, including, but not limited to the Parties, which allows for perspectives to be shared and experiences to be understood. Participants will work towards the development of a shared agreement.
- 3.2. Shuttle Mediation: An indirect version of the Facilitated Dialogue.
- 3.3. Negotiated Resolution: An agreement between parties without the need for a full investigation or findings. The process is mediated by the Responsible Compliance Officer, Ombudsperson, or other trained mediator.
- 3.4. Restorative Practices: A “collaborative decision-making process that includes harmed parties, people who caused harm, and others to seek a resolution that includes a) accepting and acknowledging responsibility for harmful behavior, b) repairing the harm caused to individuals and the community, and c) working to rebuild trust by showing understating of the harm, addressing personal issues, and building positive social connections.”<sup>5</sup>

## **F. Informal Resolution Steps**

1. The facilitator may utilize a technology-facilitated process or in-person meetings, but all parties must agree upon the method. The Informal Resolution format should be appropriate for the alleged violation and the goals of the parties.
2. Informal Resolution meetings are not recorded and the participants are not permitted to record any meetings.

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<sup>5</sup> David R. Karp. *The Little Book of Restorative Justice for Colleges and Universities: Repairing Harm and Rebuilding Trust in Response to Student Misconduct*, 2nd Ed (p.10). Good Books; 2019.

3. Informal Resolution typically involves a minimal number of essential parties in order to ensure confidentiality.
4. The facilitator will provide a written summary of the process as part of the Informal Resolution Agreement.
5. Any notes taken by the facilitator may not be used in a formal grievance process. The facilitator may not be called as a witness in a formal grievance process.
6. Once the Parties have agreed upon and signed the Informal Resolution Agreement, the facilitator will provide a final summary to the Responsible Compliance Officer, describing the process and resolution agreement that was achieved.
7. Either party can request to end an Informal Resolution Process early-, mid-, or late-process for any reasons.

#### **G. Outcome of Informal Resolution**

1. Both parties must agree in writing that the allegation in the formal complaint has been resolved to their satisfaction. The Responsible Compliance Officer has the authority to determine whether Information Resolution is successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.
2. As part of the resolution process, additional measures (including, but not limited to educational programming, training, regular meetings with an appropriate College individual or resource, extensions of no contact orders, or counseling sessions) may be agreed upon.
3. Informal Resolution may result in the voluntary acceptance of non-punitive restrictions on either Party to ensure safety and equitable educational access.

4. Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the Informal Resolution process.
5. The Responsible Compliance Officer will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the Alternative Resolution.

#### **H. Informal Resolution Agreement**

1. The Responsible Compliance Officer will provide both parties with a written Informal Resolution Agreement, which will include a summary of the steps taken in the Informal Resolution process, the mutually agreed upon conditions for resolution, and confirmation that the Complaint has been resolved.
2. The Informal Resolution Agreement will be shared with both parties and their Advisors. Parties must sign the agreement for the Informal Resolution process to be completed.
3. The Responsible Compliance Officer oversees any sanctions or remedies that follow from the informal resolution agreement, and may include appropriate employees and individuals to implement appropriate remedies or sanctions.
4. The final outcome of an Informal Resolution process is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution.
5. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the Agreement and resumption of the Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the Agreement, etc.). The results of Complaints resolved by Alternative Resolution are not appealable.

## XX. Formal Investigation of Allegation(s)

When an initial evaluation finds **Information is Sufficient and Compelling**, and if Parties have not entered into an Informal Resolution Process, or when an Informal Resolution Process Fails, the Responsible Compliance Officer will commence a formal investigation.

### A. Notice of Investigation and Allegations

1. Prior to an investigation, the Responsible Compliance Officer will provide the Parties with a written Notice of Investigation and Allegations (NOIA). 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 allegations. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.
2. The NOIA typically includes:
  - A meaningful summary of all 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/offenses implicated
  - A description of, link to, or copy of the applicable procedures
  - A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
  - The name(s) of the Investigator(s), along with a process to identify to the Responsible Compliance Officer, in advance of the interview process, any conflict of interest that the Investigator(s) may have
  - 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 during the review and comment period to inspect and review all relevant evidence

- A statement that retaliation is prohibited
  - Information about the confidentiality of the process, including that the Parties and their Advisors (if applicable) may not share Earlham work product obtained solely through the Resolution Process
  - A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process
  - A statement informing the Parties that the Earlham's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
  - Detail on how a party may request disability accommodations during the Resolution Process
  - A link to the Earlham's Violence Against Women Act Brochure (when appropriate)
  - An instruction to preserve any evidence that is directly related to the allegations
3. Notification 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 emailed to the Parties' Earlham-issued email. Once mailed, emailed, and/or received in person, the notification will be presumptively delivered.

## **B. Investigator Appointment**

The Responsible Compliance Officer appoints an Investigator(s) to conduct a formal investigation. These Investigators may be any properly trained individual, whether internal or external to the Earlham community. The Investigator(s) typically take(s) the following steps, if not already completed and not necessarily in this order.

1. Work with the Responsible Compliance Officer and the NOIA to:
  - 1.1 Determine the identity and contact information of the Parties.

- 1.2 Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all specific policies implicated.
  - 1.3 Assist the Responsible Compliance Officer, if needed, with conducting a prompt initial evaluation to determine if the allegations indicate a potential Policy violation.
2. 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 the Parties and witnesses.
3. When participation of a party is expected, provide that party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose.
4. Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
5. Interview the Complainant and the Respondent and conduct follow-up interviews with each, as necessary.
6. Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
7. Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript or recording) of the relevant evidence/testimony from their respective interviews and meetings.
8. Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses. Document in the investigation report which questions were asked, with a rationale for any changes or omissions.
9. Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.



10. Provide the Parties with regular status updates throughout the investigation, including written notice of and reason for any significant delays.
11. Prior to the conclusion of the investigation, provide the Parties and their respective Advisors with a list of witnesses whose information will be used to render a finding.

### **C. Components of an Investigation**

1. All investigations are adequate, thorough, reliable, impartial, prompt, and fair. They involve interviews with all relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.
2. **Burden of Responsibility:** Earlham is responsible for maintaining an environment free from discrimination and harassment; therefore, the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on Earlham and not the Parties. As such:
  - 2.1 Even if a Complainant chooses not to participate in an investigation, Earlham may be required, or may otherwise deem it necessary and protective of the community, to commence with the investigation and take formal action to address, prevent, and remedy discrimination and harassment.
  - 2.2 In cases where Parties choose not to participate in an investigation, and Earlham deems it necessary to take formal action, the institution will move forward with an investigation and disciplinary action without the participation of a Party or Parties, and Earlham will issue any disciplinary sanctions as appropriate.
  - 2.3 Earlham may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same

facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

2.4 Although both the Complainant and Respondent are advised to participate in the investigation process to enable a fair and equitable resolution to any case, students who are Complainant or Respondent voluntarily participate in the investigation process.

2.5 Earlham will not draw any adverse inference solely from a Complainant's or Respondent's decision not to participate in the investigation or any form of resolution under this policy; however, the Complainant or Respondent should be aware that declining to participate in the investigation may limit the ability to complete a thorough investigation and may impact the timing and outcome of the case.

2.6 Earlham expects employees to cooperate fully in the investigation process. Any faculty or staff member who is the subject of, or potential witness regarding, a discrimination or harassment complaint and refuses to cooperate in an investigation is subject to discipline, up to and including termination of employment.

2.7 Earlham may be compelled to notify law enforcement when facts gathered during the course of an investigation indicate there is a legal obligation to report, even when a Complainant has previously indicated they do not wish to contact law enforcement. In such circumstances, Earlham will notify Complainant of its obligation prior to contacting law enforcement.

3. **Interviews:** An Investigator will conduct separate in-person interviews with the Parties and any witnesses.

3.1. Parties and witnesses will be provided adequate written notice of the time, location, participants, and purpose of any scheduled interview, so that the Parties and witnesses have sufficient time

to prepare. If a Party or witness does not respond to a request for an interview, the investigator will make reasonable effort to contact the Party or witness and may proceed with the investigation if a Party or witness is nonresponsive or declines the offer to be interviewed.

- 3.2. Investigators will record interviews. The transcript of those meetings will be provided to the Parties for their review. Subsequent meetings or interviews are also recorded and/or transcribed and shared with the Parties. Parties are not permitted to separately record investigation meetings.
- 3.3. After an interview, Parties and witnesses will be asked to verify the accuracy of the transcript of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of a transcript will be deemed to have been waived, and no changes will be permitted.

4. **Witnesses:** Both parties have the right to present their own evidence and testimony in their interview(s) with investigators and to identify potential witnesses as part of the investigation.
  - 4.1. Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the incident, the disclosure, the parties or related matters. Witnesses may not participate solely to speak about an individual's character.
  - 4.2. Employees are required to cooperate with and participate in Earlham's investigation and Resolution Process. Student witnesses and witnesses from outside the Earlham community cannot be required to participate but are encouraged to cooperate with Earlham investigations and to share what they know about a Complaint.

- 4.3. Investigators will make every attempt to interview witnesses in person. If witnesses provide written statements, they will be invited to meet with the investigator to review the information provided and allow for additional investigator questions. Witnesses may decline to review written information or answer additional questions, but should be aware that further questions may be posed at the hearing, in order to verify the credibility of the evidence they provided.
5. **Evidence:** The Investigator(s) and later the Decision-maker(s) will only consider evidence that is deemed relevant and not otherwise impermissible.
  - 5.1 Relevant evidence is that which may aid in determining whether the allegation occurred or did not occur, or whether the behavior constitutes or does not constitute a violation of Policy.
  - 5.2 With regard to sex discrimination and sex-based harassment, evidence that relates to the Complainant's sexual interests or prior sexual conduct is impermissible, unless 1) evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct, or 2) is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to support the argument that consent was given.
  - 5.3 The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent or preclude a determination that sex-based harassment occurred.
  - 5.4 Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

- 5.5 Within the limitations stated above, the investigation and determination can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it relates to a pattern of conduct.
  - 5.6 All evidence obtained as part of an investigation will be made available to the Parties and their respective Advisors.
  - 5.7 The Complainant and Respondent will be given an opportunity to review all evidence and submit a written response to be included in a Final Investigation Report.
  - 5.8 The College will not restrict the ability of Parties to discuss the allegations under investigation or to gather and present relevant evidence, although the College encourages all parties involved to honor the guidelines for privacy detailed in [APPENDIX B. Privacy, Privilege, and Confidentiality](#).
  - 5.9 All documentation of an investigation will be held in a secure file, accessible only to those directly involved with the case, and will be maintained for seven (7) years.
6. **External Intervention and Confrontations:** Adversarial engagements, including confrontations, direct cross-examinations by the parties, and active advocacy by attorneys or other outside advocates, are neither appropriate nor permitted during the investigation process.
  7. **Investigation Privacy:** The investigators will manage the investigation professionally by complying with best practices for managing sensitive information privately. See [APPENDIX B. Privacy, Privilege, and Confidentiality](#).
  8. At any point in the investigation, a Respondent may elect to admit to the charged violations and voluntarily request an [Administrative Resolution](#).

## D. Investigation Report

1. The Investigation Report will follow the outline described in [Appendix D: Investigation Report Outline](#).
2. At the conclusion of the investigation, the Investigator will prepare a Draft Investigation Report for review by the Responsible Compliance Officer. The Responsible Compliance Officer will review the report for consistency with policy. The Responsible Compliance Officer will discuss any amendments to the report with the Investigator before the report is distributed to the Parties and their Advisors.
3. The Responsible Compliance Officer will provide Parties and their Advisors with access to the Draft Investigation Report.
4. The Complainant and Respondent will have ten (10) days to respond in writing to the Draft Investigation Report. A written response may correct errors of fact, omission of pertinent information, or provide newly available evidence not previously presented to the Investigator.
5. Any written feedback from Parties will be appended as appendices to the Final Investigation Report. If the Investigator amends the Investigation Report following receipt of written feedback from either Party, those amendments will be noted in the Final Investigation Report.
6. The Responsible Compliance Officer will provide all parties and their advisors with access to the final Investigation Report. Parties will receive the report 10 days prior to a hearing. See [Hearing Resolution](#).

## XXI. Administrative Resolution

The Administrative Resolution Process may be used to resolve Complaints of discrimination on the basis of protected characteristics, harassment, retaliation, and Other Prohibited Behaviors (as defined in Policy) or when Informal Resolution is either not elected or is unsuccessful.

- A. Should the Respondent voluntarily accept responsibility for all of the policy violations in a Summary of Allegations or an Investigation Report, the Responsible Compliance Officer may initiate an Administrative Resolution Process, in place of an Informal Resolution or Hearing Resolution. During an Administrative Resolution Process, the Responsible Compliance Officer will provide appropriate supportive measures before and during the resolution process.
- B. Generally, the Respondent requests an Administrative Resolution Process upon accepting responsibility for all violations, although the Responsible Compliance Officer will make the final determination as to the appropriateness of an Administrative Resolution, depending on the totality of circumstances.
- C. To determine the appropriateness of an Administrative Resolution Process, the Responsible Compliance Officer will meet with the Respondent to confirm they voluntarily take responsibility for the policy violations, review the process, and the range of possible sanctions. The Responsible Compliance Officer will then meet with the Complainant to review the process and affirm their support of this option.
- D. If an Administrative Resolution is an appropriate process for the Compliant and both Parties agree to the Administrative Resolution Process, the Responsible Compliance Officer will provide all Parties with a Notice of Administrative Resolution (NAR). The NAR will include:
  - 1. 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
  - 2. The name of the Responsible Administrator who will be determine sanctions
  - 3. A statement that the Respondent has voluntarily taken responsibility for all the reported misconduct

4. An invitation to each party to submit impact or mitigation statements to the Responsible Compliance Officer to be included in information provided to the Responsible Administrator before sanctioning
  5. An invitation to review materials provided to the Responsible Administrator, including any statements submitted by the other party(ies), even though those statements are not binding
  6. Information about the privacy of the process, including that the Parties and their Advisors (if applicable) may not share Earlham work product obtained solely through the Resolution Process
  7. A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process
  8. A statement informing the Parties that the Earlham's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
  9. Detail on how a party may request disability accommodations during the Resolution Process
  10. A Prohibition of Retaliation
- E. Notification 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 emailed to the Parties' Earlham-issued email. Once mailed, emailed, and/or received in person, the notification will be presumptively delivered.
- F. The Responsible Compliance Office will provide the assigned Decision-maker with all relevant and not impermissible evidence gathered to date in the resolution process and any statements from the parties.



- G. The Decision-maker will then consider appropriate sanctions proportional to the severity of the violation(s), in order to remedy the situation and prevent future discrimination. This will include the following steps:
1. Review of the previously submitted party impact or mitigation statements.
  2. Consult with the Responsible Compliance Officer, the Public Safety Director, the Human Resources Director and/or the Associate Vice President for Student Life, and other appropriate administrators about any pertinent conduct history before determining the appropriate sanction(s).
  3. Adherence to all privacy requirements indicated in these procedures and the prohibition of any unauthorized disclosure of information and evidence obtained solely through the resolution process.
  4. Application of appropriate sanctions, as described in these procedures. See [Disciplinary Sanctions](#).
- H. When the Decision-maker receives the file, they can recommend dismissal of the Complainant to the Responsible Compliance Officer, if they believe the grounds are met. See [Dismissal](#).
- I. The following individual(s) serve as Decision-makers in an Administrative Resolution Process:
1. **Vice President for Student Life and Dean of Students:** When Respondent is a Student. Such decisions may be subject to appeal.
  2. **Director of Human Resources:** When Respondent is an Employee
    - 2.1. When Respondent is a member of Cabinet, Human Resources will consult with the President. Decisions in such instances are final and shall be addressed in writing to the parties, their advisors, and the Responsible Compliance Officer.

- 2.2. When Respondent is the President, Earlham Trustee, or Director of the Earlham Foundation, Human Resources will consult with, first, the Chair of the Board of Trustees, and then the Executive Committee of the Board. Decisions in such instances are final and shall be addressed in writing to the parties, their advisors, and the Responsible Compliance Officer.
  - 2.3. When the Respondent is a contractor, volunteer or other non-employee, Human Resources will consult with the appropriate area Vice President. Decisions in such instances may be subject to appeal.
  - 2.4. When the Respondent is a Teaching Faculty member, Human Resources will consult with the Provost. Decisions in such instances may be subject to appeal.
  - 2.5. When the Director of Human Resources is the Respondent, the Decision-maker is their immediate supervisor, who will consult with the President. Decisions in such instances are final and shall be addressed in writing to the parties, their advisors, and the Responsible Compliance Officer.
3. In such cases involving tenured faculty, and where a sanction includes termination, the procedure for appeal is outlined in the *Faculty Handbook*.
- J. These Procedures presume that neither Responsible Compliance Officer nor the Investigator will serve as a designate for the Decision-makers named above. In other words, the individual responsible for intake and/or investigation may not serve as a Decision-maker in an Administrative Resolution Process.
  - K. The Administrative Resolution Process will be prompt and equitable. The process typically takes approximately thirty (30) business days to complete, beginning with the Decision-maker's receipt of the Summary of Allegations or Investigation Report. The Parties will be updated regularly on the timing and any significant deviation from this typical timeline. The Responsible Administrator will allow for the reasonable extension of timeframes for good

cause and will provide written notice of any delay to the parties and the Responsible Compliance Officer, along with a reason for the delay.

#### **L. Notice of Administrative Resolution**

1. At the conclusion of an Administrative Resolution Process, the Responsible Administrator will send written Notice of Administrative Resolution, along with Sanctions applied, in writing to the Parties and their Advisors, and Responsible Compliance Officer.
2. A copy of the Notice of Administrative Resolution will be placed in employee personnel files or student conduct files. Documentation of the Administrative Resolution Process will be maintained for seven (7) years.
3. The Responsible Compliance Officer will coordinate the imposition of any disciplinary sanctions on the Respondent and the provision for and implementation of remedies to a Complainant, as appropriate, to ensure their continued or restored access to the College's educational program or activity. The Responsible Compliance Officer will also take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within Earlham's education program or activity.

M. Outcomes of Administrative Resolution are subject to appeal. See [Appeal of Determination](#).

## **XXII. Hearing Resolution**

### **A. Hearing Resolution Overview**

1. When the facts of a matter remain in dispute following the 10-day response period, the Investigation Report and all related documents will be sent to the appropriate Hearing Panel for a formal hearing. The hearing will convene at a time determined by the Responsible Compliance Officer or designated hearing coordinator with reasonable notice provided to both parties and their advisors.

2. Hearings are structured meetings to provide an opportunity for all parties to be present to hear the evidence to be used in making a determination of responsibility and to ask clarifying questions to fully understand the evidence provided.

## **B. Hearing Panel Composition**

1. The Responsible Compliance Officer will designate a panel made up of at least three employees or external consultants who have received special training on the policy and scope, definitions of prohibited conduct, how to avoid prejudgment of the facts, how to conduct an impartial hearing with objective analysis of relevant evidence and fair assessment of questions, and how to recognize and avoid conflicts of interest and bias.
  - 1.1 The Responsible Compliance Officer will appoint as Hearing Panel Chair an employee or external consultant who has received specialized training to oversee discrimination and harassment grievance hearings.
  - 1.2 As appropriate, Hearing Panels may be drawn from the Earlham College and/or School of Religion Grievance Councils, or the Student Conduct Council, as indicated in their charges, and when such bodies are comprised of individuals with the appropriate training.
  - 1.3 When members of the Earlham College Grievance Council, School of Religion Grievance Council, and/or Student Conduct Council do not have the requisite training to serve on a Hearing Panel, the Responsible Compliance Officer will designate other trained individuals to serve on a Hearing Panel.
2. It is the responsibility of a 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 determine sanctions.

3. The Ombudsman may not serve as a member of a Hearing Panel.
4. Community members will recuse themselves from serving on a Hearing Panel where there are conflicts of interest. Conflicts of interest may include, but are not limited to:
  - 4.1. An immediate or extended family member is the Complainant or Respondent;
  - 4.2. A direct supervisor or direct report is the Complainant or Respondent;
  - 4.3. Either Complainant or Respondent was the recipient or author of a complaint involving a member of the Council; or
  - 4.4. There exists or has existed a previous relationship that has the potential to create a bias.
5. Hearing panel members will not have had any previous involvement with the investigation. The Responsible Compliance Officer, Investigator(s), and Advisor may not serve on the Hearing Panel. The Responsible Compliance Officer may serve as a hearing coordinator if their previous role in the matter does not create a conflict of interest. Otherwise, a trained designee may fulfill this role.

### **C. Notice of Hearing**

1. The Responsible Compliance Officer or the Hearing Panel chair will send Notice of the Hearing to the parties' via email (Earlham email when parties are Students or Employee) at least ten (10) days prior to the hearing or at a date agreed upon by all Parties.
  - 1.1 Once emailed and/or received in-person, the notice will be presumptively delivered to both parties. If the parties do not contact the Responsible Compliance Officer within three (3) business days, the College may use other methods of contact, such as in person or by mail to local or permanent address(es) of the parties as indicated in official College records.

1.2 Timing may be altered for possible violations that occur near or after the end of an academic term (assuming the respondent is still subject to this Policy) and are not resolved prior to the end of term. In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student involved in Formal Resolution Process as a Respondent is not in good standing to graduate.

2. The Notice of Hearing will contain:

2.1 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

2.2 The time, date, and location of the hearing and a reminder that attendance should take priority over all other campus activities.

2.3 Information about the implications of a party's refusal to participate or answer questions in the hearing.

2.4 Information about the video conference format of the hearing, which enables the hearing panel and parties to see and hear a party or witness answering questions synchronously.

2.5 Earlham's requirement that participants access the hearing from a designated on-campus location using Earlham technology, and that participants may submit a written request for exemption to this requirement to the Responsible Compliance Officer within five (5) business days of receipt of the hearing notice.

2.6 A list of all individuals who will attend the hearing, along with an invitation to object to any hearing panel member on the basis of demonstrated bias.

- 2.7 The requirement that objections to hearing participants must be raised in writing, detailing the rationale for the objection, and must be submitted to the Responsible Compliance Officer at least five (5) business days prior to the hearing for consideration and, if approved, to provide a substitution.
- 2.8 Information that the hearing will be recorded and accessible for review by the Parties after the hearing, as well as a prohibition of unauthorized audio or video recordings of any kind by the parties or their advisors.
- 2.9 A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons for the inability to appear, the chair may reschedule the hearing.
- 2.10 Notification that the parties may have an Advisor present at the hearing.
- 2.11 An invitation to review materials provided to the hearing panel.
- 2.12 An invitation to each party to submit an impact or mitigation statement to the Responsible Compliance Officer before the hearing, which will be reviewed by the Decision-makers after the determination and before sanctioning.
- 2.13 An invitation to contact the Responsible Compliance Office to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- 2.14 Instructions on video conference guidelines related to decorum and privacy, including that mobile phones or other devices should not be used while participating in the hearing and no unauthorized individuals will have access to the hearing procedures.

- 2.15 Statement that the Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the hearing.
- 2.16 Statement relating to privacy of the hearing and prohibition of any unauthorized disclosure of information gained solely through the Formal Resolution process.

#### **D. Evidentiary Considerations for a Hearing**

1. The Parties must provide all evidence to the Investigator(s) prior to completion of the Final Investigation Report. Evidence offered after that time will be evaluated by the Decision-maker for relevance. If such evidence is deemed relevant and not impermissible, the Parties and Decision-maker must agree to admit that evidence into the record.
2. New relevant evidence will be admitted to the record if:
  - 2.1 All Parties and the Decision-maker assent to the new evidence being included in the hearing without remanding the Complaint back to the investigator, and
  - 2.2 The evidence is not duplicative of evidence already in the record, and
  - 2.3 It is not impermissible, and
  - 2.4 The new evidence was either not reasonably available prior to the conclusion of the Final Investigation Report, or the failure to provide it in a timely manner was not the result of bad faith by the Parties, witnesses, or others.
3. If the above criteria are not met, but the evidence is deemed materially relevant and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:
  - 3.1. Delay the hearing, or



- 3.2. Provide the Parties with at least five (5) business days to review the relevant evidence, or
- 3.3. Remand the Complaint back to the Investigator for further investigation or analysis.
4. If the evidence is deemed not relevant or impermissible, the Decision-maker may proceed with the hearing without allowing the new evidence.
5. The Complainant, Respondent, and the Hearing Panel members may request witness testimony in the hearing if witnesses have relevant information to the conduct in question that needs further clarification. Neither party will be permitted to call as witness anyone who was not interviewed as part of the investigation. If either party wishes to call witnesses, they will submit a written request to the chair via their Earlham-issued email. The request for witnesses should include:
  - 5.1 The names and contact information for each witness,
  - 5.2 A brief written statement of the expected topics for the testimony of that witness,
  - 5.3 A summary of why the witness's presence is relevant to making a determination about responsibility at the hearing, and,
  - 5.4 If the individual was not interviewed during the investigation, the reason why the witness was not previously interviewed.
6. The chair will determine if any witness has relevant information and if there is sufficient justification for permitting a witness who was not interviewed by the investigator.
7. The hearing panel must review the Final Investigative Report, all relevant evidence gathered during the investigation, and any information or questions posed in the Pre-Hearing Meetings at least five (5) business days before the date of the hearing. Otherwise, the final investigative report will be considered an adequate summary of

all witness testimony. The chair will inform both parties of any decision to include witnesses and address any concerns raised through the request and rationale process described above.

#### **E. Collateral Misconduct**

The Decision-maker has the authority to hear and make determinations on all allegations of discrimination, harassment, retaliation, and Other Prohibited Behavior under the Policy and may also hear and make determinations on any additional alleged collateral misconduct that occurred in concert with the discrimination, harassment, retaliation, or Other Prohibited Behavior, even though those collateral allegations may not specifically fall within the Policy.

#### **F. Joint Hearings**

1. In Complaints involving more than one Respondent and/or involving more than one Complainant accusing the same person of substantially similar conduct, the default procedure will be to hear the allegations jointly.
2. However, the Responsible Compliance Officer may permit the investigation and/or hearings pertinent to each Respondent or Complaint to be conducted separately if there is a compelling reason to do so.
3. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each Complaint with respect to each alleged Policy violation.

#### **G. Pre-hearing Meetings**

1. The Responsible Compliance Officer or the Hearing Panel chair will convene separate pre-hearing meeting(s) with the Parties and their Advisors to review the hearing procedures and decorum, the role of the parties and their advisor in the hearing, the guidelines for posing relevant questions, and to answer any questions about the process.

2. Before the pre-hearing meetings and at any time before the hearing itself, both Parties and their Advisors will be given equal opportunity to review all investigative documents, subject to the privacy limitations imposed by state and federal law. This includes the investigation report, any witness statements or interviews, statements from or interviews with both parties, and any other documentary information that will be presented to the hearing panel for consideration.
3. The chair may consult with legal counsel and/or the Responsible Compliance Officer prior to attending pre-hearing meetings.
4. The pre-hearing meeting(s) will be recorded and become part of the procedural record.

## **H. Hearing Procedures**

1. Hearings procedures are administrative in nature and are not considered legal proceedings. Hearings are not designed to be adversarial but to provide equitable opportunity to present evidence and ask/respond to questions about the evidence. The chair or hearing coordinator has the right to remove any hearing participant who disregards procedure, disrupts the hearing, or violates the decorum or fairness of the proceedings.
2. The hearing coordinator will provide the parties and their Advisors with access to the final investigative report and relevant evidence for reference during the hearing and for the purposes of questioning. The Hearing provides an opportunity for simultaneous review of evidence and for each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
3. Hearings are not open to the public. The only individuals who may appear before the hearing panel are the Parties, approved Advisors, approved witnesses, the Investigator(s), the hearing coordinator, and Hearing Panel members.

4. Hearings will be conducted virtually through live video conferencing, unless there is a compelling reason otherwise and both parties agree in writing.
5. Earlham will ensure all parties have equal access to appropriate technology by providing space and equipment for participation on campus. For additional privacy and consistency, participants (including advisors) will be prohibited from taking their own devices (mobile phone, iPad, laptop) into the hearing space. The hearing coordinator and panel will be trained on any technology being used to conduct a hearing prior to the hearing.
6. If, at any point during the hearing, the members of the hearing panel determine that significant unresolved issues exist that could be clarified through additional investigation, the chair may suspend the hearing and reconvene it in a timely manner that accommodates further investigation.

## **I. Introductions and Hearing Procedure Explanation**

1. The Hearing Panel Chair will explain the hearing procedures and introduce the participants. The Chair will answer any procedural questions prior to and as they arise throughout the hearing.
2. The chair will provide an overview of the order of information :
  - 2.1 Summary of Charges
  - 2.2 Complainant Opening Statement
  - 2.3 Respondent Opening Statement
  - 2.4 Investigator Presentation and Questioning<sup>6</sup>
  - 2.5 Questioning of Witnesses<sup>7</sup>
  - 2.6 Questioning of Parties<sup>8</sup>
  - 2.7 End of hearing for determination and sanctioning

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<sup>6</sup> Order of questioning: Panel, Complainant's Advisor, Respondent's Advisor, follow up questions.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

3. The Chair will explain the process for posing relevant questions about evidence and asking follow-up questions to answers provided by investigators, the parties, and witnesses.
  - 3.1 Advisors and panel members may only ask questions that have been previously reviewed and approved by the Chair. The Chair may exclude any question for relevance and admissibility, and will provide an explanation should a question be excluded.
  - 3.2 Only hearing panel members and Advisors may questions witnesses. The parties will not be permitted to question each other or the hearing panel directly.
  - 3.3 The hearing panel members and Advisors will be given an opportunity to ask follow up questions for clarification. Before a complainant, respondent, or witness answers a question, the chair will determine whether the question is relevant and explain to the party's Advisor asking questions any decision to exclude a question as not relevant.
  - 3.4 At times, the chair may need to ask difficult or sensitive questions in order to understand areas of factual dispute or to gain a full understanding of the context.
  - 3.5 Parties and other individuals who offer information at a hearing are expected to respond honestly and to the best of their knowledge.
4. At the hearing, the hearing coordinator will manage the recording, participant logistics, access to documents and evidence, and other administrative elements of the hearing process. Administrative elements include, but are not limited to, logistics of rooms for various parties/witnesses ensuring recording and virtual conferencing technology is working as intended; providing secure distribution of materials to participants, etc. The Responsible Compliance Officer may serve as a hearing coordinator, but may also appoint a designee. The hearing coordinator is not a member of the hearing panel and is trained in policy, procedure, and privacy issues relevant to the hearing.

## **J. Investigator Presentation of Final Investigation Report**

1. The Investigator(s) will present a summary of the Final Investigation Report, including a review of the facts that are contested and those that are not. The Investigator may be questioned first by the Hearing Panel and then by the Advisors. The Investigator may attend the duration of the hearing or be excused after their testimony at the Hearing Panel Chair's discretion.
2. Neither the parties nor the hearing panel should ask the investigators 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.

## **K. Testimony and Questioning of the Parties**

1. The Parties will be permitted five (5) minutes each for an opening statement, if they choose, starting with the Complainant(s) and then Respondent(s).
2. The Chair will facilitate questioning of Parties and witnesses, beginning with the Panel and then Advisors.
3. Questions must be relevant, not impermissible, and appropriate to the party and/or witness.
4. Questions should be framed in a manner that seeks new information or clarification.
5. All questions must be submitted in writing to the Chair for a relevance determination before they are asked.
  - 5.1 The Chair will limit or disallow questions they deem not appropriate on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), seek or pertain to impermissible evidence, or are abusive or unprofessional.

- 5.2 The Chair will explain any decision to exclude or to reframe a question for relevance.
- 5.3 The Chair may consult with legal counsel on any questions of admissibility.
6. If either party raises an issue of bias or conflict of interest of an Investigator or Chair at the hearing, the Chair may elect to address those issues, consult with legal counsel, refer them to the Responsible Compliance Officer, and/or preserve them for appeal.
7. If bias is not an issue at the hearing, the Chair should not permit irrelevant questions that probe for Investigator bias.
8. The Chair will allow witnesses who have relevant and not impermissible information to appear at a portion of the hearing to respond to specific questions from the Chair and the Parties, and the witnesses will then be excused.

#### **L. Refusal to Submit to Questioning and Inferences**

1. Any party or student witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. Employee witnesses are required to participate in the hearing if they are reasonably available. The Hearing Panel may only rely on the available relevant and not impermissible evidence in making the determination of responsibility. The Decision-maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer any or all questions, although the lack of participation may limit the hearing panel's ability to assess the credibility of the party and the evidence provided.
2. An Advisor may not be called as a witness at a hearing to testify to what their advisee told them during their role as an Advisor unless the party being advised consents to that information being shared.

3. If any party or party's advisor (chosen or appointed) does not comply with the College's established rules of decorum and parameters for questioning in a hearing, the chair and hearing coordinator may remove the advisor and require the party to use a different advisor to facilitate questioning on behalf of that party.

#### **M. Hearing Recordings**

1. Earlham records hearings (but not deliberations) for purposes of review in the event of an appeal. No unauthorized audio or video recording of any kind is permitted during the hearing.
2. The Decision-maker, the Parties, their Advisors, Appeal Decision-makers, and other appropriate Earlham officials will be permitted to review the recording or review a transcript of the recording upon request to the Responsible Compliance Officer. If the parties request a record of the hearing in writing, a secure transcript of the Hearing will be provided with appropriate redactions to protect the FERPA rights of other students involved.
3. No unauthorized disclosure, including sharing, copying, or distribution of the recording or transcript, is permitted. If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for reopening a Resolution Process at any time, and/or referring that action to another process for resolution.

#### **XXIII. Deliberation and Determination**

- A. After the Chair closes testimony, the Hearing Panel will deliberate in closed session to determine whether the Respondent is responsible for each of the alleged Policy violation(s) based on the preponderance of the evidence standard of proof, meaning the hearing panel must find evidence that it is more likely than not that the alleged violation occurred. A simple majority vote is required to determine the finding. Deliberations are not recorded.
- B. When there is a finding of responsibility for one or more of the allegations, the Hearing Panel may then consider any previously submitted impact



and/or mitigation statement(s) provided by the Parties in determining appropriate sanction(s). The Responsible Compliance Officer will ensure that any submitted statements are exchanged between the Parties if they are viewed by the Decision-maker. Impact/mitigation statements do not influence the finding, they only potentially influence the sanctions.

- C. The Chair will then prepare and provide the Responsible Compliance Officer with a written Notice of Outcome. This Notice is usually five to fifteen (5-15) pages in length and is typically submitted to the Responsible Compliance Officer within ten (10) business days from the conclusion of the hearing, unless the Responsible Compliance Officer grants an extension for reasonable delay. The Responsible Compliance Officer will notify the Parties of any extension.

#### **XXIV. Disciplinary Sanctions**

A Sanction is a formal college response or punishment should a Respondent be found Responsible for a violation of Earlham policies.

##### **A. Factors Considered when Determining Sanctions**

1. Factors considered by the Decision-maker when determining sanctions and responsive actions may include, but are not limited to:
  - 1.1 The nature, severity of, and circumstances surrounding the violation(s)
  - 1.2 The Respondent's disciplinary history
  - 1.3 The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
  - 1.4 The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
  - 1.5 The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community

1.6 The impact on the Parties

1.7 Any other information deemed relevant by the Decision-maker(s)

2. Sanctions will be implemented as soon as it is feasible once a determination is final, either upon the outcome of any appeal or the expiration of the window to appeal, without an appeal being requested.

3. The sanctions described in these Procedures are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

## **B. Student Sanctions**

The following are the common sanctions that may be imposed upon students singly or in combination:

1. *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Earlham Policy, procedure, or directive will result in more severe sanctions/responsive actions.
2. *Educational Sanction*: Educational sanctions are designed to assist the student in taking responsibility for their actions, being accountable, and learning constructive alternatives to inappropriate behavior. These may include completion of one or more of the following:

2.1 Educational Program or Course

2.2 Paper

2.3 Community Service

2.4 Group Project

- 2.5 Letter of Apology (to be used when appropriate between individuals and ONLY if the Complainant agrees to such a sanction)
3. *Restrictions*: A student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or from holding leadership in student organizations.
  4. *Probation*: An official sanction for violation of institutional Policy, providing for more severe disciplinary sanctions in the event that the student 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.
  5. *Suspension*: Separation from the institution, or one or more of its facilities, for a definite period of time, typically not to exceed two years, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension, on successfully applying for readmission, or upon a general condition that the student is eligible to return if the institution determines it is appropriate to re-enroll/readmit the student. The student is typically required to vacate institutional property within 24 hours of notification of the action, though this deadline may be extended at the discretion of the Responsible Compliance Officer or other appropriate official. During an institution-wide suspension, the student is banned from institutional property, functions, events, and activities unless they receive prior written approval from an appropriate institutional official. This sanction may be enforced with a trespass action, as necessary. This sanction may be noted as a Disciplinary Suspension on the student's official academic transcript, per institutional policy and/or state law.
  6. *Withholding Diploma*: Earlham may withhold a student's diploma for a specified period of time and/or deny a student participation in

commencement activities as a sanction if the student is found responsible for violating Policy.

7. *Revocation of Degree*: While very rarely employed, Earlham reserves the right to revoke a degree previously awarded from Earlham for fraud, misrepresentation, and/or other violation of Earlham policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
8. *Expulsion*: Permanent separation from the institution. The student is banned from institutional property, and the student's presence at any institution-sponsored activity or event is prohibited. This action may be enforced with a trespass action, as necessary. This sanction may be noted as Disciplinary Expulsion on the student's official academic transcript, per institutional policy and/or state law.
9. *Other Actions*: In addition to, or in place of, the above sanctions, Earlham may assign any other sanctions as deemed appropriate.

### **C. Student Group and Organization Sanctions**

The following are the common sanctions that may be imposed upon student organizations singly or in combination:

1. *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Earlham Policy, procedure, or directive will result in more severe sanctions/responsive actions.
2. *Probation*: An official sanction for violation of institutional Policy, providing for more severe disciplinary sanctions in the event that the group 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 and event privileges, denial of Earlham funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.

3. *Suspension*: Termination of student group or organization recognition and/or institutional support for a definite period of time not to exceed two years and/or until specific criteria are met. During the suspension period, a student group or organization may not conduct any formal or informal business or participate in Earlham -related activities, whether they occur on- or off-campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from Earlham.
4. *Loss of Privileges*: Restricted from accessing specific Earlham privileges for a specified period of time.
5. *Expulsion*: Permanent termination of student group organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
6. *Other Actions*: In addition to or in place of the above sanctions, Earlham may assign any other sanctions as deemed appropriate.

#### **D. Employee Sanctions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

1. Verbal or Written Warning
2. Performance Improvement Plan
3. Enhanced Supervision, Observation, or Review
4. Required Training or Education
5. Probation
6. Denial of Pay Increase
7. Loss of Oversight or Supervisory Responsibility

8. Demotion
9. Transfer
10. Schedule adjustments
11. Reassignment
12. Delay of (or referral for delay of) Tenure Track Progress
13. Assignment to New Supervisor
14. Restriction of Stipends, Research, and/or Professional Development Resources
15. Suspension/Administrative Leave with Pay
16. Suspension/Administrative Leave without Pay
17. Termination
18. *Other Actions*: In addition to or in place of the above sanctions/responsive actions, the Earlham may assign any other responsive actions as deemed appropriate.

**XXV. Notice of Outcome**

- A. Within ten (10) business days of the conclusion of the Resolution Process, the Responsible Compliance Officer provides the Parties with a written Notice of Outcome.
- B. The Notice of Outcome will include:
  1. The summary of allegations and the specific policy(ies) reported to have been violated;

2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  3. All findings of fact and final determinations for each alleged Policy violation and detailed rationale for determination on each allegation, including credibility assessments; and
  4. All applicable sanctions and remedies designed to restore or preserve equal access to Earlham Education or Activity.
- C. The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps required to request an appeal, and when the determination is considered final if neither party appeals.
- D. The Responsible Compliance Officer will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official Earlham records, or emailed to the Parties' Earlham-issued or designated email account. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

## **XXVI. Withdrawal or Resignation Before Complaint Resolution**

### **A. Student Withdrawal Before Complaint Resolution**

1. Should a student Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a student Respondent withdraws from Earlham, the Resolution Process may continue, or Responsible Compliance Officer may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, Earlham will still provide reasonable supportive or remedial measures as deemed necessary to

address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

2. Regardless of whether the Complaint is dismissed or pursued to completion of the Resolution Process, Earlham will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged discrimination, harassment, and/or retaliation.
3. When a student withdraws or leaves while the process is pending, the student may not return to Earlham in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. If the student indicates they will not return, the Responsible Compliance Officer has discretion to dismiss the Complaint. The Registrar and Office of Admissions will be notified, accordingly.
4. If the student Respondent takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely, if appropriate. If found in violation, that student is not permitted to return to Earlham unless and until all sanctions, if any, have been satisfied.

## **B. Employee Resignation Before Complaint Resolution**

1. Should an employee Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an employee Respondent resigns from Earlham with unresolved allegations pending, the Resolution Process may continue, or Responsible Compliance Officer may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, Earlham may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, and/or retaliation.
2. When an employee resigns from Earlham and refuses to participate in a Resolution Process, the employee may not return to Earlham in any capacity. Human resources, the registrar, and admissions will be notified, accordingly, and a note will be placed in the employee's file



that they resigned with allegations pending and are not eligible for either rehire nor admission to an Earlham academic program. The records retained by the Responsible Compliance Officer will reflect that status.

## **XXVII. Appeal of Determination**

### **A. Grounds for Appeal**

Grounds for appeal are limited to:

1. A procedural irregularity that would change the outcome
2. New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility or dismissal was made
3. The Responsible Compliance Officer, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that would change the outcome

### **B. Appeals Decision-makers**

1. **Vice President for Student Life and Dean of Students: When Respondent is a Student.**
2. **Director of Human Resources: When Respondent is an Employee**
  - 2.1. When Respondent is a member of Cabinet, Human Resources will consult with the President. Appeals decisions in such instances are final and shall be addressed in writing to the parties, their advisors, and the Responsible Compliance Officer.
  - 2.2. When Respondent is the President, Earlham Trustee, or Director of the Earlham Foundation, Human Resources will consult with, first, the Chair of the Board of Trustees, and then the Executive Committee of the Board. Appeals decisions in such instances are

final and shall be addressed in writing to the parties, their advisors, and the Responsible Compliance Officer.

2.3. When the Respondent is a contractor, volunteer or other non-employee, Human Resources will consult with the appropriate area Vice President. Appeals decisions in such instances may be subject to a final reconsideration.

2.4. When the Director of Human Resources is the Respondent, the Decision-maker is their immediate supervisor, who will consult with the President. Appeals decisions in such instances are final and shall be addressed in writing to the parties, their advisors, and the Responsible Compliance Officer.

3. In such cases involving tenured faculty, and where a sanction includes termination, the procedure for appeal is outlined in the Earlham College Faculty Handbook.

### **C. Request for Appeal**

1. Any party may submit a written request for appeal (“Request for Appeal”) to the Responsible Compliance Officer within five (5) business days of the delivery of the Notice of Outcome.
2. The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal. This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.
3. If the Request for Appeal does not provide information that meets the grounds in these Procedures, the request will be denied by the Appeal Decision-maker, and the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.
4. If any of the grounds in the Request for Appeal meet the grounds in these Procedures, then the Appeal Decision-maker will notify all Parties and their Advisors, the Responsible Compliance Officer, and,

when appropriate, the Investigator(s) and/or the original Decision-maker.

5. All other Parties and their Advisors, the Responsible Compliance Officer, and, when appropriate, the Investigator(s) and/or the Decision-maker will be provided a copy of the Request for Appeal with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. The Appeal Decision-maker will forward all responses, if any, to all Parties for review and comment.
6. The non-appealing party (if any) may also choose to appeal at this time. If so, that Request for Appeal will be reviewed by the Appeal Decision-maker to determine if it meets the grounds in these Procedures and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Responsible Compliance Officer, and the Investigator(s) and/or original Decision-maker, as necessary, who will submit their responses, if any, within five (5) business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties will be notified accordingly, in writing.
7. No party may submit any new Requests for Appeal after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses will be shared with the Appeal Decision-maker, who will promptly render a decision.

#### **D. Appeal Determination**

1. In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal.
2. Appeal decisions are to be deferential to the original determination, 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. All decisions apply the preponderance of the evidence standard.

3. An appeal is not an opportunity for the Appeal Decision-makers to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).
4. The Appeal Decision-maker may consult with the Responsible Compliance Officer and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Responsible Compliance Officer will maintain documentation of all such consultations.

#### **E. Appeal Outcomes**

1. An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Responsible Compliance Officer (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new determination with new Pool members serving in the Investigator and Decision-maker roles.
2. A Notice of Appeal Outcome letter will be sent to all Parties simultaneously, or without significant time delay between notifications. The Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which Earlham is permitted to share according to federal or state law, and the rationale supporting the essential findings to the extent Earlham is permitted to share under federal or state law.
3. Written notification may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official institutional records, or emailed to the Parties' Earlham -issued email or otherwise approved account. Once

mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.

4. Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, except in the case of new findings, new sanctions or a new determination. When appeals result in no change to the finding or sanction, that decision is final.
5. When an appeal results in a new finding, sanction or determination, the new finding, sanction or determination can be appealed one final time on the grounds listed in [Presidential Reconsideration Following Appeal](#).

#### **F. Sanction Status During Appeal**

1. Any sanctions imposed as a result of the determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.
2. If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures (detailed above) for a “show cause” meeting on the justification for doing so must be permitted within two (2) business days of implementation.

#### **G. Presidential Reconsideration Following Appeal**

1. When an appeal results in a new finding, new sanction or new determination, either party may seek a review of that Appeal Decision by submitting a written petition for final determination to the President.<sup>9</sup> Such petitions for reconsideration may only be made if either party is able to demonstrate:
  - 1.1 The appeals decision-maker has an existing conflict of interest; or

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<sup>9</sup> When the President is Party to a grievance or consulted on an Appeals Determination, the Director of Human Resources and Chief Diversity Officer will appoint an Appeals Panel to consider the petition.

- 1.2 The appeals decision-maker did not follow the proper process for appeals considerations.
2. The Petition may have one of two outcomes:
  - 2.1 Denied. The Appeals Decision is upheld.
  - 2.2 Approved. The Appeals Decision is remanded (or partially remanded) to the Appeals Decision-maker with corrective instructions for reconsideration.
3. A Notice will be sent to all Parties simultaneously, or without significant time delay between notifications. The Notice will specify the finding on each ground for Presidential Reconsideration, any specific instructions for remand or reconsideration, any sanction(s) that may result which Earlham is permitted to share according to federal or state law, and the rationale supporting the essential findings to the extent Earlham is permitted to share under federal or state law.
4. The outcome is final and constitutes a Final Determination; further reconsiderations or appeals are not permitted.

## **XXVIII. Long-Term Remedies/Other Actions**

- A. Following the conclusion of the Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the Responsible Compliance Officer may implement additional long-term remedies or actions with respect to the Parties and/or Earlham community that are intended to stop the discrimination, harassment, and/or retaliation, remedy the effects, and prevent recurrence.
- B. These remedies/actions may include, but are not limited to:
  - Referral to counseling and health services
  - Referral to the Employee Assistance Program
  - Course and registration adjustments, such as retroactive withdrawals
  - 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 assistance
  - Implementation of long-term contact limitations between the Parties
  - Implementation of adjustments to academic deadlines, course schedules, etc.
- C. At the discretion of the Responsible Compliance Officer, certain long-term supportive measures may also be provided to the Parties even if no Policy violation is found.
- D. When no Policy violation is found, the Responsible Compliance Officer will address any remedies Earlham owes the Respondent to ensure that there is no effective denial of equal access and opportunity.
- E. Earlham will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair Earlham's ability to provide these services.

**XXIX. Failure to Comply with Resolution Terms**

- A. All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified in the Informal Resolution agreement, the Notice of Administrative Resolution Outcome, the Notice of Outcome, or Appeal Outcome. As part of coordinating disciplinary sanctions, the Responsible Compliance Officer will monitor the completion of sanctions, working with the appropriate offices and administrators on the necessary steps.
- B. Supervisors are expected to enforce the completion of sanctions/responsive actions for their employees and should provide documentation to the Responsible Compliance Officer at a time determined in the sanctioning phase.

- C. 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, but not limited to, suspension, expulsion, and/or termination from Earlham.
- D. A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Responsible Compliance Officer's satisfaction.

**XXX. Recordkeeping**

For a period of at least seven (7) years following the conclusion of the Resolution Process, Earlham will maintain records of:

- A. Each discrimination, harassment, and retaliation resolution process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation.
- B. Any disciplinary sanctions imposed on the Respondent.
- C. Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to Earlham's education program or activity.
- D. Any appeal and the result therefrom
- E. Any Informal Resolution process documents and the result therefrom
- F. All materials used to provide training to the Responsible Compliance Officer, Investigators, Decision-makers, Appeal Decision-makers, Informal Resolution Facilitator, and any person who is responsible for implementing Earlham's Resolution Processes, or who has the authority to modify or terminate supportive measures. Earlham will make these training materials available for review upon request.



G. All materials used to train all employees consistent with the requirements in the Title IX Regulations.

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

### **XXXI. Accommodations and Support During the Resolution Process**

#### **A. Disability Accommodations**

1. Earlham is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to Earlham's Resolution Process.
2. Anyone needing such accommodations or support should contact the Responsible Compliance Officer, who will work with disability support colleagues as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

#### **B. Other Support**

Earlham will also address reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters;
- Access and training regarding use of technology throughout the Resolution Process; or
- Other support as deemed reasonable and necessary to facilitate participation in the Resolution Process.

### **XXXII. 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, including but not limited to expulsion or

termination of employment. 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.

### **XXXIII. Retaliation**

- A. Protected activity under this policy includes reporting an incident that may implicate Earlham's nondiscrimination and anti-harassment policies, 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 Policy.
- B. 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.
- C. The exercise of rights protected under the First Amendment do not constitute retaliation.
- D. Acts of alleged retaliation should be reported immediately to the Responsible Compliance Officer and will be promptly investigated. Earlham is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

### **XXXIV. Policy Review and Amendment**

- A. These procedures supersede any previous procedures addressing discrimination, harassment, and retaliation for incidents occurring on or after August 1, 2024.

- B. Earlham's Chief Diversity Officer, working closely with the Director of Title IX and Equal Opportunity, will annually review and update these procedures.
- C. If governing laws or regulations change, or court decisions alter, the requirements in a way that impacts this document, this document will be construed to comply with the most recent governing laws or regulations or court holdings.
- D. This document does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally.
- E. Earlham reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

**XXXV. APPENDICES**

## APPENDIX A. Statement of the Parties' Rights

**Under these procedures, the Parties have the right to:**

- An equitable investigation and resolution of all credible allegations of prohibited discrimination, harassment, retaliation, and Other Prohibited Behaviors, when reported in good faith to Earlham officials.
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the specific misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated Policies and procedures, and possible sanctions.
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.
- Be informed in advance of any Earlham public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- Have all personally identifiable information protected from Earlham's release to the public without consent, except to the extent permitted by law.
- Be treated with respect by Earlham officials.
- Have Earlham Policy and these procedures followed without material deviation.
- Voluntarily agree to resolve allegations under these procedures through Informal Resolution without pressure, if Informal Resolution is approved by the Responsible Compliance Officer.
- Not be discouraged by Earlham officials from reporting discrimination, harassment, retaliation, and Other Prohibited Behavior to both on-campus and off-campus authorities.
- Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by Earlham in notifying such authorities, if the party chooses. This also includes the right to not be pressured to report.
- Have allegations of violations of Policy responded to promptly and with sensitivity by Earlham Public Safety and/or other officials.

- Be informed of available supportive measures, such as counseling, advocacy, health care, student financial aid, visa and immigration assistance, and/or other services, both on-campus and in the community.
- Be offered the option of an Earlham-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- Be informed of available assistance in changing academic, living, and/or employment situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur for this option to be 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 Earlham staff in completing the relocation
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation assistance
  - Visa/immigration assistance, when practicable
  - Arranging to dissolve a housing contract and provide a pro-rated refund
  - Rescheduling or adjusting an exam, paper, and/or other assignment
  - 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
- Have Earlham maintain supportive measures for as long as necessary and for supportive measures to remain private, provided privacy does not impair Earlham's ability to provide the supportive measures.

- Receive sufficiently advanced written notice of the date, time, location, participants, and purpose of any meetings, or interviews, or other meetings, with sufficient time to prepare to participate.
- Identify and have the Investigator(s) and/or Decision-maker question relevant available witnesses, including expert witnesses.
- Provide the Investigator(s)/Decision-maker with a list of questions that, if deemed relevant and permissible by the Investigator(s)/Decision-maker, may be asked of any party or witness.
- Have Complainant's inadmissible sexual interests/prior sexual history or any Party's irrelevant character evidence excluded by the Decision-maker.
- Access the relevant evidence obtained and respond to that evidence.
- A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- Receive a copy of all relevant and permissible evidence obtained during the investigation, subject to privacy limitations imposed by federal and state law and be given ten (10) business days to review and comment on the evidence.
- The right to receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed, and to have at least seven (7) business days to review the report prior to the determination.
- Be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- Regular status updates on the investigation and/or Resolution Process.
- Have reports of alleged Policy violations addressed by Resolution Process Pool members who have received relevant annual training as required by law.
- A Decision-making panel that is not single-sex in its composition, if a panel is used.
- Preservation of confidentiality/privacy, to the extent possible and permitted by law.
- Meetings, interviews, and/or hearings that are closed to the public.
- Petition that any Earlham representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.

- Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
- Apply the appropriate standard of proof, preponderance of the evidence, to make a Finding and Final Determination after an objective evaluation of all relevant and permissible evidence.
- Be present, including presence via remote technology, during all testimony given and evidence presented during any hearing.
- Have an impact and/or mitigation statement considered by the Decision-maker following a determination of responsibility for any allegation, but prior to sanctioning.
- Be promptly informed of the Resolution Process finding(s) and sanction(s) (if any) and be given a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay).
- Be informed in writing of when a decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery.
- Be informed of the opportunity to appeal the Formal Resolution Process finding(s) and sanction(s), and the procedures for doing so in accordance with the Earlham's grounds for appeal.
- A fundamentally fair resolution as defined in these procedures.



## APPENDIX B. Privacy, Privilege, and Confidentiality

For the purpose of this Policy, the terms privacy, confidentiality, and privilege have distinct meanings.

- **Privacy.** Means that information related to a complaint will be shared with a limited number of Earlham employees who “need to know” in order to assist in providing supportive measures or evaluating, investigating, or resolving the Complaint. 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 federal and state law.
- **Confidentiality.** Exists in the context of laws or professional ethics (including Title IX) that protect certain relationships, including clinical care, mental health providers, and counselors. Confidentiality also applies to those designated by Earlham as Confidential Employees for purposes of reports under this Policy, regardless of legal or ethical protections. An Employee’s confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies (i.e., confidential status applies when the individual is serving in the role listed above):

When a Complainant shares information with a Confidential Employee, the Confidential Employee does not need to disclose that information to the Title IX Coordinator. The Confidential Resource will, however, provide the Complainant with the Title IX Coordinator’s contact information, assist the Complainant in reporting, if desired, and provide them with information on how the Responsible Compliance Officer can assist them. With respect to Confidential Employees, information may be disclosed when: (1) the reporting person gives written consent for its disclosure; (2) there is a concern that the person will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or persons with disabilities. Non-identifiable information may be shared by Confidential Employees for statistical tracking purposes as required by the Clery Act/Violence Against Women Act (VAWA). Other information may be shared as required by law.

- **Privilege.** Exists in the context of laws that protect certain relationships, including attorneys, spouses, and clergy. Privilege is maintained by a provider

unless a court orders release or the holder of the privilege (e.g., a client, spouse, parishioner) waives the protections of the privilege. Earlham treats employees who have the ability to have privileged communications as Confidential Employees.

Earlham reserves the right to determine which Earlham officials have a legitimate educational interest in being informed about student-related incidents that fall under this Policy, pursuant to FERPA.

Only a small group of officials who need to know will typically be told about the Complaint. Information will be shared as necessary with Investigators, Decision-makers, Appeal Decision-makers, witnesses, the Parties, and the Parties' Advisors. The circle of people with this knowledge will be kept as tight as possible to preserve the Parties' rights and privacy, and release is governed by the institution's unauthorized disclosure policy.

Earlham may contact students' 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 prior to doing so.

## APPENDIX C. Resolution Process Pool – Roles and Responsibilities

The resolution process pool is a cross-functional team of professionals with distinct responsibilities for managing institutional compliance and response to complex, sensitive matters in a timely and thorough manner as required by law.

Any individual materially involved in the administration of the formal grievance process, including the Responsible Compliance Officer, may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

**An Advisor** is an individual selected by any party to assist them throughout the resolution process. See [Advisors in the Resolution Process](#).

**An Appeal Decision-Maker** may be an individual or a group and cannot have otherwise been involved in the case up to the point of receiving an appeal request. Following a complete review of all submitted information for consideration in the appeal, the Appeal Decision-Maker shall issue a written determination to all parties simultaneously. Such determination shall include the result of the appeal and the rationale for the result. See [Appeal of Determination](#).

**Decision-Makers** are individuals or groups who have the authority to determine whether or not institutional policy was violated in accordance with the specified standard of proof and to determine appropriate remedies and corrective action/sanctions. See [Administrative Resolution](#) and [Hearing Resolution](#).

**Investigators** are individuals designated by Earlham to conduct reliable, prompt, fair, and impartial investigations of discrimination and misconduct reports, including identifying and interviewing parties and witnesses; identifying, organizing, and compiling relevant information; maintaining accurate and thorough investigation records and notes; and writing clear, concise, and comprehensive investigation reports. See [Investigator Appointment](#).

**Responsible Compliance Officers** have the institutional authority to effectively coordinate the Earlham's compliance efforts and responsibilities. They are responsible for conducting the preliminary inquiry for all reported incidents, and for ensuring the procedures outlined in this policy are followed. See [Institutional Contacts for Discrimination and Harassment Reports](#).

**Responsible Employees / Mandatory Reporter:** An individual with a duty to report any actual or suspected conduct that may reasonably constitute discrimination or harassment or other prohibited conduct. This duty to report extends to all Earlham employees, student workers (including teaching assistants, resident assistants, graduate assistants, etc.,) contract workers on Earlham’s campus, and volunteers.

## APPENDIX D. Investigation Report Outline

### Section I **Heading**

Complaint Date

Complainant Full Name

Initial Notice Date (if different)

Initial Notice Received from (if not Complainant)

Respondent Full Name

Investigator(s)

Investigation Report Date

**Section II **Executive Summary:**** Description of alleged behavior; summary of undisputed facts; summary of disputed facts

**Section III **Relevant Background Information:**** Summarize when and how the report was made and received; summarize allegations and applicable policies; additional background information necessary to understand history, context, etc.

**Section IV **Jurisdiction and Scope:**** Statement of jurisdiction in terms of date, time, location, individuals involved, as well as relevant policies and procedures relate to jurisdiction. Include Office with responsibility for discrimination and harassment compliance as relates to the case. List all Parties and Witnesses.

**Section V **Applicable Policies and Relevant Definitions:**** Copy and paste ALL applicable policies from appropriate sources. Copy and paste ALL applicable definitions from appropriate sources. Copy and paste evidentiary standard that will be applied by Decision-makers.

**Section VI **Investigation Timeline:**** Description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, etc.

- Section VII** **Reported Incident Timeline(s):** Table including date and time of all relevant incidents.
- Section VIII** **Summary of Relevant Statements and Evidence:** Include copies of relevant notes from interviews and written statements, and other relevant evidence. No need to include entire interview notes (unless all is relevant) because you will be including full interview notes in the appendices.
- Section IX** **Credibility Assessment:** Specific and detailed analysis of credibility of the parties, each witness, and any other evidence. Point to specific details that you have considered that have aided in your assessments. Investigator may not include conclusions about credibility.
- Section X** **Discussion and Synthesis:** Discuss and synthesize the relevant information, considering the elements of each policy at issue, and referring back to relevant evidence cited as well as the credibility assessments above. Summarize all areas of contested and uncontested facts/evidence. Investigator may not recommend making recommendations as to findings or final determination. Investigator may also include a summary of all questions asked, all questions suggested by parties, and all questions deemed not relevant by investigator(s).
- Section XI** **Conclusion:** Summarize allegations, investigation process, any recommendations, and next steps.
- Section XII** **Appendices:** Include all applicable evidence and documentation, including the verified full transcript or complete notes from each interview, the formal complaint, any written statements, photos, screenshots, etc. Also always include a copy of the full policies in place at the time of the incident(s) and investigation.

## APPENDIX E. Credibility Assessment for Investigators

The following is a non-exhaustive brief of what constitutes evidence and how that evidence might be evaluated by investigators and decision-makers.<sup>10</sup> See [Evidence](#) and [Evidentiary Considerations for a Hearing](#).

### Understanding evidence

- **Evidence** is any kind of information presented to help determine what occurred
- **Relevant** means related to the allegations under investigation:
  - Questions are relevant when they seek evidence that may aid in showing whether the alleged discrimination occurred.
  - Evidence is relevant when it may aid a Decision-maker in determining whether the alleged discrimination occurred or in assessing credibility.
- All relevant evidence, unless otherwise impermissible, must be objectively evaluated and considered. Investigators and Decision-makers will consider relevant evidence that both proves or disproves a policy violation.

### Types of evidence

- **Testimonial** – statements or the spoken word from the parties or witnesses.
- **Physical** – also referred to as real evidence – tangible articles (physical objects, including clothing, videotapes, photographs, security footage)
- **Documentary** – evidence found in documents (such as letters, transcripts of conversations, print out of text conversations, etc).
- **Demonstrative** – evidence should demonstrate or illustrate the testimony of a witness (such as maps, floorplans, charts, illustrations, diagrams).

The amount and nature of the evidence created will be largely dependent on the circumstances of the incident(s).

**Establishing the credibility of evidence** means determining that the evidence is believable and reliable and provides an accurate reflection of what occurred. This requires identifying corroborating evidence and finding consistency across evidence.

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<sup>10</sup> Investigation Foundations for Higher Education (2024). Association of Title IX Administrators.

## Assessment

In determining the credibility of evidence to include in an investigation report, investigators will consider the following elements:

- Is there corroborating evidence: evidence that can be verified by an independent and objective individual or by other reliable evidence or facts?
- Is the evidence inherently plausible: information that is believable on its face or by context?
- Is the evidence consistent with other evidence and testimony received?
- Has the evidence been modified or fabricated?
- Is the evidence complete?
- Does the person providing the evidence have a motive to falsify evidence?
- Is the individual's evidence or testimony consistent with their past behavior?
  - *A past record is not proof of alleged actions but can contribute to the plausibility of actions.*
- A past record can indicate a pattern, which raises additional concern for ongoing discrimination and harassment. Does the demeanor of the individual support their believability and reliability?
  - Assessing demeanor requires an understanding of the impact of trauma, as well as culture, age, ability, etc.
  - Memory errors alone do not necessarily diminish witness credibility, nor does some evasion or hesitation.

Not all evidence has the same degree of credibility.

- Less credible evidence may be less reliable evidence



## APPENDIX F. Sanction Ranges

Factors considered by the Decision-maker when determining sanctions and responsive actions may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent’s disciplinary history
- 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 Decision-maker(s)

Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.

*The sanctions described here are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.*

### **Level 1: Warning through Expulsion/Termination**

Bullying	Fondling
Failure to Comply/Process Interference	Statutory Rape
Discrimination (without Violence)	Sexual Exploitation
Quid Pro Quo Harassment	Retaliation
Hostile Environment Harassment	Unauthorized Disclosure

### **Level 2: Probation through Expulsion/Termination**

Endangerment	Stalking
Hazing	Dating/Domestic Violence

### **Level 3: Suspension through Expulsion/Termination**

Discrimination with Physical Violence	Sexual Assault with an Object
Rape	Sodomy

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