



Sex Discrimination and Sex-based Harassment

1 August 2024

Policy Specifications

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I. Scope

The core purpose of the policy is the prohibition of sex discrimination, including sex-based harassment, sexual assault, dating violence, domestic violence, and stalking, in all education programs and activities of Earlham College and the Earlham School of Religion (“Earlham”).

This Policy applies to all students, employees, visitors, volunteers, alumni, trustees, and any individuals regularly or temporarily employed, studying, living, visiting, conducting business, or having any official capacity at Earlham.

This Policy is applicable to alleged incidents occurring on or after August 1, 2024. For alleged incidents of sexual harassment occurring prior to August 1, 2024, please consult the policy and procedures in place at the time of the alleged incident¹.

II. Notice of Nondiscrimination

Earlham does not discriminate on the basis of race, color, national origin, gender, sex, sexual orientation, age, or disability in the administration of its employment or educational policies, admissions policies and practices, scholarship and loan programs, athletics, or other school-administered programs. Earlham prohibits discrimination on the basis of these protected categories, as required by Title IX, Title VI, Title VII, and other applicable state and federal law.

Read Earlham’s [Principles and Practices](#) to learn more about shared community values.

III. Policy Statement

- A. [Title VII of the Civil Rights Act of 1964](#) prohibits discrimination in employment on the basis of sex, and [Title IX of the Education Amendments of 1972](#) prohibits exclusion from or discrimination in “any education program or activity receiving Federal financial assistance,” absent certain exceptions.
- B. Additionally, the Pregnant Workers Fairness Act² and Title IX of the Education

¹ Applicable versions of those policies and procedures are available from the Title IX Coordinator.

² See Implementation of the Pregnant Workers Fairness Act. Equal Employment Opportunity Commission. 29 CFR 1636. <https://www.federalregister.gov/d/2024-07527>

Amendments³ protect employees and students, respectively, from discrimination on the basis of pregnancy and all related conditions, and require institutions to provide reasonable accommodations for known limitations related to pregnancy or related conditions.

- C. Earlham values and upholds the equal dignity of all members of its community. Consistent with its [Nondiscrimination and Anti-Harassment Policy](#), Earlham prohibits all forms of all forms of discrimination and harassment, including sex discrimination, sex-based harassment and retaliation, in its Education Program and Activities.
- D. To ensure compliance with Earlham policies, as well as federal and state civil rights laws and regulations, Earlham has developed internal policies and procedures that provide a prompt, equitable, and impartial process for those involved in an allegation of discrimination or harassment on the basis of sex, and for allegations of retaliation.
- E. Allegations of sex discrimination and sex-based harassment will be addressed through the *Discrimination and Harassment Grievance Procedures*, which offer safety and supportive measures; equitable resolution processes; and appropriate sanctions and remedies. As the Responsible Compliance Officer designated with Title IX compliance authority, the Title IX Coordinator takes appropriate, prompt, and effective steps to prevent sex discrimination or sex-based harassment in Earlham’s education programs or activities.

IV. Definitions

- A. **Chief Diversity Officer:** The Cabinet-level Earlham administrator with responsibility for development and implementation of diversity, equity and inclusion (DEI) initiatives within the organization. The Chief Diversity Officer is appointed by the president.
- B. **Complainant:** A person who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or Earlham policy and who was participating or attempting to participate in an Earlham education program or activity at the time of the alleged sex discrimination.

³ See Pregnant or Parenting? Title IX Protects You From Discrimination at School. U.S. Department of Education. Office of Civil Rights. <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-know-rights-201306-title-ix.html>

C. **Complaint:** An oral or written request that objectively can be understood as a request for the Earlham to investigate and make a determination about alleged policy violation(s).

D. 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 under this Policy 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.

E. **Disciplinary sanction:** A formal Earlham response or punishment should a Respondent be found Responsible for a violation of Earlham policy.

F. **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 the 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. See also scope and jurisdiction.

- G. Notice:** When an employee, student, or third party informs the Responsible Compliance Officer of the alleged occurrence of discriminatory, harassing, and/or retaliatory conduct.
- H. Parental status:** The status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is a biological parent; an adoptive parent; a foster parent; a stepparent; a legal custodian or guardian; in loco parentis with respect to such a person; or actively seeking legal custody, guardianship, visitation, or adoption of such a person.
- I. Parties:** The Complainant and Respondent, collectively.
- J. 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.
- K. Preponderance of 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 or not.
- L. Prohibited Conduct:** Any discrimination on the basis of a protected characteristic, harassment on the basis of a protected characteristic, sex discrimination and sex-based harassment, bullying, and retaliation, as defined in this Policy as well as the [Nondiscrimination and Anti-harassment Policy](#).
- M. Protected Category:** 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).

- N. **Remedies:** Measures provided, as appropriate, to a complainant or any other person Earlham identifies as having had their equal access to its education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to Earlham's education program or activity after it is determined that sex discrimination occurred.
- O. **Respondent:** An individual who is alleged to have committed Prohibited Conduct.
- P. **Responsible Compliance Officer:** An Employees who is responsible for ensuring Earlham nondiscrimination and anti-harassment procedures. See *Title IX Coordinator*.
- Q. **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.
- R. **Title IX Coordinator:** The individual responsible for coordinating implementation of this policy and Earlham's compliance with Title IX of the Education Amendments of 1972, including by providing information to all parties about grievance procedures, and offering and coordinating supportive measures. The Title IX Coordinator's role is not to serve as a confidential advisor to the complainant or any other party.

V. Jurisdiction of Earlham

- A. This policy applies to conduct that takes place on the campus or on property owned or controlled by Earlham, and within academic, extracurricular, research, occupational training, or other educational program or activity operated by Earlham.

- B. Earlham has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside Earlham's education program or activity or outside the United States.
- C. This policy is applicable to the effects of off-campus misconduct that effectively deprives students or employees to equal educational or employment opportunity.
- D. If the Respondent is unknown or is not a member of the Earlham community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.
- E. When the Respondent is not a member of Earlham's community, The Title IX Coordinator will provide the Complainant with reasonable supportive measures, remedies, and resources, as practicable.
- F. In addition, Earlham may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Earlham's property and/or events.
- G. All vendors, volunteers, and other paid or unpaid individuals involved with Earlham programs and activities are subject to this policy.
- H. When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator will assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.
- I. The Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences sexual harassment in an externship, study abroad program, or other environment external to Earlham where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

VI. Institutional Contacts

A. 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

Title IX Coordinator

Beth M. Birky, Ph.D.

Director of Title IX and Equal
Opportunity

Human Resources 301

Phone: 765-983-1346

Email: 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

B. For student disability and pregnancy/parenting accommodations

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

C. For discrimination and harassment unrelated to sex or disability

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

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

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

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
Web: <http://www.ed.gov/ocr>

Office for Civil Rights (OCR)-Chicago Office

U.S. Department of Education
John C. Kluczynski Building
230 S. Dearborn Street, 37th Floor
Chicago, IL 60604
Telephone: 312-730-1560
Fax: 312-730-1576
TDD#: 800-877-8339
Email: ocr.chicago@ed.gov

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

VII. Mandated Reporting and Responsible Employees

In order to promote an institutional environment free from discrimination and harassment and to promote equal opportunity, Earlham requires all employees who do not have a legal privilege of confidentiality and who become aware of alleged discrimination or harassment to report that alleged discrimination or harassment to the appropriate office.

- A. All Earlham employees, other than those deemed Confidential Resources, are considered Responsible Employees with a duty to report promptly to the Title IX Coordinator any actual or suspected conduct that may reasonably constitute sex discrimination or sex-based harassment or other prohibited conduct as defined by this Policy. The duty to report extends to all student workers (teaching assistants, resident assistants, graduate assistants, etc.), contract workers on Earlham's campus, and volunteers.
- B. If a Complainant expects formal action in response to their allegations, the Complainant can provide report (verbally or in writing) to any Earlham employee, who will help the Complainant contact the Title IX Coordinator for safety and supportive measures and for information about Earlham's resolution process options.
- C. When criminal conduct is alleged, the Title IX Coordinator can assist the Complainant in reporting to Public Safety on campus or to local law enforcement if the individual would like to file a police report.

- D. A Responsible Employee, as described above in this section, who fails to report an incident of sex discrimination, sex-based harassment, or retaliation to the Title IX Coordinator is in violation of Earlham Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when the alleged perpetrator is a Responsible Employees. Responsible employees are obligated to report their own misconduct, and failure to do so is a chargeable offense under this Policy. A Responsible Employee who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

VIII. Confidential Resources

- A. To enable Complainants to access support and resources without filing a Complaint, Earlham has designated specific employees as Confidential Resources. Those designated by Earlham as Confidential Resources are not required to report actual or suspected discrimination, harassment, or retaliation when information is obtained as they are serving in their capacity as a confidential resource. These individuals will maintain confidentiality except when there is imminent and serious threat to the health or safety of a complainant, any students, employees, or other persons, or when they are notified of the abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.
- B. The employee's confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of the duties to which privilege or confidentiality applies.
- C. Employees will provide the Complainant with the appropriate contact information for reporting discrimination allegations and offer options and resources without any obligation to inform an outside agency or Earlham official unless a Complainant has requested the information be shared.
- D. Employees whose roles confer confidentiality as described above, and who receive Notice within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes, unless they believe it would be harmful to their client, patient, or parishioner. A decision not to provide anonymous statistical information should be documented. See <https://www.clerycenter.org/the-clery-act>.
- E. An Earlham employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex

discrimination—but the employee’s confidential status is only with respect to information received while conducting the study.

F. The following are designated confidential employees:

Student Counseling Services

Confidential under Indiana law and professional license

General Contact

Earlham Hall (1st floor - West Wing)

Phone: 765-983-1328

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

Alisa Damholt, MSW, LCSW
Director of Counseling Services
Phone: 765-983-1432
Email: alisad@earlham.edu

Phone: 765-983-1608
Email: dkmerid90@earlham.edu

Shamara A. Dickenson, MS, CWHC
Wellness and Health Coach
Phone: 765-983-1449
Email: dickesh@earlham.edu

Desiree Tharp-Davis, MS, LPC
Counselor
Phone: 765-983-1608
Email: tharpde@earlham.edu

Darcey Meridith, MSW, LCSW
Contract Counselor

Barbie Will, MSW, LCSW
Contract Counselor
Phone: 765-983-1609
Email: willba@earlham.edu

Health Services

Confidential under Indiana law and professional licensure

General Contact

Office: Earlham Hall (1st floor - West Wing)

Phone: 765-983-1328

Fax: 765-983-1488

Email: healthservices@earlham.edu

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

Courtney Skaggs PMHNP-BC
Psychiatric Nurse Practitioner
Email: 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

Ombudsperson
Designated confidential by Earlham

Lailul Ikram, M.S.
Ombudsperson
Location: Virginia Cottage
Phone: 765.983.1875
Email: ikramla@earlham.edu

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

External Confidential Resources

In addition, Complainants may speak with individuals unaffiliated with Earlham without concern that Policy will require them to disclose information to the institution without permission:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors

- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

Employees also have access to counseling and legal services through the Employee Assistance Program (EAP) and should contact Human Resources for additional information about accessing these services.

IX. Title IX Coordinator: Independence and Conflicts of Interest

- A. The Director of Title IX and Equal Opportunity serves as the Title IX Coordinator and has the primary responsibility for coordinating Earlham's efforts to comply with its responsibilities under Title IX.
1. **Policy:** The Title IX Coordinator works with the Vice President for Strategic and Diversity Initiatives, the Director Human Resources, and the Deputy Title IX Coordinator for Athletics to adopt, publish, and implement the Sex Discrimination and Sex-based Harassment Policy.
 2. **Reporting:** The Title IX Coordinator responds to reports of alleged sex discrimination and harassment and oversee risk assessment, intake, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under the Policy. This includes monitoring for and addressing potential barriers to reporting information about conduct that may constitute sex discrimination under Title IX in Earlham's education program or activity.
 3. **Resolution processes:** The Title IX Coordinator oversees all resolutions under this policy and these procedures.
 4. **Training:**
 - 4.1 **Title IX Office:** The Title IX Coordinator will coordinate appropriate training for members of the Title IX office, which include those who assist with risk and safety assessment, provide supportive measures, facilitators of informal resolution processes, as well as investigators, decisionmakers, and other persons who are responsible for

implementing Earlham's grievance procedures, including appeals, or who have the authority to modify or terminate supportive measures.

4.2 **Earlham Employees:** The Title IX Coordinator ensures that all Earlham employees receive training related to Earlham's Nondiscrimination and Anti-Harassment policy and the prohibited conduct under this policy, as well as their mandated duty as Responsible Employees to report upon hiring or change of position that alters their duties under Title IX, and annually thereafter.

4.3 **Students:** The Title IX Coordinator will collaborate with appropriate campus offices on sex discrimination and sex-based harassment prevention activities. This may include providing tailored training to address alleged sex discrimination and sex-based harassment in a particular part of its education program or activity or at a specific location when information indicates there may be multiple incidents of sex-based harassment.

- B. The Title IX Coordinator fulfills the responsibilities defined above and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator ensures that all members of the Office of Title IX and participating in the response to reports or resolution of complaints are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.
- C. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Chief Diversity Officer, Gariot Louima, at louimga@earham.edu. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.
- D. Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Chief Diversity Officer, Gariot Louima, at louimga@earham.edu or designee. Reports of misconduct or discrimination committed by any other member involved in a Title IX process should be reported to the Title IX Coordinator.

X. Prohibited Conduct

A. Discrimination and Harassment

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discrimination, harassment, and retaliation. The [Nondiscrimination and Anti-Harassment Policy](#) describes specific forms of legally prohibited discrimination, including sex discrimination and harassment.

Prohibited Conduct includes all forms of:

1. **Discrimination:** Differential treatment of an individual or group of people based protected characteristics, including race, color, national origin; religion; sex, including pregnancy, childbirth, and related medical conditions; age; disability; veterans and past or present service members. See [Nondiscrimination and Anti-Harassment Policy](#).
 - 1.1. In determining whether discrimination occurred, Earlham considers whether there was an adverse impact on the individual's work or education environment and whether individuals outside of the protected class received more favorable treatment.
 - 1.2. If there was an adverse impact on the individual's work or education environment, Earlham considers whether there is a legitimate, non-discriminatory reason for the action.
2. **Harassment:** Federal law defines harassment as verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of race, color, national origin, gender, sex, sexual orientation, age, disability or any other Protected Category or that of his/her relatives, friends or associates, and that 1) has the purpose or effect of creating an intimidating, hostile or offensive work or study environment; 2) has the purpose or effect of unreasonably interfering with an individual's work or study performance; and 3) otherwise adversely affects an individual's employment or learning opportunities.
 - 2.1 **Discriminatory Harassment** is unwelcome conduct on the basis of actual or perceived protected characteristic(s), that based on the totality of the circumstances, is subjectively and objectively

offensive, and is so severe or pervasive, that it limits or denies a person's ability to participate in or benefit from Earlham's education program or activity.

B. Sex Discrimination and Sex-based Harassment

1. **Sex discrimination:** Sex discrimination includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, gender identity, or other sex characteristic.
2. **Sex-based harassment:** "Sex-based harassment" is a form of sex discrimination that includes sexual harassment and harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity, that is quid pro quo harassment, hostile environment harassment, or one of four specific offenses referenced in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act ("Clery Act") as amended by the Violence Against Women Reauthorization Act (2022 reauthorization). There are two types of sexual harassment claims:
 - 2.1. Hostile environment harassment is unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Earlham's education program or activity (i.e., creates a hostile environment).
 - 2.2. Quid pro quo harassment is when an employee, agent, or other person authorized by Earlham to provide an aid, benefit, or service under Earlham's education program or activity explicitly or implicitly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.
3. **Sexual assault:** A forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sexual assault encompasses a range of offenses, including but not limited to Fondling; Incest; Rape; Statutory Rape; and Sexual Assault with an Object directed against another person, without that person's consent ([National Incident-Based Reporting System \(NIBRS\), 2019](#)).

- 3.1. **Fondling:** The touching of the private body parts of the Complainant by the Respondent or causing the Complainant to touch the Respondent's private body parts intentionally for a sexual purpose without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity or physical incapacity. (NIBRS, 2019)
- 3.2. **Incest:** Nonforcible sexual intercourse between persons over the age of 18 who are related biologically as a parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, or nephew. (NIBRS, 2019; [IN Code § 35-46-1-3](#))
- 3.3. **Rape (Except Statutory Rape):** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This includes the offenses of sodomy and sexual assault with an object. (NIBRS, 2019; [FBI, Uniform Crime Report, 2019](#))
 - 3.3.1. **Sexual Assault With An Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. (NIBRS, 2019)
 - 3.3.2. **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. (NIBRS, 2019)
- 3.4. **Statutory Rape:** is nonforcible sexual intercourse with a person who is under the age of consent, or age 16 in Indiana. IN Code § 35-42-4-9.
4. **Dating violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and where the existence of such a relationship shall be determined based on a

consideration of the following factors: 1) the length of the relationship, 2) the type of relationship; and 3) the frequency of interaction between the persons involved in the relationship.

5. **Domestic violence:** Felony or misdemeanor crimes committed by a person who is a current or former spouse or intimate partner of the Complainant; is cohabiting, or has cohabited with the Complainant; shares a child in common; or commits acts against a youth or adult Complainant who is protected from these acts under the family or domestic violence laws of the jurisdiction.
6. **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.
7. **Sexual exploitation:** When one person takes a non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of Sexual Exploitation include, but are not limited to:
 - 7.1. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
 - 7.2. Invasion of sexual privacy (e.g., doxxing⁴)
 - 7.3. Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
 - 7.4. Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's

⁴ Doxxing is to search for and publish private or identifying information about (a particular individual) on the internet, typically with malicious intent.

consent), including the making or posting of non-consensual pornography

- 7.5. Prostituting another person
- 7.6. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- 7.7. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- 7.8. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- 7.9. Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- 7.10. Knowingly soliciting a minor for sexual activity
- 7.11. Engaging in sex trafficking
- 7.12. Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- 7.13. Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually-related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)
- 7.14. Creating or disseminating images or videos of child sexual abuse material

C. Title IX Sexual Harassment

Any of the following conduct on the basis of sex constitutes sexual harassment under Title IX⁵:

1. An Earlham employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (often called "quid pro quo" harassment);
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
3. "Sexual assault" as defined in [20 U.S.C. 1092\(f\)\(6\)\(A\)\(v\)](#), "dating violence" as defined in [34 U.S.C. 12291\(a\)\(10\)](#), "domestic violence" as defined in [34 U.S.C. 12291\(a\)\(8\)](#), or "stalking" as defined in [34 U.S.C. 12291\(a\)\(30\)](#).

D. Consent, Force, Coercion

1. **Consent:** Consent is an unambiguous, affirmative, and conscious decision by each person to engage in mutually agreed-upon sexual activity. Consent is informed, voluntary (freely given), clear, active, and requires ongoing permission by word or action to engage in sexual activity.
 - 1.1 Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity and with each new sexual act in advance of initiation. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction, but clear communication from the outset is strongly encouraged.
 - 1.2 For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is never implied by past behavior or statements or by location.

⁵ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. 34 C.F.R. § 106.30(a) (2020). <https://www.federalregister.gov/d/2020-10512/p-6446>

- 1.3 Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.
 - 1.4 Consent can also be withdrawn once given, as long as the withdrawal of consent is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease immediately.
 - 1.5 Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.
 - 1.6 Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.
 - 1.7 If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent (e.g., use of a safe word), those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.
 - 1.8 Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Earlham to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.
2. **Force** is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce. Sexual activity that is forced

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

3. **Coercion** is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
4. **Incapacitation** is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption. An individual who is incapacitated, disoriented, helpless, asleep, or unconscious for any reason, including by alcohol or other drugs, is incapable of giving consent. Engaging in a sexual act with an individual who is incapable of giving consent is a violation of this policy.
 - 4.1 Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
 - 4.2 This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.
 - 4.3 Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non- consensual sexual activity is a violation of this policy.
 - 4.4 It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or

mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

E. Additional Prohibited Conduct

In addition to the forms of discrimination and harassment described above and the Nondiscrimination and Anti-Harassment Policy, Earlham prohibits the following offenses when on its campus, within its education programs or activities, or when such action directly impacts the ability of members of the community to fully participate in Earlham education or activities.

1. **Failure to Provide Reasonable Accommodation:** Failure to provide an employee or student with reasonable modifications and/or accommodations for conditions relating from pregnancy and related conditions is a violation of this policy. See *Pregnancy and Related Conditions, and Parenting Student Policy*.
2. **Retaliation:** The Intimidation, threats, coercion, or discrimination against any person by Earlham, a student, employee, or other person authorized by the institution, from participating in activity protected by federal and state anti-discrimination and/or whistleblower laws. Protected activity includes: complaining about discriminatory or harassing behavior; disclosing/reporting violations of law, rule or procedure or fraud, waste or abuse; and participating in discrimination or whistleblower proceedings in good faith (such as an investigation or lawsuit).
3. **Unauthorized Disclosure:** Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by Earlham, or publicly disclosing a party's personally identifiable information without authorization or consent.
4. **Failure to Comply/Process Interference:** Intentional failure to comply with the reasonable directives of an Earlham Administrator in the performance of their official duties, including:
 - 4.1. Intentional failure to comply with the terms of a no contact order;

- 4.2. Intentional failure to comply with emergency removal or interim suspension terms;
- 4.3. Intentional failure to comply with sanctions;
- 4.4. Intentional failure to adhere to the terms of an agreement achieved through informal resolution;
- 4.5. Intentional failure to comply with mandated reporting duties as defined in this Policy;
- 4.6. Intentional interference with a discrimination or harassment resolution process, including but not limited to:
 - 4.6.1. Destruction of or concealing of evidence
 - 4.6.2. Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
 - 4.6.3. Intimidating or bribing a witness or party

5. False Allegations and Evidence

- 5.1. Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination of a Policy violation.
- 5.2. Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate Earlham policies.

F. Employee-Student Amorous Relationship

Regardless of position or contact, an employee's professional responsibilities make it possible for that employee to influence the status or circumstances of any student;

therefore, Earlham prohibits all employees from entering into amorous relationships with students.

Efforts by employees to initiate or oblige romantic or sexual relationships with students is considered a violation of this policy and subject to disciplinary action, including but not limited to termination of employment.

Please refer to the full policy at <https://earlham.edu/policy/employee-student-amorous-relationships-policy/>.

G. Other Offenses and Referrals

When the Title IX Coordinator receives reports of Civil Rights offenses that do not fall under the category of sex discrimination, the Title IX Coordinator will assist the Complainant in accessing other applicable reporting and grievance processes. Supportive measures are available to all students, regardless of the grievance process involved. See the Nondiscrimination and Anti-Harassment policy for further information.

Other behaviors, when not a violation of this policy, may constitute violations of community standards and will, therefore, be processed through employee or student conduct grievance processes.

XI. Notice of Discrimination, Harassment and/or Retaliation

Earlham welcomes and takes seriously any report of alleged discrimination, harassment, or assault in order to provide equal access to education programs and activities. When receiving verbal or written reports or complaints of sex discrimination and sex-based harassment, the Title IX Coordinator will promptly and equitably respond to a report in order to address the situation and provide safety measures and support, and, where appropriate and requested by the Complainant, pursue steps to resolve the situation through informal resolution or formal grievance processes, and to prevent further harm or discrimination.

- A. **Notice** describes any process by which a Complainant or third party notifies Earlham of action alleged to be a violation of this Policy or the Nondiscrimination and Anti-Harassment Policy.

- B. A **Report**, verbal or written, provides notice to Earlham of an allegation or concern about sex discrimination, sex-based harassment, or retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures.
- C. A **Complaint** provides notice to Earlham that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Complaint.
- D. Reports or Complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:
1. Give verbal or written notice to any responsible or mandated reporter.
 2. File a Complaint or give verbal notice to any of the administrators named in Section V of this Policy. Such a Complaint may be made at any time by using the telephone number, email address, or by mail to the office of the Administrator listed in this Policy.
 3. Submit a report or notice online using the appropriate form at <https://earlham.edu/report>.
 4. Report, verbally or in writing to any Earlham employee who has a mandate to report. All Earlham employees are responsible employees unless designated as confidential employees as defined in this Policy.
- E. **Anonymous Notice:** If an individual would like the College to be aware of a policy violation but is not ready or willing to share their name, they may report anonymously through the online reporting form, which initiates the Title IX Coordinator's review for safety threats and for opportunity to provide resources to a specific campus area. Employees have access to anonymous reporting through the online form or the campus Ombudsperson for confidential reporting of any unethical behavior on campus, including sexual harassment or assault.
1. Anonymous notice will be taken seriously and explored by Earlham to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

2. Anonymous notice typically limits Earlham's ability to provide supportive measures to Complainants who are the subject of anonymous notice or to investigate, respond, and provide remedies for the alleged discrimination or harassment, depending on what information is shared. Measures intended to protect the community in general or redress or mitigate harm may be enacted, based on the Title IX Coordinator's initial evaluation or risk assessment.
 3. If an individual submits an anonymous report, they are welcome to provide their name at a later date by submitting another online report or reporting in writing, by phone, or in person to the Title IX coordinator or any Earlham employee.
 4. Following a risk assessment of an anonymous report or when a Complainant does not wish to file a formal Complaint, the Title IX Coordinator may be obligated to initiate a Complaint without the Complainant's participation due to information indicating an imminent and serious threat to the health or safety of an individual or the campus community, such as evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence.
 5. When the Title IX Coordinator executes an anonymous Complaint, Earlham does not become the Complainant. The Complainant is the individual who is alleged to have been subjected to conduct that could constitute sex discrimination or sex-based harassment under this policy.
 6. A Complainant considering an anonymous report should be aware that reporting carries no obligation to initiate a Complaint, and in most situations, Earlham is able to respect a Complainant's request not to initiate a resolution process. If a Complainant does not wish to file a Complaint, Earlham will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows Earlham to discuss and/or provide supportive measures, in most circumstances.
- F. There is no time limitation on providing Notice/Complaints to Earlham. However, if the Respondent is no longer subject to the Earlham's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

- G. Earlham reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not based on a protected characteristic. Addressing such conduct will not result in the imposition of discipline under Earlham's Policy, but may be addressed through respectful conversation, remedial actions, education, and/or other Informal Resolution mechanisms. For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, contact the Title IX Coordinator or the Ombudsperson for guidance.
- H. Earlham will document in writing all Reports and Complaints regardless of whether a Complainant chooses an informal resolution process; withdraws an initial complaint; or pursues formal grievance procedures. Records are maintained for seven years.

XII. Amnesty for Complainants and Witnesses

- A. Earlham encourages the reporting of misconduct and crimes by Complainants and Witnesses. Sometimes, Complainants or witnesses are hesitant to report to officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.
- B. It is in the best interests of the Earlham community that Complainants choose to report misconduct to Earlham officials, that witnesses come forward to share what they know, and that all parties participate in good faith during the process. To encourage reporting and participation in the process, Earlham maintains a policy of offering parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident.
- C. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution or other criminal behavior.
 - 4. **Students:** Earlham maintains a policy of amnesty for students who offer help to others in need. Minor offenses may not result in the imposition of discipline under Earlham policy, but may be addressed through respectful

conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

5. **Employees:** Earlham may, at its discretion and within reason, offer amnesty to employees who reveal themselves as having engaged in behavior that constitute minor violations of policy while seeking redress for alleged violations of Earlham policy.

XIII. Privacy and Confidentiality

- A. Earlham makes every effort to preserve the Parties' privacy. Earlham will not share the identity of any individual who has made a Complaint of sex discrimination, sex-based harassment, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of discrimination, harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures.
- B. Even if a reporter does not specifically ask for privacy, the College will only disclose information regarding incidents of alleged sexual harassment or assault to individuals whom the College determines are necessary to conduct an appropriate investigation, to provide supportive measures to parties, to perform other appropriate College functions, or when the College is required to provide information under the law.
- C. Those reporting an incident, or who are in the process of reporting or filing a formal complaint, will always be informed in advance what information would need to be disclosed, to whom, and why. Confidential information shared with a certain College employee or outside professional cannot be disclosed to others without the express written permission of the individual who shared the information, except in situations of an imminent and serious threat to the health and safety of the individual and community or incidents involving a minor.
- D. Parties and Advisors are prohibited from unauthorized disclosure of information obtained by Earlham solely through the Resolution Process, to the extent that information is the work product of Earlham (meaning it has been produced, compiled, or written by Earlham for purposes of its investigation and resolution

of a Complaint). It is also a violation of Earlham Policy to publicly disclose a work product or a party's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

- E. Otherwise, the College will not restrict the ability of Complainant or Respondent 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.
- F. In situations in which there is a imminent and serious health and/or safety risk to a student, Earlham may contact parents or legal guardians to inform them of situations. In such instances, the Title IX Coordinator will consult the student before such action, unless the student is incapacitated or otherwise unable to respond.

XIV. Supportive and Protective Measures

- A. Upon receiving notice of alleged sex discrimination or sex-based harassment, the Title IX Coordinator will promptly communicate with the Complainant, in order to offer and implement appropriate and reasonable supportive measures. 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.
- B. In addition to providing supportive measures, the Title IX Coordinator may also, upon indication of a compelling threat to health and/or safety, work with Public Safety, Student Life, and/or Human Resources to implement protective measures designed to protect the safety of all Parties ensure that sex discrimination does not continue or recur within Earlham's education program or activity. Protective measures may include emergency removal or administrative leave.
- C. The availability of supportive and protective measures will be determined by the specific circumstances of each report and interim measures will be tailored to avoid depriving any Party or other student with access to Earlham's education programs or activities.

- D. The Title IX Coordinator will consider a number of factors in determining which measures to take, including the needs of the student or employee seeking supportive and/or protective measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the parties; whether the Complainant and the Respondent share the same residence hall, academic course(s), or job location(s); and whether court proceedings have been used to protect any parties (e.g., protective orders).
- E. Earlham will work in good faith to implement the requirements of judicially issued protective orders and similar orders, to the extent that doing so is within its authority
- F. Earlham will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair Earlham's ability to provide those supportive measures. The Title IX Coordinator will act to ensure as minimal an academic/occupational impact on the Parties as possible and will implement measures in a way that does not unreasonably burden any party.
- G. Supportive measures are detailed in the Discrimination and Harassment Grievance Procedures.
- H. When a student, or a person who has a legal right to act on behalf of the student, informs any employee of the student's pregnancy or related conditions, the employee should promptly provide that person with the Title IX Coordinator's contact information and inform that person that the Title IX Coordinator and the Director of Disability and Access Services (Section 504 Coordinator) can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the recipient's education program or activity. Earlham will allow the student to voluntarily access any separate and comparable portion of its education program or activity through reasonable accommodations or modifications outlined below.

XV. Promptness of Addressing Complaints and Resolutions

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

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

XVI. Standard of Proof

Earlham uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that Earlham will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of the Policy. This standard of proof requires "the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness."

XVII. Online Harassment and Misconduct

- A. Earlham policies are written and interpreted broadly to include online manifestations of any prohibited conduct, when those behaviors occur in or have an effect on Earlham's education program and activities, or when they involve the use of Earlham networks, technology, or equipment.
- B. Although Earlham may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the Title IX Coordinator or any Earlham employee, Earlham will engage in a variety of means to address and mitigate the effects, including off-campus conduct whose effects contribute to limiting or denying a person access to Earlham's education program or activity.
- C. Any online posting or other electronic communication by students, including technology-facilitated bullying, stalking, harassment, etc., occurring completely outside of the Earlham's control (e.g., not on Earlham networks, websites, or between Earlham email accounts) will only be subject to this Policy when such online conduct can be shown to cause (or will likely cause) a substantial in-program disruption or infringement on/harm to the rights of others. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided.

XVIII. Retaliation

Retaliation means the intimidation, threats, coercion, or discrimination against any person by the institution, a student, employee, or other person authorized by the institution, from participating in activity protected by federal and state anti-discrimination and/or whistleblower laws. Protected activity includes: complaining about discriminatory or harassing behavior; disclosing/reporting violations of law, rule or procedure or fraud, waste or abuse; and participating in discrimination or whistleblower proceedings in good faith (such as an investigation or lawsuit).

- A. 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.
- B. Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.
- C. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator or other 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.
- D. Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.
- E. The exercise of rights protected under the First Amendment does not constitute retaliation.
- F. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this

policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

XIX. Federal Timely Warning and Statistical Reporting Obligations

- A. Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Earlham must issue a timely warning to the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate or imminent threat to the health or safety of students and/or employees occurring on campus, unless the notification will compromise efforts to contain the emergency. Earlham will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.
- B. At Earlham, Campus Security Authorities include all personnel in the areas of student life/student conduct, public safety, athletics, residence life, human resources, student engagement (including advising student organizations), and any other official with significant responsibility for student and campus activities.
- C. In addition to Responsible Employees' mandatory reporting of sex discrimination and harassment, those deemed Campus Security Authorities (CSAs) to have a duty to report the following for federal statistical reporting purposes ([Clery Act](#)):
 - 1. All "primary crimes," which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
 - 2. Hate crimes, which include any bias-motivated primary crime, as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
 - 3. Sex offenses, forcible or nonforcible;
 - 4. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

- D. For Clery reports, all personally identifiable information is kept private, but statistical information must be passed along to Public Safety regarding the type of incident and its general location (on or off- campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log. Note that sex offenses fall under the requirement of mandatory reporting.
- E. See Crime Statistics at <https://earlham.edu/public-safety/crime-statistics/>.

XX. Academic Freedom

- A. The teaching and learning of the liberal arts at Earlham College rest on the principle of free inquiry and open discourse. This policy is not intended to inhibit or restrict free expression or exchange of ideas. Earlham's commitment to academic freedom can be found in full in the *Earlham College Faculty Handbook* (Section M) and the *Earlham School of Religion Faculty Handbook* (Section L).
- B. Speech or expression with legitimate and appropriate pedagogical purpose are not subject to sanction under this policy, unless they rise to the level of discrimination, harassment or other prohibited conduct as described in this policy.

XXI. Recordkeeping

Earlham will maintain records related to the implementation of this policy in a secure, digital location for a period of at least seven years:

- A. Records documenting the informal resolution process or the grievance procedures and the resulting outcome.
- B. Documentation for each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX and the actions taken to end, prevent, and remedy sex discrimination and sex-based harassment.

- C. All materials used to provide training of the campus community and Title IX office personnel indicated above. These training materials are available upon request for inspection by members of the public.

XXII. Policy Review and Amendment

- A. The Title IX coordinator is responsible for leading an annual review of this policy for compliance with state and federal law.
- B. Clerical amendments -- including adding or removing the names of certain administrators named in this policy – shall be made administratively as necessary.
- C. Changes beyond clerical amendments are reviewed and approved by the President.

CLERICAL NOTES

August 1, 2024 – Approved by the President. Compliant with the Department of Education’s Final Rules on Title IX (34 CFR 106) as well as the Equal Employment Opportunity Commission’s 2024 Final Rule on Pregnant Workers Fairness Act (29 CFR 1636).