

## TITLE IX GRIEVANCE PROCEDURES

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination based on sex in education programs and activities in federally funded schools at all levels. This means all academic, educational, extracurricular, athletic, and other programs of the Academy, that take place on Academy premises, in an Academy vehicle and at any other Academy-sponsored activities or events that take place off of Academy's premises. If any part of the Academy receives any Federal funds for any purpose, all of the operations of the Academy are covered by Title IX.

All Academy staff (including but not limited to, Title IX Coordinator, an administrator with authority to institute corrective measures on behalf of the Academy or any staff member) with actual knowledge of sexual harassment in a program or activity against a person must respond promptly and in a manner that is not "deliberately indifferent" (failure to respond in light of known circumstances). The Academy is deemed to have "actual notice" once any staff member has notice.

The Academy has adopted the following grievance procedures providing for the prompt and equitable resolution of complaints under Title IX. This includes providing supportive measures to the Complainant and the Respondent and following the grievance procedures before imposing disciplinary consequences against the Respondent.

The Title IX Coordinator is the Academy staff member that has been designated by the Academy Board to coordinate the Academy's compliance with Title IX, including the grievance process. The Title IX Coordinator, along with any investigator, decision maker or any person designated to facilitate the information resolution process shall not have a conflict of interest or bias against the Complainant or Respondent.

The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as the filing of a complaint with the Office for Civil Rights, local law enforcement agencies or the filing of a court case.

The Academy retains discretion to respond to unanticipated or extraordinary circumstances not expressly addressed in these procedures in a way that is not clearly unreasonable.

### Definitions

#### *Sexual Harassment*

Sexual harassment is defined as:

1. A staff member conditioning the provision of an aid, benefit, or service of the public school academy on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo sexual harassment). or
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive **and** objectively offensive that it effectively denies a person's equal access to the Academy's education program or activity.; or
3. Any incident of sexual assault, dating violence, domestic violence, and stalking as defined under federal law.

#### *Complainant*

The individual who is alleged to be the victim of conduct that could constitute sexual harassment.

#### *Respondent*

The individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

## Reporting Sexual Harassment

Any person may report sexual discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim), in person, by mail, by email, by telephone, or by any other means that results in the Title IX Coordinator receiving the person's written or verbal report. The report may be made at any time, including during non-business hours.

Academy staff are required to report allegations of sexual harassment within two (2) business days of having actual knowledge to the Title IX Coordinator. The person making the report should identify the alleged victim, the alleged perpetrator, and describe the alleged conduct and/or occurrence, including, date, time and location.

Within two (2) business days of receiving a report, the Title IX Coordinator must contact the alleged victim confidentially to inform her/him of the availability of supportive measures with or without the filing of a formal complaint and explain the process for filing a formal complaint. The Title IX Coordinator should consider the alleged victim's wishes with respect to supportive measures. The Title IX Coordinator should not pressure the alleged victim into filing a formal complaint, or into participating in the grievance process.

The alleged victim's wishes with respect to whether the Academy investigates should be respected. However, the Title IX Coordinator may determine that signing a formal complaint is necessary to initiate an investigation given the known circumstances.

### *Supportive Measures*

Supportive measures are meant to be non-punitive individualized services, offered as appropriate and without charge to the alleged victim or the alleged perpetrator before filing of a formal complaint or where no complaint has been filed. These measures include but are not limited to counseling, course modifications, schedule changes, mutual restriction on contact between the parties, leaves of absence, and increased monitoring.

A supportive measure that completely removes an alleged perpetrator from an activity would likely be considered punitive (and prohibited), except for "emergency removals" for students or "administrative leave" for staff. The Title IX Coordinator may remove an alleged perpetrator from the Academy on an emergency basis after conducting an individual risk assessment in order to determine if the alleged perpetrator poses an immediate threat to the physical health or safety of any student or other individual under the sexual harassment allegations.

Upon receiving a formal complaint, the Title IX Coordinator will consider whether any supportive measures should be provided to protect the Complainant and the Respondent from further sexual harassment or retaliation. If either the Complainant or Respondent is unwilling to consent to the proposed supportive measures, the Title IX Coordinator may still take whatever measures she/he deems appropriate in consultation with the School Leader.

Before the Academy imposes any disciplinary measures, including actions that are not supportive measures, against the alleged perpetrator, the Academy must follow the grievance procedures.

### Informal Resolution

A Complainant who does not wish to pursue the formal complaint process may request a less formal process known as informal resolution. An informal resolution is prohibited unless a formal complaint is filed.

An informal resolution is allowed at any time during the formal complaint process if:

1. Both parties are provided written notice of their rights; and
2. Both parties' written, voluntary consent is obtained.

The Title IX Coordinator will provide to both the Complainant and the Respondent with written notice stating the allegations and the right of the parties to withdraw from the informal resolution process and proceed with the formal

grievance process at any time. Once both parties consent in writing to participate in the informal resolution process, the Title IX Coordinator will meet separately with the Complainant and the Respondent to gather relevant information. The Title IX Coordinator may put in place appropriate supportive measures to protect the parties.

The Title IX Coordinator will work with both parties to determine a mutually acceptable resolution to the complaint. This resolution will be put in writing and signed by the Complainant and the Respondent. Once signed, the written resolution becomes final and neither party can initiate the formal complaint process. The written resolution is not subject to appeal. Either party may, at any time prior to signing an informal resolution agreement, elect to end the informal resolution process and initiate the formal complaint process.

The informal resolution process is not an option when the complaint alleges that a staff member or another adult in the Academy community sexually harassed the student. Also, the informal resolution process is not available to resolve a complaint alleging sexual assault between two students.

Informal resolution may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, or restorative justice.

### Formal Complaints

A formal complaint is filed by an individual who alleges she/he has been subjected to unlawful sexual harassment or discrimination (the "Complainant") by an individual perpetrator of the conduct (the "Respondent"). The formal complaint requests that the Academy investigate the allegations. The formal complaint can be filed with the Title IX Coordinator by mail, e-mail, or in person. The Academy will follow its grievance procedures before the imposition of any disciplinary consequences or other actions that are not supportive measures against the Respondent.

Individuals wishing to file a formal complaint should make every effort to file a complaint within thirty (30) calendar days after the alleged conduct occurs. Once the formal complaint is received the Academy will attempt to conclude the grievance process within sixty (60) business days of receipt of the formal complaint.

This timeline may be subject to temporary delays or limited extensions for good cause. The Complainant and the Respondent will receive written notice, including the reason for, the delay or extension. Good cause may include, but is not limited to, concurrent law enforcement activity, the absence of a party or party's advisor or the need for an accommodation.

The Complainant may obtain a Complaint Form from the Title IX Coordinator, School Leader, or the Academy website.

If a Complainant informs the School Leader or other Academy staff, either orally or in writing, about any complaint of sexual harassment or discrimination, that person must report such information to the Title IX Coordinator within two (2) business days.

All formal complaints must include the following information to the extent it is available:

1. the identity of the individual believed to have engaged in, or be engaging in, conduct that could constitute sexual harassment or discrimination (the "Respondent");
2. a detailed description of the facts upon which the complaint is based, including date and time;
3. a list of potential witnesses; and
4. the resolution sought by the Complainant.

If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the Title IX Coordinator shall ask for such details in an oral interview. In the event the Complainant is a student with disabilities, the Title IX Coordinator will carefully review the reporting student's IEP or 504 plan to determine what specific accommodations that child should have to aid in their reporting. Thereafter, the Title IX Coordinator will prepare

a written summary of the oral interview, and the Complainant will be asked to verify the accuracy of the reported charge by signing the document.

Within two (2) business days of receipt of the formal complaint, the Title IX Coordinator will provide simultaneously written notice of the allegations to both the Complainant and the Respondent. The notice must allow sufficient time for Respondent to prepare a response before any initial interview. The written notice must include:

- Notice of grievance process, including the informal resolution process
- Notice of allegations in sufficient detail to allow respondent to prepare a response. Sufficient details include the identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.
- Statement that Respondent is presumed not responsible and that responsibility will be determined at end of grievance process
- Notice of parties' rights to have an advisor of their choice (not required to be an attorney) and the right to inspect and review evidence
- Notice of any provision in the code of conduct that prohibits knowingly making false reports of sexual harassment or providing false evidence during the grievance process

### *Investigations*

Within two (2) business days of receiving the complaint, the Title IX Coordinator will assign an investigator who will initiate a formal investigation to determine whether the Complainant has been subjected to sexual harassment. The burden of gathering evidence and the burden of proof are on the Academy, not the parties. The Respondent is presumed innocent during the grievance process.

The Academy will,

1. provide equal opportunity for the parties to present fact and expert witnesses and other evidence both exculpatory and inculpatory;
2. provide the same opportunity to both parties to select an advisor of the party's choice who may be, but need not be, an attorney;
3. will not restrict the parties' ability to discuss the allegations or gather evidence, e.g., no "gag orders"

Questions or evidence about the Complainant's prior sexual behavior – even with the Respondent accused of sexual harassment and even in cases where the Respondent already possesses evidence about sexual history are never deemed relevant, with two exceptions:

1. To prove consent; or
2. To prove someone other than the Respondent committed the alleged sexual harassment.

The Academy will not access, consider, disclose a party's record that are made or maintained by a physician, psychiatrist, psychologist, or other professional which are made in connection with treatment provided to the party, unless the party provide a written, voluntary consent. The Academy will never use or attempt to use questions or evidence that is protected by a legally required privilege, unless the person holding the privilege waives the privilege.

The investigation will include:

1. Interviews with the Complainant;
2. Interviews with the Respondent;
3. Interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
4. Consideration of any documentation or other information presented by the Complainant, Respondent, or any other witness that is reasonably believed to be relevant to the allegations

The Academy will send the parties, and their advisors, evidence directly related to the allegations with at least ten (10) days for the parties to inspect, review, and respond to the evidence. The Academy will provide a minimum of two (2) days written notice to the parties of any investigative interview and/or meetings.

At the conclusion of the investigation, the investigator shall prepare a written investigative report. The report must fairly summarize the relevant evidence gathered during the investigation. Either the investigator or the Title IX Coordinator will provide the investigative report to both parties and advisors at least ten (10) days before the determination of responsibility. The investigator must allow each party the opportunity to submit written, relevant questions that a party wants asked to another party or witness, provide each party with the answers and allow for additional, limited follow-up questions from each party.

#### *Determination of Responsibility*

The Title IX Coordinator shall designate a decision maker (cannot be the investigator or Title IX Coordinator) to issue a determination of responsibility. The decision maker must issue a final determination regarding whether the charges have been substantiated within five (5) business days of the parties submitting their final review and written responses.

The decision-maker shall consider the totality of the evidence and determine by a preponderance of the evidence whether the alleged conduct constitutes sexual harassment (i.e., it is more likely than not that sexual harassment occurred).

A copy of the decision-maker's final decision will be sent to both the Complainant and the Respondent, simultaneously. The final determination must address:

1. Allegations
2. Procedural steps taken during the grievance process
3. Findings of fact supporting the determination
4. Application of code of conduct to facts
5. Statement of and rationale for result as to each allegation including:
  - Determination of responsibility
  - Any disciplinary sanctions
  - Whether remedies to restore or preserve equal access to the educational program or activity will be provided
6. Information on how to file an appeal

If the decision-maker determines the Complainant was subjected to sexual harassment or retaliation, the decision-maker shall make recommendations to immediately end the discriminatory conduct, recommend ways to remedy the discriminatory effects on the Complainant and identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the sexual harassment or retaliation. The corrective action should be reasonable, timely, age-appropriate and effective, and tailored to the specific situation.

#### *Remedies and Sanctions*

If an investigation reveals that the harassment created a hostile environment, the school must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent the harassment from recurring, and, as appropriate, remedy its effects. Title IX requires the Academy to take steps to protect the Complainant as necessary, including implementing supportive measures before the final outcome of the investigation. In addition, the Academy must be aware that complaints of sexual harassment or violence may be followed by retaliation by the Respondent.

Depending on the specific nature of the problem, remedies for the Complainant might include, but are not limited to:

- ensuring that the Complainant and the Respondent do not attend the same class;
- providing counseling services;

- providing academic support, such as tutoring;
- providing an escort to ensure that the complaining can move safely between classes and activities

The following consequences may be imposed on a Respondent who is determined to have committed sexual harassment:

- suspension of extracurricular activities, such as athletics
- in school discipline, such as detention, Saturday school, or writing assignments
- short term suspension
- long term suspension or expulsion

### Appeal

A Complainant or Respondent who is dissatisfied with a **dismissal** or **final determination** may appeal for:

- procedural irregularities that affected the outcome of the complaint
- new evidence that was not reasonably available at the time of the dismissal or final determination that could affect the outcome of the complaint
- conflict of interest or bias by the Title IX Coordinator, investigator or decision-maker against the Complainant or Respondent that affected the outcome of the complaint

The Complainant may not challenge the ultimate disciplinary consequences that are imposed against the Respondent.

The Title IX Coordinator will assign a decision maker for the appeal process. The decision maker for the appeal shall not be the same person as the decision maker who reached the determination of responsibility, or the Title IX Coordinator.

A party wishing to appeal the determination of responsibility or the dismissal of a formal complaint must submit a written appeal to the Title IX Coordinator within five (5) business days after receipt of the determination of responsibility or dismissal. The written appeal must state the reasons for the dissatisfaction. The Academy is not precluded from imposing remedies, including discipline consequences, while the appeal is pending. The Title IX Coordinator will send written notification to the non-appealing party of the appeal within two (2) business days of its receipt. The non-appealing party's written statements must be submitted five (5) business days after the Title IX Coordinator provides that party a copy of the appeal.

The decision maker for the appeal must issue a written decision describing the result of the appeal and the rationale for the result within five (5) business days of the date when the parties submitted their written statements. The written decision on appeal will be provided simultaneously to the parties by the Title IX Coordinator.

The original determination of responsibility, including disciplinary consequences, will stand if the appeal is not filed in a timely manner, or if the appealing party failed to show an error or a compelling reason to overturn the original determination. No further review will be permitted beyond the appeal.

### Dismissals

The Academy must dismiss a formal complaint for purposes of Title IX when the alleged conduct

1. does not meet the definition of sexual harassment; or
2. did not occur in the Academy's program or activity; or
3. did not occur in the United States

The Academy may still address the allegations in any manner the Academy deems appropriate under the Academy's student code of conduct, policy or under the law.

The Academy may, at its discretion, dismiss a formal complaint if

1. the Complainant informs the Title IX Coordinator in writing that she/he is withdrawing the formal complaint; or
2. the Respondent is no longer enrolled at the Academy; or

3. specific circumstances prevent the Academy from gathering evidence sufficient to reach a determination of responsibility, e.g., the passage of time, lack of cooperation by the Complainant

For both mandatory and permissive dismissals, the Academy must give the parties written notice of the dismissal and the reasons for the dismissal.

#### Privacy/Confidentiality

The Academy will employ all reasonable efforts to protect the privacy and confidentiality of the Complainant, the Respondent, and the witnesses consistent with its legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations. The Academy's obligation to protect confidentiality shall not impair the Complainant's and Respondent's right to receive information related to the investigative record and determination of responsibility.

Confidentiality, however, cannot be guaranteed. Requests for confidentiality, therefore, will be evaluated in the context of the Academy's responsibility to provide a safe and nondiscriminatory environment for all students, and the request will be weighed against whatever factors the Academy deems relevant, including, without limitation:

1. the complainant's age;
2. circumstances that suggest there is an increased risk of future acts of harassment and/or sexual violence under similar circumstances; and
3. whether the Academy possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

All Complainants proceeding through the formal investigation process will be advised that their identities will be disclosed to the Respondent(s).

#### Retaliation

Retaliation against a person who makes a report or files a complaint alleging sexual harassment or retaliation, or participates as a witness in an investigation is prohibited. Specifically, the Academy will not retaliate against, coerce, intimidate, threaten or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil rights law, or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised, enjoyed, aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws.

The Academy will not charge an individual with code of conduct violations that does not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX .

The exercise of rights under the first amendment does not constitute retaliation.

Complaints alleging retaliation may be filed according to the Academy's grievance procedures.

#### Record Keeping

The Academy must maintain all records related to alleged sexual harassment for a minimum of seven (7) years. These records include, but are not limited to, investigation records, disciplinary sanctions and supportive measures, remedies, any appeals and the results, any informal resolution and the result, and all materials used to train the Title IX Coordinator, investigators, and decision maker.

In each case the Academy must document:

1. Why response was not deliberately indifferent

2. Measures were taken to restore or preserve equal access to educational program or activity
3. If no supportive measures provided, why that was not deliberately indifferent

### Training

All staff must receive training in identifying and reporting sexual harassment. Title IX Coordinators, decision makers and investigators or anyone who facilitates an informal resolution process must receive training on the key elements of Title IX, including:

1. definition of sexual harassment
2. the scope of the Academy's education program of activity;
3. how to prevent irrelevant questions about a party's sexual history being asked during a proceeding; and
4. the grievance process, including formal investigations, informal resolutions and appeals
5. the availability of training materials on the Academy's website and for public review

Training records must be maintained for seven (7) years and training materials must be posted on the website. If a person is not able to access the Academy's website, the Title IX Coordinator will make the training materials available upon request.