

## TITLE IX SEXUAL -HARASSMENT POLICY AND GRIEVANCE PROCEDURES<sup>1</sup>

### **I. About Title IX**

Title IX is a federal civil rights law that protects people from discrimination based on sex in education programs or activities that receive federal financial assistance. While many associate Title IX strictly with equity in access to sports and facilities irrespective of sex, it also applies to sexual harassment, including sexual violence.

Title IX regulations found in 34 C.F.R. Part 106 require extensive standards and grievance procedures for complaints of sexual harassment. This Title IX policy is intended to comply with those standards and procedures. The Title IX regulations apply to complaints of sexual harassment made by employees or by students.

Title IX regulations define sexual harassment more narrowly than the school's code of conduct or employee handbook. Some complaints of sexual harassment will not fall within the sexual harassment definitions of Title IX's regulations but will fall within the sexual harassment definitions within the student code of conduct or employee handbook. Each complaint a school receives alleging sexual harassment should be examined to determine which grievance procedures need to be followed. Some complaints might implicate multiple grievance procedures.

### **II. Definitions**

***Accused*** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

***Actual knowledge*** means notice of sexual harassment or allegations of sexual harassment to the School's Title IX Coordinator or any official of the School who has authority to institute corrective measures on behalf of the School, or to any other employee. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the School with actual knowledge is the individual accused of harassment ("Accused"). The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the School. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in 34 C.F.R. § 106.8(a).

***Complainant*** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

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Adopted:

“**Education program or activity**” includes locations, events, or circumstances over which the School exercised substantial control over both the accused and the context in which the sexual harassment occurs.

**Formal complaint** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against an accused and requesting that the School investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the School with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the School.

The phrase “**document filed by a complainant**” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the School) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

**Accused** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the School conditioning the provision of an aid, benefit, or service of the School on an individual's participation in unwelcome sexual conduct;
- (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 School'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).

**Supportive measures** mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the accused before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the School's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the School's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The School must maintain as confidential any supportive measures provided to the complainant or accused, to the extent that maintaining such confidentiality would not impair the ability of the School to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

### **III. General Response to Sexual Harassment**

If TEACH has actual knowledge of sexual harassment in an education program or activity of the school against a person in the United States, TEACH must respond promptly in a manner that is not deliberately indifferent. TEACH is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

TEACH's response must treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process that complies those processes identified herein before the imposition of any disciplinary sanctions or other actions that are not supportive measures against an accused.

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

### **IV. Response to a Formal Complaint**

In response to a formal complaint, TEACH will follow a grievance process outlined below. With or without a formal complaint, TEACH must comply with the School's General Response to Sexual Harassment process identified above.

#### **Emergency Removal**

TEACH may remove an accused from the education program or activity on an emergency basis, provided that it undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the accused with notice and an opportunity to challenge the decision immediately following the removal.

#### **Administrative Leave**

TEACH may place an accused non-student employee on administrative leave during the pendency of a grievance process identified below.

### **V. Grievance Process for Formal Complaints of Sexual Harassment**

#### **Discrimination on the Basis of Sex**

TEACH's treatment of a complainant or an accused in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX.

#### **Grievance Process Generally**

TEACH shall treat complainants and those accused equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the accused, and by following a grievance process that complies with this policy before the imposition of any disciplinary sanctions or other actions that are not supportive measures against an accused. Remedies are to be designed to restore or preserve equal access to the its education program or activity. Such

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remedies may include the same individualized services described above as “supportive measures”; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the accused.

TEACH shall require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a complainant, accused, or witness.

**Title IX Coordinator:** The designated Title IX Coordinator, investigator, decision-maker, or any person designated by TEACH to facilitate an informal resolution process, shall not have a conflict of interest or bias for or against complainants or those accused generally or an individual complainant or accused.

TEACH shall ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the School's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

TEACH shall ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth below.

TEACH also shall ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth below. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

**Presumption:** TEACH shall include a presumption that the accused is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

**Time Frames:** TEACH shall include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if TEACH offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the accused of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

## **VI. Disciplinary Sanctions and Remedies:**

Following the determination of responsibility, the following reflect the range of possible disciplinary sanctions and remedies TEACH may implement:

Remedies for students:

If TEACH determines that the respondent engaged in Sexual Harassment, TEACH will provide remedies to the complainant, as appropriate. This may include supportive measures. Remedies may also include: transfer from a class; parent/student conference(s); positive behavior support; warnings; detention; and/or formal discipline, such as suspension and expulsion.

When an employee is found to have committed Sexual Harassment, TEACH will take appropriate disciplinary action, up to and including termination, in accordance with TEACH's policies and as permitted by law.

## **VII. Due Process**

**Standard of Evidence:** For all formal complaints of sexual harassment against students, employees, and faculty, the standard of evidence to be used to determine responsibility is the clear and convincing evidence standard.

**Appeals:** The following include the procedures and permissible bases for the complainant and accused to appeal: Appeals will be made to the COO in writing and sent via electronic mail within 15 business days of any decision being appealed.

Either party may appeal Charter School's Written Decision, or its dismissal of a formal complaint or any allegation in the complaint, within five (5) calendar days of the decision. An appeal may be made on any of the following grounds:

1. A procedural irregularity affected the outcome.
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter.
3. The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against complainant or respondent that affected the outcome of the matter.

Upon receipt of an appeal, Charter School will provide a written notification to the other party about the appeal that gives both parties a reasonable, equal opportunity to submit a written statement in support of/challenging the appeal.

The Title IX Appeals Officer (not Decision-Maker, Title IX Coordinator, or Investigator) shall issue a written decision of an appeal, including the rationale for the result, to both parties simultaneously. The Title IX Appeals Officer will endeavor to issue their decision within 30 calendar days from the receipt of the appeal.

## **VIII. Supportive Measures:**

The following supportive measures are available to complainants and those accused: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

**Privileged Evidence:** When making a determination of responsibility, TEACH will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### **IX. Notice of allegations:**

When TEACH receives a formal complaint, TEACH will provide written notice to the parties who are known. Such written notice will contain the following:

- 1) Notice of the School's grievance process, including any informal resolution process;
- 2) Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined above, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.

Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.

The written notice shall include a statement that the accused is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice must inform the parties of any provision in the TEACH code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, TEACH decides to investigate allegations about the complainant or the accused that are not included in the notice provided above, TEACH must provide notice of the additional allegations to the parties whose identities are known.

### **X. Dismissal of a Formal Complaint:**

TEACH shall investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined above even if proved, did not occur in TEACH's education program or activity, or did not occur against a person in the United States, then TEACH must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX and implemented regulations; such a dismissal does not preclude action under another provision of the TEACH's code of conduct.

TEACH may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the accused is no longer enrolled or employed by the school; or specific circumstances prevent the School from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal described above, TEACH must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

**Consolidation of Formal Complaints.** TEACH may consolidate formal complaints as to allegations of sexual harassment against more than one accused, or by more than one complainant against one or more accused, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one accused, references in this policy to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.

## **XI. Investigation of a Formal Complaint**

When investigating a formal complaint and throughout the grievance process, TEACH shall:

- 1) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on TEACH and not on the parties provided that the TEACH cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless TEACH obtains that party's voluntary, written consent to do so for a grievance process under this policy. If a student is under the age of 18, TEACH must obtain the voluntary, written consent of the student's parent/guardian/education rights holder.
- 2) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- 3) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- 4) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or the accused in any meeting or grievance proceeding.
- 5) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- 6) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which TEACH does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, TEACH must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. TEACH must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

7) Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this policy or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

### **Hearings.**

No hearing will be provided for an accused employee.

For students, no hearing will be provided for a suspension, but is required and will be provided for an expulsion according to school's disciplinary rules.

After TEACH has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the accused committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the accused and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

## **XII. Determination Regarding Responsibility**

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility applying the standard of evidence described above.

The written determination must include—

- 1) Identification of the allegations potentially constituting sexual harassment as defined above.
- 2) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
- 3) Findings of fact supporting the determination.
- 4) Conclusions regarding the application of the TEACH's code of conduct to the facts.
- 5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions TEACH imposes on the accused, and whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided by the School to the complainant; and
- 6) TEACH's procedures and permissible bases for the complainant and the accused to appeal.

TEACH shall provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the school provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.



The Title IX Coordinator is responsible for effective implementation of any remedies.

### **XIII. Appeals**

TEACH shall offer both parties an appeal from a determination regarding responsibility, and from the school's dismissal of a formal complaint or any allegations therein, on the following bases:

- 1) Procedural irregularity that affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- 3) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against a complainant or an accused generally or the individual complainant or accused that affected the outcome of the matter.

#### **As to all appeals, TEACH shall:**

- 1) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- 2) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- 3) Ensure that the decision-maker(s) for the appeal complies with the conflict of interest and bias standards set forth above;
- 4) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- 5) Issue a written decision describing the result of the appeal and the rationale for the result; and
- 6) Provide the written decision simultaneously to both parties.

**Informal Resolution.** TEACH may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this policy. Similarly, TEACH may not require the parties to participate in an informal resolution process under this policy and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the School may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the School—

- 1) Provides to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

- 2) Obtains the parties' voluntary, written consent to the informal resolution process; and
- 3) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

#### **XIV. Recordkeeping**

1) TEACH must maintain for a period of seven years records of—

(A) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript of any hearing (if applicable), any disciplinary sanctions imposed on the accused, and any remedies provided to the complainant designed to restore or preserve equal access to the School's education program or activity;

(B) Any appeal and the result therefrom;

(C) Any informal resolution and the result therefrom; and

(D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The School must make these training materials publicly available on its website, or if the School does not maintain a website the School must make these materials available upon request for inspection by members of the public.

(ii) For each response to a formal complaint required by this policy, the School must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the school must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the school's education program or activity. If a School does not provide a complainant with supportive measures, then TEACH must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the school in the future from providing additional explanations or detailing additional measures taken.

## Title IX Policy Flowchart

**Title IX applies to sexual violence, harassment or discrimination. This flowchart provides an overview of the process and should be used in conjunction with a close reading of the policy. If you need support, your CMO is here for you!**

**Principals- you are the Title IX Coordinator for any Title IX related issues dealing with STUDENTS.**

**Human Resources- You are the Title IX Coordinator for any Title IX related issues dealing with EMPLOYEES.**

**The process and policy apply to both students and employees.**

1. Do you have a situation or complaint involving sexual harassment, sexual violence, or discrimination involving either employees or students or both? If so, Title IX policy trumps Student Code of Conduct and Employee Handbook.
  - a. **If Yes- You need to use the IX Policy- go to #2**
  - b. **If no- use the Employee Handbook or Student Code of Conduct**
  
2. Do you have actual knowledge of the case or situation – **(go to A.) Or**  
Has someone filed a complaint or come to you for help? **(go to B.)**
  - A. If you have actual knowledge you need to act promptly. See section III of the policy, **continue on to B.**
  - B. Start the process **(go to step 1).**
  
3. **Step 1:** Do you have a conflict of interest or potential conflict of interest?
  - a. **If yes- contact HR and/or the COO immediately.**
  
  - b. **If no conflict of interest, go to step 2.**
  
4. **Step 2:** Provide written notice to all known parties
  
5. **Step 3:** Discuss supportive measures with the complainant. See section VIII. Supportive Measures.

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6. **Step 4:** Do a safety/ risk analysis and consider the following actions:
  - a. If accused is a student that presents a safety risk, emergency removal
  - b. If the accused is an employee, consider administrative leave
  
7. **Step 5: The investigation-** Read the policy carefully, see section XI:
  - a. Perform an objective evaluation of all relevant evidence.
  - b. Presume the accused is not guilty until a determination is made at the end of the process.
  - c. The standard of proof is clear and convincing evidence.
  
8. **Step 6:** The determination- see section XII
  
9. **Step 7:** The Appeal- if an appeal is requested, see section XIII
  
10. **Step 8:** Determine and administer disciplinary measures if there is convincing evidence the accused committed an act in violation of Title IX.
  
11. **Step 9:** Official disposition and Recordkeeping. See section XIV.