

## July 2020 Special Release – Title IX Regulations Board Policies Update

### OVERVIEW AND COMMENTS

Policy 2266 – Nondiscrimination on the Basis of Sex in Education Programs and Activities is a replacement policy for Policy 5517.02, which is being eliminated. Policy 2266 is a mandatory policy that memorializes the key requirements of the new Title IX regulations that the U.S. Department of Education, Office for Civil Rights (“OCR”) released on May 6, 2020. The new regulations go into effect on August 14, 2020, which means that public school academies must follow its mandates when addressing, investigating and adjudicating allegations of sexual harassment occurring in the Academy’s education program and activities that the Academy received notice of on or after August 14. It is expected that Academies will need to certify/affirm their compliance with Title IX and these new implementing regulations when applying for and receiving federal funds related to the 2020-2021 school year.

The new regulations are extremely prescriptive and, as a result, the Institute is required to use specific terms (e.g., Complainant, Respondent, Title IX Coordinator, Formal Complaint, Sexual Harassment), definitions, and procedures (i.e., grievance process and procedures) that are different from those found in other Institute nondiscrimination and anti-harassment policies and administrative guidelines. For example, the regulations mandate a specific definition of “Sexual Harassment” that includes not only the standard *quid pro quo* sexual harassment that is found in existing policies, but also a more stringent definition of hostile environment sexual harassment (i.e., “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 Academy’s education program or activity”)<sup>1</sup> and sexual misconduct that is based upon definitions of “sexual assault,” “dating violence,” “domestic violence,” and “stalking” that are derived from two Federal statutes that historically have only applied to post-secondary and higher-education institutions (i.e., the Clery Act and the Violence Against Women Reauthorization Act).

Additionally, the scope of conduct that is covered by the regulations is narrower than that which is covered by other nondiscrimination and anti-harassment policies – e.g., the regulations do not cover conduct that occurs outside the United States (i.e., any field/class trips that take place outside the United States) or conduct involving a Respondent (i.e., the individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment) that the Academy does not have “substantial control” over.

Further, the regulations necessitate the need for the Board to require any employee who receives a report of, or has knowledge of, Sexual Harassment to notify the Title IX Coordinator so it can be promptly and equitably addressed; the Academy is considered to have “actual knowledge” and, therefore, responsibility for addressing such misconduct, even if the employee fails to bring it to the appropriate person’s attention. In such a situation, the Academy could be found in violation of Title IX if it does not promptly and equitably address Sexual Harassment that occurs in its education program or activity.

The regulations also eliminate the practice of having a single investigator and decision-maker. Under the new regulations the person who conducts an investigation cannot be the same person who makes the ultimate determination of responsibility concerning whether the Respondent engaged in Sexual Harassment. The investigation process is further different from Academy’s prior practices because the

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<sup>1</sup> Compare to the definition in Policies 1662, 3362, and 4362: “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when: \* \* \* C. Such conduct has the purpose or effect of interfering with the individual’s work or educational performance; of creating an intimidating, hostile, or offensive working, and/or learning environment; or of interfering with one’s ability to participate in or benefit from a class or an educational program or activity.”



Complainant (i.e., the individual who is alleged to be the victim of conduct that could constitute Sexual Harassment) and the Respondent must be provided advanced written notice before being interviewed, and must be afforded at least 10 days advanced notice of, and an opportunity to review, all of the evidence and information collected by the investigator before the investigator prepares the investigatory report.<sup>2</sup> In addition, the parties must have a minimum of 10 days to review the investigatory report before a decision-maker issues a determination of responsibility or conducts a hearing (if the Board elects to allow live hearings).<sup>3</sup>

Last, the regulations detail specific training that certain members of the Academy's Title IX team need to receive and mandate the retention of specific records for a period of seven calendar years and the posting of certain information on the Academy's website (i.e., the Board's notice of nondiscrimination, the name/title and contact information for the Academy's Title IX Coordinator, the Board-adopted grievance process and procedures, and specific training materials).

Administrative Guideline 2266 – Nondiscrimination on the Basis of Sex in Education Programs and Activities is a new guideline that should be taken as promulgated because it expands upon and clarifies some of the key aspects of replacement Policy 2266 and the new Title IX regulations.

- I. particular, the AG expands on the definition of Sexual Harassment by providing examples of conduct that may constitute Sexual Harassment and provides information concerning the concepts of "consent" and a person being "incapacitated," which are both important to the offensive of sexual assault. The AG also discusses the process the Academy needs to follow when determining whether to emergency remove a student Respondent.

Next, the AG provides direction concerning the need to verify the members of the Academy's Title IX team do not have a conflict of interest or impermissible bias associated complainants and respondents generally or the specific Complaint and Respondent in a particular case. Additionally, the AG outlines some circumstances that might serve as reasonable/good cause for temporarily delaying an investigation.

The AG further details the preliminary assessment that the Title IX Coordinator should complete upon receipt of a Formal Complaint of Sexual Harassment to verify it falls under the jurisdiction of Policy 2266. The AG additionally defines the supportive measures that the Title IX Coordinator needs to offer to the Complainant and Respondent, along with the content of the notice that needs to be provided to a party in advance of a meeting, interview and/or hearing.

While the policy explains the roles of Title IX Coordinator, investigator, and decision-maker, the AG addresses in detail the scope and nature of the role of advisor.

The AG also provides more detailed information about the remedies that can be offered if a Respondent is determined responsible for violating the policy.

Finally, the AG sets forth details concerning the training the Board should provide to all employees, members of the Academy's Title IX team, and students in order to meet its Title IX obligation to operate an education program and activities that are free from discrimination the basis of sex. The AG

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<sup>2</sup> In writing the investigation report, the investigator must take into consideration any written statements that the parties (i.e., the Complainant and Respondent) submit concerning their review of the investigatory file.

<sup>3</sup> If the Board does not allow hearings, the decision-maker must provide the parties an opportunity to submit questions that they want posed to the other party and/or any witness and to get those answers (along with limited follow-up questions) before the decision-maker issues a determination of responsibility.



concludes with a list of the records that need to be retained associated with implementation of Policy 2266.

The following documents are included in this Special Release:

**Legal Alert: May 2020 – Special Update – Title IX Regulations**

**Policy 2266 – Nondiscrimination on the Basis of Sex in Education Programs and Activities (NEW)**

**Policy 5517.02 – Sexual Violence (DELETE)**

**AG 2266 – Nondiscrimination on the Basis of Sex in Education Programs and Activities (NEW)**

**Academy-Specific Material**

Though the Institute is happy to modify any policy to meet the unique needs of any Academy, if the Academy chooses to incorporate Academy-specific material into a new policy or guideline that has been proposed or to insert Academy-specific material into a current policy or guideline for which revisions have been proposed in an update issued by the Institute, then the Academy agrees to hold the Institute harmless for those Academy-specific edits. In addition, the Institute retains ownership of the text from the original policy template that remains in a policy to which Academy-specific material has been added. Academy-specific materials include the following:

- A. Materials from the Academy's existing materials that the Academy requests be incorporated during the drafting process;
- B. New materials that the Academy develops in their entirety and exclusive of the Institute; and
- C. Revisions or deletions that substantively depart from the Institute's templates.

All production related materials and questions should be directed to the National Charter Schools Institute (NCSI) at 711 W. Pickard Street, Mount Pleasant, Michigan 48858 (phone 989-317-3510) or via email at [boardpolicies@nationalcharterschools.org](mailto:boardpolicies@nationalcharterschools.org).

**COMMENTS**

**Electronic Access to Your Board Policy Manual**

Since 2018, The National Charter Schools Institute has been providing boards and school leaders access to their Board Policy Manual via the platform known as EPICENTER. If your authorizer also uses EPICENTER for the collection of compliance documents, this is the same platform, but may use a different login. The Institute's partnership with EPICENTER provides our boards with a platform to easily track board activities, know responsibilities, and keep all documentation in one place! View your updated policies on Epicenter anytime, anywhere. Whether out traveling or in a board meeting, EPICENTER bridges the gap and connects everyone on your team to the same information and resources. Within 3 clicks on your EPICENTER site, you'll be able to download your whole policy manual or individual parts. For more information on accessing your policies through EPICENTER, please do not hesitate to contact our team via email at [boardpolicies@nationalcharterschools.org](mailto:boardpolicies@nationalcharterschools.org) or via phone at (989) 317-3510.

# Legal Alerts



# Special - Title IX Regulations - July 2020

PETERS KALAIL & MARKAKIS CO, L.P.A.  
ATTORNEYS AT LAW

## Legal Alert

To: Neola Clients / National Charter Schools Institute Clients

From: Peters Kalail & Markakis Co., L.P.A.

Re: **Title IX Regulations**

Date: May 2020

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Title IX of the Education Amendments of 1972 ("Title IX") protects individuals from discrimination based on sex and applies to educational institutions that receive federal funding (including public elementary and secondary ("K-12") schools and institutions of higher learning). On May 6, 2020, the U.S. Department of Education, Office for Civil Rights ("OCR") released its Final Rule,<sup>1</sup> which amends existing Title IX regulations – the Department's first action of its kind in decades. The Final Rule, which encompasses both the amended regulations and accompanying commentary, exceed 2,000 pages and are scheduled to take effect on August 14, 2020. The regulations bring sweeping changes to how educational institutions address, investigate, and adjudicate allegations of sexual harassment occurring within their programs and activities.<sup>2</sup> As such, the amended regulations will require significant revisions to existing policies and administrative guidelines, and necessitate staff training prior to the start of the 2020-2021 school year.

Below is an overview of the major changes and new requirements and responsibilities contained in the Final Rule:

1. New Definition of "Sexual Harassment": Previously, the Title IX regulations did not define sexual harassment. The Final Rule defines "sexual harassment" as conduct on the basis of sex that satisfies one or more of the following:
  1. An employee 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).
  2. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the Academy's education program or activity (i.e., "hostile environment" sexual harassment);
  3. "Sexual assault" as defined in the Clery Act (20 U.S.C. 1092), and "dating violence," "domestic violence," and "stalking" as defined in the Violence Against Women Reauthorization Act of 2012 ("VAWA") (34 U.S.C. 12291).

If an individual's allegations do not rise to the level of "sexual harassment" as defined in the Final Rule, the formal complaint must be dismissed. The infraction, however, may still be a violation of the Student Code of Conduct or Title VII.



2. **Sexual Harassment Occurring in a School's "Education Program or Activity":** Schools must address allegations of sexual harassment that occur in "the school's education program or activity, against a person in the United States."
  1. "Education program or activity" is broadly defined to include locations, events, or circumstances over which the school exercises **substantial** control.
  2. The school must have substantial control over both the respondent (i.e., the alleged harasser) and the context in which the sexual harassment occurs.
3. **Definition of "Actual Knowledge":** Schools are required to respond when the school has actual knowledge of sexual harassment or allegations of sexual harassment.
  1. "Actual knowledge" occurs when notice is given to a Title IX Coordinator, any official of a school who has authority to institute corrective measures on behalf of a school, **or to any school employee** of an elementary and secondary school.
  2. Once a school receives notice, **it must respond** and take action (whether a formal complaint is filed or not).
4. **Designation of Title IX Coordinator, Investigator, Initial Decision Maker, and Appeal Decision Maker:** Schools must designate and authorize at least one employee to be a "Title IX Coordinator" to oversee and coordinate the school's compliance with Title IX. The school must also appoint an Investigator to investigate a formal complaint (the Title IX Coordinator may serve as an Investigator), a Decision Maker (the Title IX Coordinator and the Investigator (if different from the Title IX Coordinator) cannot serve as the Decision Maker), and one or more persons to serve as the Appeal Decision Maker (who cannot be the Title IX Coordinator, the Investigator (if different from the Title IX Coordinator), or the Initial Decision Maker).
5. **Notice Requirements:** Schools must notify applicants for admission and employment, students, parents or legal guardians, and unions of its nondiscrimination policy and grievance procedures, including how to file or report sexual harassment and how the school will respond. The notice must also specify the name, title, office address, electronic mail address, and telephone number of the Title IX Coordinator.
  1. Notice must include language that the school does not discriminate on the basis of sex in the education program or activity that it operates. Notice must also state that this duty not to discriminate applies to employment.
  2. Notice must state that inquiries about the application of Title IX and its regulations may be referred to the Title IX Coordinator or the Assistant Secretary of Education, or both.
6. **Publication Requirements:** In addition to notice requirements, schools must prominently display the contact information for the Title IX Coordinator and its Title IX policy on its website and in each handbook that it makes available to persons entitled to notification above.
  1. Posting on an Academy's website alone does NOT satisfy notice requirements.



2. Academies must publish and maintain all grievance procedures adopted under the regulations.
  3. Schools must disseminate its updated policies.
  4. **Any** person may report sexual discrimination, including sexual harassment, to the Academy's Title IX Coordinator, regardless of whether the person is the alleged victim of the reported conduct. The report may be made in person, by mail, by telephone, or by email. The report may be made at any time, including during nonbusiness hours.
7. **School's Response to Complaint:** Schools must respond promptly to sexual harassment in a manner that is not "deliberately indifferent." "Deliberate indifference" is defined as actions that are clearly unreasonable in light of the known circumstances.
1. Title IX Coordinator must contact the "complainant" (i.e., the person who is alleged to be the victim of the conduct that could constitute sexual harassment) and discuss supportive measures (which are similar to "interim measures"), including individualized services to restore or preserve the person's equal access to education (e.g., counseling, course modifications, schedule changes, increased monitoring or supervision, etc.).
    1. Supportive measures may not be disciplinary or punitive and must be offered without charge.
    2. Supportive measures must be offered even if the complainant does not initiate or desire to file a formal complaint.
  2. Title IX Coordinator must explain to the complainant the process for filing a formal complaint and the option to file a formal complaint.
  3. Only the complainant (or parent/guardian) or the Title IX Coordinator may sign a formal complaint.
  4. Before imposing any discipline or other sanctions that are not supportive measures against a "respondent," (i.e., the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment) a grievance process must be followed.
  5. The Academy's response must treat complainants and respondents equitably.
8. **Adopt and Publish Grievance Procedures:** Schools must adopt and publish "grievance procedures" that provide for the "prompt and equitable" resolution of student and employee complaints alleging policy violations. The grievance procedures must also comport with general due process requirements and include the following components:
1. Equal treatment of complainant/respondent.
  2. No sanctions imposed until the grievance process is complete.
  3. No conflict of interest or bias.



4. Staff training.
  5. Presumption that respondent is not responsible.
  6. Reasonably prompt timelines.
  7. Description of supportive measures and possible sanctions.
  8. Exclusion of privileged information.
9. **Notice to Parties of Formal Complaint:** When a formal complaint is filed notice is to be given to both parties. Notice must include:
1. Sufficient details known at the time, including identification of the parties, date and location of alleged incident, and a description of the alleged conduct.
  2. Statement that respondent is presumed not responsible and that determination will be made at the conclusion of the grievance process.
  3. Opportunity for representation of choice (i.e., an "advisor") at all stages of the investigation.
  4. Opportunity to inspect and review evidence. Code of conduct prohibiting false statements.
  5. Obligation to provide notice of additional allegations.
  6. Notice must be given before an initial interview is conducted and with sufficient time for respondent to prepare a response.
10. **Investigation Process:** The investigation process must include/require:
1. The school has the burden of proof and of gathering evidence.
  2. Both parties are entitled to the same opportunity to present witnesses, receive written notices, and review evidence.
    1. Both parties must be given 10 days to review evidence and submit a written response before the Investigator finalizes his/her report.
    2. Both parties must be given copies of all evidence (i.e., interview notes, witness statements, photographs, text messages).
  3. After the ten (10) day evidence review period, the Investigator finalizes the Investigative Report and provides it to both parties.
  4. The Investigative Report must summarize relevant evidence but **not** contain a determination of responsibility or conclusion.
- Parties are given ten (10) days to review the Investigative Report and submit a written response prior to a hearing or the Decision Maker making a determination of responsibility.



11. **Live Hearings Requirement:** Live hearings with cross-examination are required for **postsecondary** institutions following release of the Investigation Report. Live hearings are **optional** for K-12 schools.

With or without a hearing, after the Investigative Report is issued and before reaching a determination regarding responsibility, each party is afforded the opportunity to submit written, relevant questions that a party wants asked of any party or witness, and each party must receive the answers to those questions and an opportunity to ask additional, limited follow-up questions.

12. **Determination of Responsibility:** The Decision Maker, who cannot be the Title IX Coordinator or Investigator, must issue a written determination of responsibility that is provided to both parties simultaneously. The determination of responsibility must include identification of any sanctions that will be imposed on the respondent and any remedies that will be provided to the complainant.

13. **Standard of Evidence:** A school's grievance process must state whether the standard of evidence to be used to determine responsibility is the **preponderance of the evidence standard** or the **clear and convincing evidence standard**. The adopted standard must be applied for all Title IX complaints against students **and** employees.

14. **Appeals:** Both parties have the right to appeal the Decision Maker's determination of responsibility.

1. The Appeal Decision Maker cannot be the Title IX Coordinator, Investigator, or Initial Decision Maker.
2. As part of the appeal process, the parties are permitted to submit a written statement supporting/challenging the Initial Decision Maker's determination of responsibility.

15. **Informal Resolution:** An informal resolution process may only be used if a formal complaint of sexual harassment is filed.

1. If a formal complaint is filed, the Academy may offer to facilitate an informal resolution process.
  1. When doing so, the Academy must provide written notice to both parties of their rights with respect to the informal process.
  2. Prior to commencing the informal resolution process, the Academy must obtain both parties' written, voluntary consent to participate in the informal process.
2. An informal resolution process may NOT be offered in the context of a complaint alleging that an employee harassed a student.
3. Either party may withdraw from the informal resolution process at any time prior to agreeing to a resolution.
4. If a party withdraws from the informal resolution process, the investigation resumes.



16. **Recordkeeping Requirements:** All documentation whether related to a formal complaint or report of sexual harassment – including statements, evidence, and transcripts – must be maintained for **7 years**.

17. **Emergency Removal Provisions:** While the investigation is pending, emergency removal of the respondent is permitted under limited circumstances.

1. In order to emergency remove a respondent, the Title IX Coordinator, or another designated individual, must conduct a **safety and risk analysis** and determine that there is an immediate threat to the **physical** health or safety of **any** student or other individual arising from the allegations (not just the complainant).
  1. The respondent may not be emergency removed based upon a threat to the mental health of the complainant.
  2. The regulations contemplate emotional/mental well-being should be addressed through supportive measures.
2. The notice of emergency removal must be provided to the respondent and the respondent must be afforded an opportunity to challenge the emergency removal decision.
3. Academies will need to ensure their emergency removal procedures do not conflict with other school policies or legal requirements.

18. **Training Required:** Much of the training required by the amended regulations must be completed by **August 14, 2020**.

1. The requisite training must include:
  1. The new definition of sexual harassment.
  2. The scope of the Academy's educational program or activities for jurisdiction.
  3. How to consistently apply sexual harassment definitions.
  4. How to investigate a formal complaint.
  5. The grievance process, including hearings, appeals, and informal resolutions.
  6. How individuals can impartially serve as an investigator, decision maker or appeal decision maker to avoid prejudgment of facts at issue, conflicts of interest, and bias issues.
  7. How to use available technology to conduct a live hearing.
  8. Investigator and Decision Makers must be trained on appropriate evidence and questions related to the complainant's sexual predisposition or prior sexual behavior and that sexual history irrelevant in K-12 context.



9. Investigators must be trained to prepare an Investigative Report that fairly summarizes relevant evidence.
2. Training materials must be made available on the Academy's website and for public review.
3. Training materials must be kept for a period of 7 years; Academies may need to update their public records retention schedules.
4. All K-12 employees should be trained due to the heightened notice requirements applicable to all Academy employees.

Neola is in the process of developing updated policies and administrative guidelines that comply with the Final Rule. The new and revised documents will be issued this summer so boards of education can take the steps necessary to comply with the amended Title IX regulations when they go into effect on August 14, 2020.

If you have any questions concerning OCR's May 6, 2020 Final Rule related to Title IX and educational institutions' responsibilities with respect to addressing allegations of sexual harassment, you should contact your local legal counsel.

<sup>1</sup> The Final Rule can be found at: <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>.

<sup>2</sup> The Final Rule does not impact existing Title IX regulations that address athletic participation, employment, and single-sex education.

**This legal alert is intended as general information and not legal advice. No attorney-client relationship exists. If legal advice is required, obtain the services of an attorney.**



## July 2020 Special Release – Title IX Regulations

### Board Policies Summary Table

#### Board Policies

Policy No.	Policy Title	New/ Revise/ Replace/ Delete	Legally Required, Legal Content or Best Practice	Summary
2266	Nondiscrimination on the Basis of Sex in Education Programs and Activities	New	Legally Required	Nondiscrimination on the Basis of Sex in Education Programs and Activities is a replacement policy for Policy 5517.02, which is being eliminated. Policy 2266 is a mandatory policy that memorializes the key requirements of the new Title IX regulations that the U.S. Department of Education, Office for Civil Rights ("OCR") released on May 6, 2020. The new regulations go into effect on August 14, 2020, which means that public school academies must follow its mandates when addressing, investigating and adjudicating allegations of sexual harassment occurring in the Academy's education program and activities that the Academy received notice of on or after August 14. It is expected that Academies will need to certify/affirm their compliance with Title IX and these new implementing regulations when applying for and receiving federal funds related to the 2020-2021 school year.
5517.02	Sexual Violence	DELETE	Legally Required	

#### Administrative Guidelines

Guideline No.	Guideline Title	New/ Revise/ Replace/ Delete	Legally required or Best Practice	Summary
2266	Nondiscrimination on the Basis of Sex in Education Programs and Activities	New	Best Practice	Administrative Guideline 2266 – Nondiscrimination on the Basis of Sex in Education Programs and Activities is a new guideline. AG 2266 should be taken as promulgated because it expands upon and clarifies some of the key aspects of replacement Policy 2266 and the new Title IX regulations.

# Board Policies



## **NEW POLICY – SPECIAL RELEASE – JULY 2020** **NONDISCRIMINATION ON THE BASIS OF SEX IN** **EDUCATION PROGRAMS OR ACTIVITIES**

Reference: 20 U.S.C. 1681 et seq., Title IX of the Education Amendments of 1972 (Title IX)  
20 U.S.C. 1400 et seq., The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)  
42 U.S.C. 2000c et seq., Title IV of the Civil Rights Act of 1964  
42 U.S.C. 2000d et seq.  
42 U.S.C. 2000e et seq.  
42 U.S.C. 1983  
34 C.F.R. Part 106  
OCR's Revised Sexual Harassment Guidance (2001)  
20 U.S.C. 1092(F)(6)(A)(v)  
34 U.S.C. 12291(a)(10)  
34 U.S.C. 12291(a)(8)  
34 U.S.C. 12291(a)(30)

### **Introduction**

The Board of Directors of the \_\_\_\_\_ Academy (hereinafter referred to as "the Board" or "the Academy") does not discriminate on the basis of sex (including sexual orientation or gender identity), in its education programs or activities, and is required by Title IX of the Education Amendments Act of 1972, and its implementing regulations, not to discriminate in such a manner. The requirement not to discriminate in its education program or activity extends to admission and employment. [DRAFTING NOTE: In the new Title IX regulations, the term "admission" refers to admission to postsecondary institutions (i.e., institutions of graduate higher education, institutions of undergraduate higher education, institutions of professional education, and institutions of vocational education); thus, if a K-12 school does not operate a vocational program (e.g., a school or institution that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study), the K-12 school does not officially need to include "admission and" in the preceding sentence (and where that phrase is used throughout this policy); The Institute, however, has elected to include it because all K-12 schools "enroll" students and often the term "enroll" is viewed as synonymous with the term "admit." Since K-12 schools cannot discriminate when enrolling students into the education programs or activities that they operate, it seems appropriate to include the term "admission."] The Board is committed to maintaining an education and work environment that is free from discrimination based on sex, including sexual harassment.

The Board prohibits Sexual Harassment that occurs within its education programs and activities. When the Academy has actual knowledge of Sexual Harassment in its education program or activity against a person in the United States, it shall promptly respond in a manner that is not deliberately indifferent.

Pursuant to its Title IX obligations, the Board is committed to eliminating Sexual Harassment and will take appropriate action when an individual is determined responsible for violating this policy. ( ) Board (1) Educational Service Provider employees, students, third-party vendors and contractors, guests, and other members of the Academy community who commit Sexual Harassment are subject to the full range of disciplinary sanctions set forth in this policy. The Board will provide persons who have experienced



Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to the Academy's education programs and activities.

### Coverage

This policy applies to Sexual Harassment that occurs within the Academy's education programs and activities and that is committed by a member of the Academy community or a Third Party.

This policy does not apply to Sexual Harassment that occurs off school grounds, in a private setting, and outside the scope of the Academy's education programs and activities; such Sexual Misconduct/Sexual Activity may be prohibited by the Student Code of Conduct if committed by a student, or by Board policies and administrative guidelines, applicable State and/or Federal laws ( ) and/or Employee/Administrator Handbook(s) [END OF OPTION] if committed by a ( ) Board ( ☒ ) Educational Service Provider employee.

Consistent with the U.S. Department of Education's implementing regulations for Title IX, this policy does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in the Academy's education programs or activities. Sexual Harassment that occurs outside the geographic boundaries of the United States is governed by the Student Code of Conduct if committed by a student, or by Board policies and administrative guidelines, applicable State and/or Federal laws ( ) and/or Employee/Administrator Handbook(s) [END OF OPTION] if committed by a ( ) Board ( ☒ ) Educational Service Provider employee.

### Definitions

Words used in this policy shall have those meanings defined herein; words not defined herein shall be construed according to their plain and ordinary meanings.

Sexual Harassment: "Sexual Harassment" means conduct on the basis of sex that satisfies one or more of the following:

- A. A ( ) Board ( ☒ ) Educational Service Provider employee conditioning the provision of an aid, benefit, or service of the Academy on an individual's participation in unwelcome sexual conduct (often called "*quid pro quo*" harassment);
- B. 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 Academy's education program or activity; or
- C. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)A(v), or "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).

"Sexual assault" means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault includes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape.

1. [DRAFTING NOTE: Select Option 1 or Option 2. While The Institute is comfortable with Option 2, given that offenses 2 (sodomy) and 3 (sexual assault with an object) pick-up parts of Option 1 that are not included in



Option 2, The Institute suggests the Board consult with its local legal counsel concerning which definition of "Rape" to adopt. By way of background, Option 1 represents the definition of "Rape" that is required by the Clery Act's regulations – i.e., the definition contained in the Summary Reporting System ("SRS") of the FBI's Uniform Crime Reporting ("UCR") Program. Unfortunately, the SRS is being faded out effective January 2021; at that time, the SRS is being replaced by the National Incident-Based Reporting System (NIBRS), which contains a different definition of "Rape" – i.e., the definition contained in Option 2. Additionally, it is relevant to note that the definitions of the remaining sexual assault offenses are already derived from the NIBRS's definitions. If a Board selects Option 1, it may be necessary to later update the policy to a new definition of "Rape" (i.e., the one contained in Option 2) once the SRS is retired. Alternatively, a Board could include both definitions to hopefully minimize the need to amend this policy – even on a technical amendment basis so soon after it is adopted. If a Board elects to include both definitions, it should include the following parentheticals: (a) at the end of Option 1: "(effective until the FBI retires the Summary Reporting System, which is scheduled for January 2021"; and (b) at the end of Option 2: "(effective upon retirement of the Summary Reporting System, which is scheduled for January 2021.)"

☒ [OPTION 1] *Rape* is 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, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. Attempted rape is included. [END OF OPTION 1]

☐ [OPTION 2] *Rape* is the carnal knowledge of a person (i.e., penetration, no matter how slight, of the genital or anal opening of a person), without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. [END OF OPTION 2]

2. *Sodomy* is 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 age or because of temporary or permanent mental or physical incapacity.
3. *Sexual Assault with an Object* is using 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 age or because of temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia.
4. *Fondling* is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.



5. ***Incest*** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by State law.
  6. ***Statutory Rape*** is sexual intercourse with a person who is under the statutory age of consent as defined by State law.
  7. ***Consent*** refers to words or actions that a reasonable person would understand as agreement to engage in the sexual conduct at issue. A person may be incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. A person who is incapacitated is not capable of giving consent. [DRAFTING NOTE: The Title IX regulations do not require the Board to adopt a particular definition of "consent," but it is advisable to adopt a definition because "consent" is an element of each of the first four terms listed above. Since there are a number of different definitions of consent from which to choose, the Board should consult its local legal counsel concerning selecting a specific definition of consent that represents its position on the topic; the investigator(s) and decision-maker(s) will then uniformly apply the adopted definition.]
  8. ***Incapacitated*** refers to the state where a person does not understand and/or appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition, disability, or due to a state of unconsciousness or sleep. [DRAFTING NOTE: Depending on the definition of "consent" that the Board adopts, it may be necessary to define "incapacitated" in the policy. If it is not defined in the policy, it should certainly be defined in the Administrative Guideline; even if defined in the policy, the Administrative Guideline provides an opportunity to expand on the concept of "consent" and what the Board means by the term "incapacitated."]
- D. "Domestic violence" includes felony or misdemeanor crimes of violence committed by:
1. a current or former spouse or intimate partner of the victim;
  2. a person with whom the victim shares a child in common;
  3. a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
  4. a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime occurred; or
  5. any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime occurred.
- E. "Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.



- F. "Stalking" means 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.

**Complainant:** "Complainant" means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

**Respondent:** "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

**Formal Complaint:** "Formal Complaint" means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the Academy investigate the allegation(s) of Sexual Harassment. At the time of filing a Formal Complaint with the Academy, a Complainant must be participating in or attempting to participate in the Academy's education program or activity. A "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal that the Board provides for this purpose) 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 a party to the Formal Complaint and must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

**Actual Knowledge:** "Actual knowledge" means notice of Sexual Harassment or allegations of Sexual Harassment to the Academy's Title IX Coordinator, or any Academy official who has authority to institute corrective measures on behalf of the Board, or any ( ) Board ( ) Educational Service Provider employee. 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 Academy. "Notice" includes, but is not limited to, a report of Sexual Harassment to the Title IX Coordinator. This standard is not met when the only Academy official with actual knowledge is the Respondent.

**Supportive Measures:** "Supportive measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the Academy's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Academy'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, school/campus escort services, mutual restrictions of contact between the parties, changes in work locations), leaves of absence, increased security and monitoring of certain areas of the campus (including academy buildings and facilities), ( ) referral to Employee Assistance Program [END OF OPTION], and other similar measures.

**Education Program or Activity:** "Education program or activity" refers to all operations of the Academy, including but not limited to in-person and online educational instruction, employment, extracurricular activities, athletics, performances, and community engagement and outreach programs. The term applies to all activity that occurs on academy grounds or on other property owned or occupied by the Board. It also includes locations, events and circumstances that take place off-academy property/grounds over



which the Board exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs.

**Academy community:** "Academy community" refers to students and ( ) Board ( ) Educational Service Provider employees (i.e., administrators, and professional and classified staff), as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

**Third Parties:** "Third Parties" include, but are not limited to, guests and/or visitors on Academy property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with the Board, and other individuals who come in contact with members of the Academy community at academy-related events/activities (whether on or off Academy property).

**Inculpatory Evidence:** "Inculpatory evidence" is evidence that tends to establish a Respondent's responsibility for alleged Sexual Harassment.

**Exculpatory Evidence:** "Exculpatory evidence" is evidence that tends to clear or excuse a Respondent from allegations of Sexual Harassment.

**Day(s):** Unless expressly stated otherwise, the term "day" or "days" as used in this policy means business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday – Friday, excluding State-recognized holidays),

**Eligible Student:** "Eligible Student" means a student who has reached eighteen (18) years of age or is attending an institution of postsecondary education.

**Title IX Coordinator(s)**

The Board of Directors designates and authorizes the following individual(s) to oversee and coordinate its efforts to comply with Title IX and its implementing regulations:

[DRAFTING NOTE: The Institute suggests the Board consider appointing both a male and a female Title IX Coordinator. The Board must list either the Name *or* Title of the Title IX Coordinator; while the Board may list both the Name *and* Title, the Institute suggests that the Board consider only listing the Title in this policy (so it does not need to revise/amend its policy whenever there is a change in the actual person(s) holding the designated position(s)), but list both the Name *and* Title in the requisite postings (e.g., website) and publications (e.g., handbooks) ( ) and in the Administrative Guideline.]

<u>Dr. Ali Y. Bazzi</u> (Name)	<u>Mrs. Nawal Hamadeh</u> (Name)
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<u>Title IX Coordinator &amp; Investigator</u> (Title)	<u>Decision-Maker</u> (Title)
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<u>(313) 565-0507</u> (Telephone Number)	<u>(313) 565-0507</u> (Telephone Number)
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<u>6919 N. Waverly St., Dearborn Heights, MI 48127</u> (Office Address)	<u>6919 N. Waverly St., Dearborn Heights, MI 48127</u> (Office Address)
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BOARD OF DIRECTORS  
ACADEMY NAME

PROGRAM  
2266/page 7 of 29

abazzi@starpssa.org  
(E-mail Address)

nhamadeh@hesedu.com  
(E-mail Address)

The Title IX Coordinator shall report directly to the ( ) School Leader ( ) Educational Service Provider. Questions about this policy should be directed to the Title IX Coordinator.

The ( ) School Leader ( ) Educational Service Provider shall notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, ( ) Board ( ) Educational Service Provider employees, ~~and all unions or professional organizations holding collective bargaining or professional agreements with the Board~~ of the following information:

The Board of Directors of the \_\_\_\_\_ Academy does not discriminate on the basis of sex in its education program or activity, and is required by Title IX and its implementing regulations not to discriminate in such a manner. The requirement not to discriminate in its education program or activity extends to admission and employment.

The Academy's Title IX Coordinator(s) is/are:

<u>Dr. Ali Y. Bazzi, Assistant Superintendent</u> (Name)	<u>Mrs. Amal Beydoun, Director of Human Resources</u> (Name)
<u>Title IX Coordinator &amp; Investigator</u> (Title)	<u>Title IX Coordinator &amp; Investigator (Female)</u> (Title)
<u>(313) 565-0507 or 724-8990</u> (Telephone Number)	<u>(313) - 565-0507</u> (Telephone Number)
<u>6919 N. Waverly St. Heights, MI 48127</u> (Office Address)	<u>6919 N. Waverly St., MI 48127</u> (Office Address)
<u>abazzi@starpssa.org</u> (E-mail Address)	<u>abeydoun@hesedu.com</u> (E-mail Address)

Any inquiries about the application of Title IX and its implementing regulations to the Academy may be referred to the Title IX Coordinator(s), the Assistant Secretary for the U.S. Department of Education's Office for Civil Rights, or both.

The Board has adopted a grievance process that provide for the prompt and equitable resolution of student and employee complaints alleging any action that is prohibited by Title IX and/or its implementing regulations. The grievance process is included in Policy 2266 – Nondiscrimination on the Basis of Sex in Education Programs or Activities, which is available at: [insert the web address at which Policy 2266 can be found; or insert a hyperlink tied to the title of the policy] The grievance process specifically addresses how to report or file a complaint of sex discrimination, how to report or file a formal complaint of Sexual Harassment, and how the Academy will respond.

The ( ) School Leader ( ) Educational Service Provider shall also prominently display the Title IX Coordinator's(s') contact information – including name(s) and/or title(s), phone number(s), office address(es), and e-mail address(es) – and this policy on the Academy's website and in each handbook or catalog that the Board makes available to applicants for



admission and employment, students, parents or legal guardians of elementary and secondary school students, ( ) Board ( ☒ ) Educational Service Provider employees, and all unions or professional organizations holding collective bargaining or professional agreements.

### Grievance Process

The Board is committed to promptly and equitably resolving student and employee complaints alleging Sexual Harassment. The Academy's response to allegations of Sexual Harassment will treat Complainants and Respondents equitably, including providing supportive measures to the Complainant and Respondent, as appropriate, and following this Grievance Process before imposition of any disciplinary sanctions or other actions, other than supportive measures, against the Respondent.

The Title IX Coordinator(s), along with any investigator(s), decision-maker(s), or any person(s) designated to facilitate an informal resolution process, shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

If a determination of responsibility for Sexual Harassment is made against the Respondent, the Board will provide remedies to the Complainant. The remedies will be designed to restore or preserve equal access to the Academy's education program or activity. Potential remedies include, but are not limited to, individualized services that constitute supportive measures. Remedies may also be disciplinary or punitive in nature and may burden the Respondent.

### Report of Sexual Discrimination/Harassment

Any person may report sex discrimination, including Sexual Harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or Sexual Harassment), in person, by mail, by telephone, or by electronic mail, using the Title IX Coordinator's(s') contact information listed above, or by any other means that results in the Title IX Coordinator receiving the person's oral or written report. Reports may be made at any time (including during non-business hours), by using the telephone number(s) or electronic mail address(es), or by mail to the office address(es), listed for the Title IX Coordinator(s). ( ) ~~Anonymous~~ reports may be submitted using [ ] the online reporting form posted at [insert the web address for the reporting form, or insert a hyperlink tied to the phrase "online reporting form" ~~or~~ [ ] the hotline reporting number (insert phone number)].

*The online report must be completed and signed.*

Students, Board members, and ( ) Board ( ☒ ) Educational Service Provider employees are required, and other members of the Academy community, and Third Parties) are encouraged, to report allegations of sex discrimination or Sexual Harassment promptly to the/a Title IX Coordinator or to any ( ) Board ( ☒ ) Educational Service Provider employee, who will in turn notify the/a Title IX Coordinator. [DRAFTING NOTE: All ( ) Board ( ☒ ) Educational Service Provider employees are mandatory reporters pursuant to the Title IX regulations. Existing policy, however, also requires students and Board members to report any information they have concerning allegations of sex discrimination or Sexual Harassment. The Institute suggests that the Board continue this additional requirement in this policy, along with the language encouraging other individuals to make such reports; this will coincide with similar requirements that are imposed on Board members and students in other nondiscrimination and anti-harassment policies. If the Board decides it does not want to go beyond the scope of the regulations for purposes of this policy, it



should replace the first sentence of this paragraph with either of the following: "( ) Board (X) Educational Service Provider employees are required to report allegations of sex discrimination or Sexual Harassment promptly to the Title IX Coordinator." OR "( ) Board (X) Educational Service Provider employees are required, and other members of the Academy community and Third Parties are encouraged, to report allegations of sex discrimination or Sexual Harassment promptly to the/a Title IX Coordinator or to any ( ) Board (X) Educational Service Provider employee, who in turn will notify the/a Title IX Coordinator." Reports can be made orally or in writing and should be as specific as possible. The person making the report should, to the extent known, identify the alleged victim(s), perpetrator(s), and witness(es), and describe in detail what occurred, including date(s), time(s), and location(s).

If a report involves allegations of Sexual Harassment by or involving the Title IX Coordinator, the person making the report should submit it to the ( ) School Leader ( ) Educational Service Provider, or another ( ) Board (X) Educational Service Provider employee who, in turn, will notify the (X) School Leader (X) Educational Service Provider of the report. The ( ) School Leader (X) Educational Service Provider will then serve in place of the Title IX Coordinator for purposes of addressing that report of Sexual Harassment. [DRAFTING NOTE: If the School Leader is the Title IX Coordinator, substitute "Educational Service Provider" in place of "School Leader."]

The Board does business with various vendors, contractors, and other third-parties who are not students or employees of the Board. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this policy, the Board retains the right to limit any vendor's, contractor's, or third-party's access to school grounds for any reason. The Board further retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this policy.

A person may file criminal charges simultaneously with filing a Formal Complaint. A person does not need to wait until the Title IX investigation is completed before filing a criminal complaint. Likewise, questions or complaints relating to Title IX may be filed with the U.S. Department of Education's Office for Civil Rights at any time.

Any allegations of Sexual Misconduct/Sexual Activity not involving Sexual Harassment will be addressed through the procedures outlined in Board policies (X) and/or administrative guidelines, [END OF OPTION] the applicable Student Code of Conduct, applicable collective bargaining agreement, and/or Employee/Administrator Handbook.

Because the Board is considered to have actual knowledge of Sexual Harassment or allegations of Sexual Harassment if any ( ) Board (X) Educational Service Provider employee has such knowledge, and because the Board must take specific actions when it has notice of Sexual Harassment or allegations of Sexual Harassment, a ( ) Board (X) Educational Service Provider employee who has independent knowledge of or receives a report involving allegations of sex discrimination and/or Sexual Harassment must notify the/a Title IX Coordinator within two (2) days of learning the information or receiving the report. [DRAFTING NOTE: The regulations do not specify within how many days the ( ) Board ( ) Educational Service Provider employee must notify the Title IX Coordinator of receiving a report of Sexual Harassment; The Institute suggests "two (2) days". Alternatively, the Board could make this language more open-ended – e.g., "\*\*\* must immediately/promptly notify the/a Title IX Coordinator of such information or report."] The ( ) Board (X) Educational Service Provider employee must also comply with mandatory reporting responsibilities pursuant to M.C.L. 722.623 and Policy 8462 – Student Abuse and Neglect,



if applicable. If the ( ) Board (☒) Educational Service Provider employee's knowledge is based on another individual bringing the information to the ( ) Board (☒) Educational Service Provider employee's attention and the reporting individual submitted a written complaint to the ( ) Board (☒) Educational Service Provider employee, the ( ) Board (☒) Educational Service Provider employee must provide the written complaint to the Title IX Coordinator.

If a ( ) Board (☒) Educational Service Provider employee fails to report an incident of Sexual Harassment of which the ( ) Board (☒) Educational Service Provider employee is aware, the ( ) Board (☒) Educational Service Provider employee may be subject to disciplinary action, up to and including termination.

When a report of Sexual Harassment is made, the Title IX Coordinator shall promptly (i.e., within two (2) days [DRAFTING NOTE: The regulations do not define "promptly" or otherwise specify within how many days the contact has to be made; The Institute suggests "two (2) days".] of the Title IX Coordinator's receipt of the report of Sexual Harassment) contact the Complainant (including the parent/guardian if the Complainant is under 18 years of age or under guardianship) 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. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Any supportive measures provided to the Complainant or Respondent shall be maintained as confidential, to the extent that maintaining such confidentiality will not impair the ability of the Academy to provide the supportive measures.

**Emergency Removal:** Subject to limitations and/or procedures imposed by State and/or Federal law, the Academy may remove a student Respondent from its education program or activity on an emergency basis after conducting an individualized safety and risk analysis. The purposes of the individualized safety and risk analysis is to determine whether the student Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment that justifies removal. If the Academy determines the student Respondent poses such a threat, it will so notify the student Respondent and the student Respondent will have an opportunity to challenge the decision immediately following the removal. See Policy 5610 – Emergency Removal, Suspension, and Expulsion of Students and Policy 5611 – Due Process Rights. [DRAFTING NOTE: The Board may substitute "School Leader/Educational Service Provider" or "Title IX Coordinator" in place of "Academy" in the first sentence. Alternatively, the School Leader/Educational Service Provider could designate, through the administrative guideline, one or more administrators, including the Title IX Coordinator, to make emergency removal decisions after conducting the individualized safety and risk analysis. In Michigan, emergency removals may only be imposed in the manner delineated in M.C.L. 380.1311. Additionally, emergency removals must be conducted in compliance with the Individuals with Disabilities Education Improvement Act and/or Section 504 of the Rehabilitation Act of 1973.]

If the Respondent is a non-student employee, the Academy may place the Respondent on administrative leave during the pendency of the grievance process.

For all other Respondents, including other members of the Academy community and Third Parties, the Board retains broad discretion to prohibit such persons from entering onto its academy grounds and other properties at any time and for any reason, whether after receiving a report of Sexual Harassment or otherwise.



### Formal Complaint of Sexual Harassment

A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information set forth above, ( ) and by ~~\_\_\_\_\_~~.  
[DRAFTING NOTE: The Board may set forth additional method(s) by which a Formal Complaint may be filed (e.g., online portal submission).] If a Formal Complaint involves allegations of Sexual Harassment by or involving the Title IX Coordinator, the Complainant should submit the Formal Complaint to the ( ) School Leader ( ) Educational Service Provider, who will designate another person to serve in place of the Title IX Coordinator for the limited purpose of implementing the grievance process with respect to that Formal Complaint. [DRAFTING NOTE: If the School Leader is the Title IX Coordinator, substitute "Educational Service Provider" in place of "School Leader" in the preceding sentence.]

When the Title IX Coordinator receives a Formal Complaint or signs a Formal Complaint, the Academy will follow its Grievance Process, as set forth herein. Specifically, the Academy will undertake an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

It is a violation of this policy for a Complainant(s), Respondent(s), and/or witness(es) to knowingly making false statements or knowingly submitting false information during the grievance process, including intentionally making a false report of Sexual Harassment or submitting a false Formal Complaint. The Board will not tolerate such conduct, which is a violation of the Student Code of Conduct ( ) and the Employee/Administrator Handbook. [DRAFTING NOTE: The Board should confirm/verify that its Student Code of Conduct and any Employee/Administrator Handbook(s) include a prohibition against intentionally making a false report, submitting a false Formal Complaint, or making a false statement or submitting false information during a Title IX grievance process. Such misconduct should be a sanctionable offense pursuant to the Student Code of Conduct and Employee/Administrator Handbook(s).]

The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

### Timeline

The Academy will seek to conclude the grievance process, including resolving any appeals, within sixty (60) days of receipt of the Formal Complaint. [DRAFTING NOTE: The Title IX regulations do not specify a deadline for completing the grievance process; The Institute suggests sixty (60) days (i.e., twelve (12) weeks) based on the following considerations: (1) within two (2) days of receipt of the Formal Complaint, the Title IX Coordinator sends requisite notice to parties; (2) two (2) weeks (fourteen (14) calendar days) to investigate (remember the need for advance written notice to a party and adequate time for the party to prepare before any interviews/hearings/meetings; time for parties to present witnesses (including expert witnesses) and other inculpatory or exculpatory evidence); (3) at the conclusion of the investigation and before finalizing the investigative report, two (2) weeks (a minimum of ten (10) calendar days) for the parties to review the evidence and submit their feedback; (4) up to a week (i.e., seven (7) calendar days) for the investigator to consider such feedback and prepare the investigative report; (4) two (2) week (a minimum of ten (10) calendar days) for the parties to review the investigative report and submit questions and receive answers to questions submitted to parties and witnesses (if the Board permits hearings, the hearing cannot occur until the Complainant



~~and Respondent have had a minimum of ten (10) calendar days to review the investigative report); (5) a week (i.e., seven (7) calendar days) for the decision-maker(s) to prepare the decision; (6) up to a week (The Institute suggests three to five calendar days) for the parties to review the decision and submit a notice of appeal; (7) a week (seven (7) calendar days) for the parties to submit their written statements in support of or in opposition to the appeal; and (8) a week (seven (7) calendar days) for the appeal decision-maker(s) to prepare a final decision. Any informal resolution process could impact this schedule. Given this fairly aggressive timeline, the Board may want to remove the appeal process from this timeline – i.e., delete the phrase “, including resolving any appeals,” from the sentence, which would allow more time for potential use of the informal resolution process. Further, the preceding schedule does not provide time for a hearing that could further extend the timeline needed to complete the grievance process.]~~

If the Title IX Coordinator offers informal resolution processes, the informal resolution processes may not be used by the Complainant or Respondent to unduly delay the investigation and determination of responsibility. The timeline, however, may be subject to a temporary delay of the grievance process or a limited extension for good cause with written notice to the Complainant and the Respondent 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; and the need for language assistance or accommodation of disabilities. [DRAFTING NOTE: The Board should consult with its local legal counsel on a case-by-case basis to determine whether there may be other reasons/good cause for a delay or extension of time – e.g., the complexity and severity of the matter, or school breaks.] ( ) ~~The Title IX Coordinator will provide the parties with reasonable updates on the status of the grievance process.~~

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide written notice of the following to the parties who are known:

- A. Notice of the Board's grievance process, including any informal resolution processes;
- B. Notice of the allegations of misconduct that potentially constitutes Sexual Harassment as defined in this policy, 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 must:
  1. include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;
  2. 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.
  3. inform the parties of any provision in the Student Code of Conduct (u), this policy, (l) and/or Employee/Administrator Handbook [DRAFTING NOTE: While the Title IX regulations only reference “code of conduct” The Institute suggests that the Board reference other applicable documents that expressly prohibit an individual from making false statements or knowingly submitting false information as part of the grievance process] that prohibits



knowingly making false statements or knowingly submitting false information during the grievance process.

[DRAFTING NOTE: The Title IX regulations do not define "upon receipt" or otherwise specify within how many days the notice must be sent; The Institute suggests the Title IX Coordinator send the notice within "two (2) days" of receipt of the Formal Complaint; this suggestion is memorialized in the corresponding Administrative Guideline. Please note, however, that it could be argued that the notice should be sent sooner. Regardless, the Title IX Coordinator should have a template notice form available that can be quickly completed with the requisite information after receipt of the Formal Complaint.]

If, during the course of the investigation, the investigator becomes aware of allegations about the Complainant or Respondent that are not included in the original notice provided to the parties, the investigator will notify the Title IX Coordinator and the Title IX Coordinator will decide whether the investigator should investigate the additional allegations; if the Title IX Coordinator decides to include the new allegations as part of the investigation, the Title IX Coordinator will provide notice of the additional allegations to the parties whose identities are known.

#### Dismissal of a Formal Complaint

The Academy shall investigate the allegations in a Formal Complaint, *unless* the conduct alleged in the Formal Complaint:

- A. would not constitute Sexual Harassment (as defined in this policy) even if proved;
- B. did not occur in the Academy's education program or activity; or
- C. did not occur against a person in the United States.

If one of the preceding circumstances exist, the Title IX Coordinator *shall* dismiss the Formal Complaint. If the Title IX Coordinator dismisses the Formal Complaint due to one of the preceding reasons, the Academy may still investigate and take action with respect to such alleged misconduct pursuant to another provision of an applicable code of conduct, Board policy, and/or Employee/Administrator Handbook.

The Title IX Coordinator *may* dismiss a Formal Complaint, or any allegations therein, if at any time during the investigation ( ) ~~or hearing~~ [DRAFTING NOTE: Select this option if the Board permits hearings.]-

- A. a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- B. the Respondent is no longer enrolled in the Academy or employed by the Board; or
- C. specific circumstances prevent the Academy from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

If the Title IX Coordinator dismisses a Formal Complaint or allegations therein, the Title IX Coordinator must promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties.



During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur have stayed and all related deadlines are suspended.

The informal resolution process is not available to resolve allegations that a ( ) Board (✓) Educational Service Provider employee ( ) or another adult member of the Academy community or Third Party [END OF OPTION] sexually harassed a student. [DRAFTING NOTE: The Title IX regulations prohibit the use of an informal resolution process when the allegations involve a ( ) Board (✓) Educational Service Provider employee sexually harassing a student; The Institute suggests that it also may not be appropriate to use informal resolution processes when a Third Party is alleged to have sexually harassed a student. Since this is not a requirement, it is offered as an option. If the optional language is not selected, the Board retains the discretion to use informal resolution processes as may be determined appropriate by the Title IX Coordinator on a case-by-case basis.]

- ✓ The informal resolution process is not available to resolve allegations involving a sexual assault involving a student Complainant and a student Respondent. [DRAFTING NOTE: While this language is not required by the Title IX regulations, The Institute suggests the Board select this option because of the severity of this type of Sexual Harassment.]

#### Investigation of a Formal Complaint of Sexual Harassment

In conducting the investigation of a Formal Complaint and throughout the grievance process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility is on the Academy, not the parties.

In making the determination of responsibility, the decision-maker(s) is(are) directed to use the (✓) preponderance of the evidence standard ( ) clear and convincing evidence standard. The decision-maker(s) is charged with considering the totality of all available evidence, from all relevant sources.

[DRAFTING NOTE: The Institute suggests the Board adopts the "preponderance of the evidence standard." The preponderance of the evidence standard is an equitable standard of proof and the legal standard by which most civil lawsuits, including civil rights claims, are adjudicated in the United States. This standard requires the decision-maker(s) to determine that there is a greater than fifty percent (50%) likelihood (i.e., it is more probable/likely than not) that the Respondent engaged in the alleged Sexual Harassment. The "clear and convincing evidence standard," on the other hand, is a higher standard of evidence, in which the Academy would need to show to the decision-maker(s) that the truth of the allegations is highly probable (i.e., that the contention is substantially more likely to be true than untrue). Some argue that using the clear and convincing standard may skew the playing field toward the Respondent by enhancing protection for the Respondent at the expense of the Complainant. The same standard of evidence must be applied for Formal Complaints against students as is applied to Formal Complaints against employees, and the same standard of evidence must be used for all Formal Complaints of Sexual Harassment.]

The Academy is not permitted to 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 the party



provides the Academy with voluntary, written consent to do so; if a student party is not an Eligible Student, the Academy must obtain the voluntary, written consent of a parent.

Similarly, the investigator(s) and decision-maker(s) may 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 in writing.

As part of the investigation, the parties have the right to:

- A. present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence; and
- B. 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. The Academy may not limit the choice or presence of an advisor for either the Complainant or Respondent in any meeting or grievance proceeding.
- ( ) The Academy establishes the following restrictions, which apply equally to both parties, regarding the extent to which an advisor may participate in the proceedings:

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[DRAFTING NOTE: The Board should consult with its local legal counsel concerning any restrictions it may want to place on an advisor's participation in the proceedings, including rules of decorum. This topic is also addressed in Administrative Guideline 2266.]

- (☒) Board Policy 2461 – Recording of Academy Meetings Involving Students and/or Parents controls whether a person is allowed to audio record or video record any meeting or grievance proceeding.

Neither party shall be restricted in their ability to discuss the allegations under investigation or to gather and present relevant evidence.

The Academy will provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all ( ) hearings, [DRAFTING NOTE: Select this option if the Board permits hearings.] investigative interviews, or other meetings, with sufficient time for the party to prepare to participate. ( ) The investigator(s) and decision-maker(s) must provide a minimum of 1 days' notice with respect to investigative interviews and other meetings ( ) and — days' notice with respect to hearings [END OF OPTION]. [DRAFTING NOTE: The Board should consult with its local legal counsel concerning whether to set a minimum amount of advance notice – i.e., define "sufficient time"; The Institute suggests a minimum of three (3) days' advanced notice for hearings and one (1) day's advanced notice for investigative interviews and other meetings.]



Both parties shall have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the Academy 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 the conclusion of the investigation.

Prior to completion of the investigative report, the ☒ investigator <sup>and/or</sup> ☐ Title IX Coordinator will 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 will have at least ten (10) calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report. [DRAFTING NOTE: The Board should select the following option if it provides for a hearing before the decision-maker.] ☒ The Academy will 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.

At the conclusion of the investigation, the investigator shall create an investigative report that fairly summarizes relevant evidence and send the report to each party and the party's advisor, if any, for their review and written response. The investigator will send the investigative report in an electronic format or a hard copy, at least ten (10) calendar days prior to [DRAFTING NOTE: Select one of the following two options. The Board should select the second option if it is providing a hearing or permitting the decision-maker(s) to decide whether to conduct a hearing on a case-by-case basis.]

- ☒ the decision-maker(s) issuing a determination regarding responsibility.
- ☐ a hearing or the decision-maker(s) issuing a determination regarding responsibility.

#### Determination of Responsibility

The Title IX Coordinator shall appoint a decision-maker(s) to issue a determination of responsibility. The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator(s) or the investigator(s).

[DRAFTING NOTE: The Board may, but need not, provide for a hearing before the decision-maker(s) reaches a determination of responsibility. The Institute suggests that the Board not provide for a hearing. If the Board decides not to provide for a hearing, the Board should select OPTION 1; if the Board elects to provide a hearing or to provide the decision-maker(s) with the discretion to conduct a hearing on a case-by-case basis, the Board should select OPTION 2. Additionally, if the Board operates a vocational program [see the Drafting Note contained in the first paragraph of the Introduction for a definition of "vocational program"], The Institute suggests that the Board consult its local legal counsel concerning whether it must provide for a live hearing related to Formal Complaints involving parties associated with the vocational program. If the Board determines, in consultation with its legal counsel, that it must provide for a live hearing, it should select Option E of OPTION 2, at least with respect to Formal Complaints involving parties involved in the vocational program (i.e., it does not need to provide for a live hearing for its regular K-12 education programs and activities that it operates.)



☒ **OPTION 1**

After the investigator sends the investigative report to the parties and the decision-maker(s), and before the decision-maker(s) reaches a determination regarding responsibility, the decision-maker(s) will 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. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

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 Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

[END OF OPTION 1]

☐ **OPTION 2**

After the investigator sends the investigative report to the parties and the decision-maker(s), and prior to the decision-maker(s) issuing a determination of responsibility, the decision-maker(s) ( ) may ( ) will conduct a hearing.

[DRAFTING NOTE: Select Option A or Option B. If the Board selects "may," it should select Option A; if it selects "will," it should select Option B.]

☐ **Option A**

If the decision-maker(s) decides not to conduct a hearing, the decision-maker(s) will state in writing the reason for not conducting a hearing and provide that explanation to the parties. Additionally, before the decision-maker(s) reaches a determination regarding responsibility, the decision-maker(s) will 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. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

If the decision-maker(s) elects to conduct a hearing, the hearing will proceed as follows:

[END OF OPTION A]

☐ **Option B**

The hearing will proceed as follows:

[END OF OPTION B]



**[DRAFTING NOTE: Select Option C or Option D or Option E; The Institute suggests Option C]**

**[ ] Option C**

At the hearing, the decision-maker(s) will allow each party or each party's advisor to submit relevant questions to the decision-maker(s) who will ask the questions to the other party and any witnesses. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Only relevant cross-examination and other questions, including follow-up questions and questions challenging credibility, will be permitted. Such cross-examination and questioning at the live hearing shall be conducted orally and in real time.

**[ ] If a party does not have an advisor present at the live hearing, the Academy will provide, without fee or charge to that party, an advisor of the Academy's choice, who may be, but is not required to be, an attorney, to submit questions on behalf of that party.**

**[END OF OPTION C]**

**[ ] Option D**

Prior to commencing the hearing, the decision-maker(s) will decide whether to allow each party's advisor to ask questions directly of the other party and any witnesses, or instead to have the questions submitted to the decision-maker(s) who will ask the other party and any witnesses the questions.

If the decision-maker(s) permits each party's advisor to ask the other party and any witnesses relevant questions and follow-up questions, including questions challenging credibility, such cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. If the decision-maker(s) permit each party's advisor to ask questions directly to the other party and any witnesses, the decision-maker(s) shall not restrict the extent to which advisors may participate in the hearing.

If, on the other hand, the decision-maker(s) decides to have each party's advisor (or the party, if the party does not have an advisor) submit relevant questions to the decision-maker(s), the decision-maker will ask the questions to the other party and any witnesses. Such cross-examination at the hearing will be conducted orally and in real time by the decision-maker(s) based upon questions submitted by a party's advisor or the party.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If the decision-maker(s) permits the parties' advisors to ask the questions directly, and a party does not have an advisor present at the live hearing, the Academy will provide, without fee or charge to that party, an advisor of the Academy's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.



☐ If the decision-maker(s) decides not to have the parties' advisors ask the questions directly, and a party does not have an advisor present at the hearing, the Academy will provide, without fee or charge to that party, an advisor of the Academy's choice, who may be, but is not required to be, an attorney, to submit questions on behalf of that party.

[END OF OPTION D]

☐ Option E

At the hearing, the decision-maker(s) shall permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally; notwithstanding anything to the contrary in this policy, the decision-maker shall not restrict the extent to which advisors may participate in the hearing.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If a party does not have an advisor present at the hearing, the Academy will provide, without fee or charge to that party, an advisor of the Academy's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

[END OF OPTION E]

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 Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a party or witness does not submit to cross-examination at the hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

Hearings may be conducted with all parties physically present in the same geographic location or, at the discretion of the ( ) decision-maker(s) ( ) Title IX Coordinator(s), any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the decision-maker shall provide for the hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or witness answering questions. The Academy will create an audio or audiovisual recording, or transcript, of any hearing and make it available to the parties for inspection and review.

[END OF OPTION 2]



**Determination regarding responsibility:** The decision-maker(s) will issue a written determination regarding responsibility. To reach this determination, the decision-maker(s) must apply the ☒ preponderance of the evidence standard ( ) clear and convincing evidence standard. [DRAFTING NOTE: Be sure to select the evidence standard selected previously (i.e., above).]

The written determination will include the following content:

- A. identification of the allegations potentially constituting Sexual Harassment pursuant to this policy;
- B. 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, [and] methods used to gather other evidence, ( ) ~~and hearings held; [DRAFTING NOTE: The Board should only select this option if it permits hearings.]~~
- C. findings of fact supporting the determination;
- D. Conclusions regarding the application of the applicable code of conduct to the facts;
- E. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the decision-maker(s) is recommending that the Academy impose on the Respondent(s), and whether remedies designed to restore or preserve equal access to the Academy's education program or activity should be provided by the Academy to the Complainant(s); and
- F. the procedures and permissible bases for the Complainant(s) and Respondent(s) to appeal.

The following disciplinary sanctions/consequences may be imposed on a student Respondent who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment):

A. Informal Discipline

- ( ) writing assignments;
- ( ) changing of seating or location;
- ( ) pre-school, ( ) lunchtime, ( ) after-school detention;
- ( ) in-school discipline;
- ( ) Saturday school; *Program*

B. Formal Discipline

- 1. suspension of bus riding/transportation privileges;



2. removal from co-curricular and/or extra-curricular activity(ies), including athletics;
3. emergency removal;
4. suspension for up to ten (10) school days;
5. long-term suspension or expulsion;
6. any other sanction authorized by the Student Code of Conduct.

If the decision-maker(s) determines the student Respondent is responsible for violating this policy (i.e., engaging in Sexual Harassment), the decision-maker(s) will recommend appropriate remedies, including disciplinary sanctions/consequences. The Title IX Coordinator will notify the ( ) School Leader (1) Educational Service Provider of the recommended remedies, so an authorized administrator can consider the recommendation(s) and implement an appropriate remedy(ies) in compliance with Policy 5600 – Student Discipline, Policy 5605 – Suspension/Expulsion of Students with Disabilities, Policy 5610 – Emergency Removal, Suspension, and Expulsion of Students, Policy 5610.02 - In-School Discipline, and Policy 5611 – Due Process Rights. Discipline of a student Respondent must comply with the applicable provisions of the Individuals with Disabilities Education Improvement Act (IDEA) and/or Section 504 of the Rehabilitation Act of 1972, and their respective implementing regulations.

The following disciplinary sanctions/consequences may be imposed on an employee Respondent who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment):

- ( ) oral or written warning;
- ( ) written reprimands;
- ( ) performance improvement plan;
- ( ) required counseling;
- ( ) required training or education;
- ( ) demotion;
- ( ) suspension with pay;

H. suspension without pay;

- I. termination, and any other sanction authorized by any applicable Employee/Administrator Handbook, and/or collective bargaining agreement.

If the decision-maker(s) determines the employee Respondent is responsible for violating this policy (i.e., engaging in Sexual Harassment), the decision-maker(s) will recommend appropriate remedies, including disciplinary sanctions/consequences. The Title IX Coordinator will notify the ( ) School Leader (1) Educational Service Provider of the recommended remedies, so an authorized administrator can consider the recommendation(s) and implement an appropriate remedy(ies) in compliance with



applicable due process procedures, whether statutory or contractual. [DRAFTING NOTE: The Board should review applicable policy(ies)/administrative guidelines/employee handbooks to determine whether changes are needed to stated timelines related to imposition of discipline as result of possible delays caused by the Board's obligation to follow this grievance process; likewise, the Board may need to discuss with union representatives how implementation of this grievance process may impact any disciplinary provisions contained in applicable collective bargaining (e.g., timelines, permitted attendees at investigative interviews, etc.).]

Discipline of an employee will be implemented in accordance with Federal and State law, Board policy, ~~and applicable provisions of any relevant collective bargaining agreement.~~ The following disciplinary sanctions/consequences may be imposed on a non-student/non-employee member of the Academy community or Third Party who is determined responsible for violating this policy (i.e., engaging in Sexual Harassment):

- ( ) oral or written warning;
- ( ) suspension or termination/cancellation of the Board's contract with the third-party vendor or contractor;
- ( ) mandatory monitoring of the third-party while on academy property and/or while working/interacting with students;
- ( ) restriction/prohibition on the third-party's ability to be on academy property; and
- E. any combination of the same.

If the decision-maker(s) determines the third-party Respondent is responsible for violating this policy (i.e., engaging in Sexual Harassment), the decision-maker(s) will recommend appropriate remedies, including imposition of sanctions. The Title IX Coordinator will notify the ( ) School Leader (X) Educational Service Provider of the recommended remedies, so appropriate action can be taken.

The decision-maker(s) will provide the written determination to the Title IX Coordinator who will provide the written determination to the parties simultaneously.

In ultimately, imposing a disciplinary sanction/consequence, the ( ) School Leader (X) Educational Service Provider will consider the severity of the incident, previous disciplinary violations (if any), and any mitigating circumstances.

The Academy's resolution of a Formal Complaint ordinarily will not be impacted by the fact that criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

At any point in the grievance process, the ( ) School Leader (X) Educational Service Provider may involve local law enforcement and/or file criminal charges related to allegations of Sexual Harassment that involve a sexual assault.

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



### Appeal

Both parties have the right to file an appeal from a determination regarding responsibility, or from the Title IX Coordinator's dismissal of a Formal Complaint or any allegations therein, on the following bases:

- A. Procedural irregularity that affected the outcome of the matter (e.g., material deviation from established procedures);
- B. 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
- C. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant(s) or Respondent(s) that affected the outcome of the matter.

[DRAFTING NOTE: The Board may insert additional grounds on which an appeal may be filed.]

- ☒ The recommended remedies (including disciplinary sanctions/consequences) are unreasonable in light of the findings of fact (i.e., the nature and severity of the Sexual Harassment).

☐ \_\_\_\_\_

- ☒ The Complainant(s) may not challenge the ultimate disciplinary sanction/consequence that is imposed.

Any party wishing to appeal the decision-maker(s)'s determination of responsibility, or the Title IX Coordinator's dismissal of a Formal Complaint or any allegations therein, must submit a written appeal to the Title IX Coordinator ~~within ( ) days after receipt of the decision-maker(s)'s determination of responsibility or the Title IX Coordinator's dismissal of a Formal Complaint or any allegations therein.~~ [DRAFTING NOTE: If the Board indicated above an intent to ordinarily complete the grievance process, including any appeal, within sixty (60) days of receipt of the Formal Complaint, The Institute suggests that the deadline for submitting a written appeal be set at "within ( ) three (3) ( ) five (5) days" of the appealing party's receipt of the decision-makers(s)' determination of responsibility.]

Nothing herein shall prevent the ( ) School Leader ☒ Educational Service Provider from imposing any remedy, including disciplinary sanction, while the appeal is pending.

As to all appeals, the Title IX Coordinator will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.

The decision-maker(s) for the appeal shall not be the same person(s) as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator(s). The decision-maker(s) for the appeal shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant(s) or Respondent(s) and shall receive the same training as required of other decision-makers.



Both parties shall have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. [DRAFTING NOTE: Select OPTION 1, OPTION 2, OPTION 3, or OPTION 4.]

☒ [OPTION 1] The decision-maker(s) for the appeal shall determine when each party's written statement is due. [END OF OPTION 1]

~~[OPTION 2] The parties' written statements in support of, or challenging, the determination of responsibility must be submitted within \_\_\_ days after the Title IX Coordinator provides notice to the non-appealing party of the appeal. [END OF OPTION 2]~~

~~[OPTION 3] The appealing party's written statement must be submitted within \_\_\_ days after the Title IX Coordinator receives notice of the appeal. The other party's written statement must be submitted within \_\_\_ days after the Title IX Coordinator provides that party a copy of the appealing party's written statement. ( ) The appealing party will have \_\_\_ days to submit a rebuttal to the other party's written statement. [DRAFTING NOTE: The Institute does not suggest that the Board select this extra option.] [END OF OPTION 3]~~

~~[OPTION 4] Specifically, the appealing party must submit with the notice of appeal a written statement challenging the determination of responsibility. The nonappealing party shall have up to \_\_\_ days after receipt of the appealing party's written statement to submit his/her written statement in support of the determination of responsibility. [END OF OPTION 4]~~

[DRAFTING NOTE: If the Board indicated above an intent to ordinarily complete the grievance process, including any appeal, within sixty (60) days of receipt of the Formal Complaint, The Institute suggests that the deadline for both parties to submit a written statement pursuant to OPTION 2 be set at "within five (5) days" of the Title IX Coordinator providing notice to the non-appealing party of the appeal. If the Board selects OPTION 3, The Institute suggests that the party's respective written statements be submitted within three (3) days of the triggering event (i.e., submission of the notice of appeal for the appealing party, and receipt of the appealing party's written statement for the nonappealing party), and if the Board selects the extra option in OPTION 3, The Institute suggests the appealing party only have two (2) days after receipt of the non-appealing party's written statement to submit the rebuttal. Alternatively, in order to expedite the appeal, the Board could select OPTION 4 and require the appealing party to submit his/her written statement challenging the determination of responsibility at the same time s/he submits his/her notice of appeal. The nonappealing party would then be permitted to submit a written statement in support of the determination of responsibility within the same number of days that the appealing party had to submit the notice of appeal/statement challenging the determination of responsibility (e.g., three or five days, depending on the appeal deadline selected above).]

The decision-maker(s) for the appeal shall issue a written decision describing the result of the appeal and the rationale for the result. The original decision-maker(s)' determination of responsibility will stand if the appeal request is not filed in a timely manner or the appealing party fails to show clear error and/or a compelling rationale for overturning or modifying the original determination. The written decision will be provided to the Title IX Coordinator who will provide it simultaneously to both parties. The written decision will be issued within \_\_\_ days of when the parties' written statements were submitted. [DRAFTING NOTE: If the Board indicated above an intent to ordinarily complete the grievance process, including any appeal, within sixty (60) days of receipt of the Formal Complaint, The Institute suggests that the deadline for the decision-maker(s) of the appeal



to issue the final decision be set at "within five (5) days" of the date the parties submitted their written statements, or the date a last written statement is submitted pursuant to Option 3 or Option 4.]

The determination of responsibility associated with a Formal Complaint, including any recommendations for remedies/disciplinary sanctions, becomes final when the time for filing an appeal has passed or, if an appeal is filed, at the point when the decision-maker(s) for the appeal's decision is delivered to the Complainant and the Respondent. ☒ No further review beyond the appeal is permitted.

### Retaliation

Neither the Board nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, or because the individual 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~~. Intimidation, threats, coercion, or discrimination, including 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 Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, constitutes retaliation. Retaliation against a person for making a report of Sexual Harassment, filing a Formal Complaint, or participating in an investigation ( ) ~~and/or hearing [DRAFT NOTE: Select this option if the Board permits hearings].~~ is a serious violation of this policy that can result in imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

Complaints alleging retaliation may be filed according to the grievance process set forth above.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

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 shall not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

### Confidentiality

The Academy will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder (i.e., the Academy's obligation to maintain confidentiality shall not impair or otherwise affect the Complainant's and Respondent's receipt of the information to which they are entitled related to the investigative record and determination of responsibility).



### Application of the First Amendment

The Board will construe and apply this policy consistent with the First Amendment to the U.S. Constitution, ☐ and the principles of academic freedom as set forth in the applicable collective bargaining agreement. In no case will a Respondent be found to have committed Sexual Harassment based on expressive conduct that is protected by the First Amendment, ☐ and/or the principles of academic freedom specified in the Board's collective bargaining agreement with its teachers.

### Training

The Academy's Title IX Coordinator, along with any investigator(s), decision-maker(s), or person(s) designated to facilitate an informal resolution process, must receive training on:

- A. the definition of Sexual Harassment (as that term is used in this policy);
  - B. the scope of the Academy's education program or activity;
  - ☒ C. how to conduct an investigation and implement the grievance process ☐ that includes hearings, [DRAFTING NOTE: Select this option if the Board permits hearings.] appeals and informal resolution processes, as applicable; and
  - D. how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interests, and bias.
- [ ] All ☐ Board ☒ Educational Service Provider employees will be trained concerning their legal obligation to report Sexual Harassment to the Title IX Coordinator. This training will include practical information about how to identify and report Sexual Harassment. [DRAFTING NOTE: While the Title IX regulations do not specifically require this training, it is critical that the Board train all of the employees concerning this legal obligation since the Board will be considered to have "actual knowledge" of Sexual Harassment if any ☐ Board ☐ Educational Service Provider employee has notice of such conduct.]

### Recordkeeping

As part of its response to alleged violations of this policy, the Academy shall create, and maintain for a period of seven (7) calendar 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 Academy shall 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 Academy's education program or activity. If the Academy does not provide a Complainant with supportive measures, then the Academy will 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 Academy in the future from providing additional explanations or detailing additional measures taken.

The Academy shall maintain for a period of seven (7) calendar years the following records:

- A. each Sexual Harassment investigation including any determination regarding responsibility, ☐ and any audio or audiovisual recording or transcript that is made of any hearing [DRAFTING NOTE: Select this option if the Board permits live



~~hearings,], any disciplinary sanctions recommended and/or imposed on the Respondent(s), and any remedies provided to the Complainant(s) designed to restore or preserve equal access to the Academy'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, decisionmakers, and any person who facilitates an informal resolution process.

The Academy will make its training materials publicly available on its website. ( ) If a person is unable to access the Academy's website, the Title IX Coordinator will make the training materials available upon request for inspection by members of the public.

#### Outside Appointments, Dual Appointments, and Delegations

The Board retains discretion to appoint suitably qualified persons who are not ( ) Board ( ) Educational Service Provider employees to fulfill any function of the Board under this policy, including, but not limited to, Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor.

The Board also retains discretion to appoint two or more persons to jointly fulfill the role of Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor.

The ( ) School Leader ( ) Educational Service Provider may delegate functions assigned to a specific ( ) Board ( ) Educational Service Provider employee under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, decision-maker, decision-maker for appeals, facilitator of informal resolution processes, and advisor, to any suitably qualified individual and such delegation may be rescinded by the ( ) School Leader ( ) Educational Service Provider at any time.

[DRAFTING NOTE: The following option expressly sets forth authority that the Board has regardless of whether it is included in this policy, but is offered for those boards of education that may want to affirmatively communicate to/address these issues for readers of this policy.]

#### ( ) Discretion in Application

The Board retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the Board's interpretation or application differs from the interpretation of any specific Complainant and/or Respondent.

Despite the Board's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the Board retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the Board retains



**discretion to revise this policy at any time, and for any reason. The Board may apply policy revisions to an active case provided that doing so is not clearly unreasonable.**

FOR BOARD APPROVAL



## **DELETED POLICY – JULY 2020 SPECIAL RELEASE** **SEXUAL VIOLENCE**

- References
- 20 U.S.C. 1681 et seq., Title IX of the Education Amendments of 1972 (Title IX)
  - 20 U.S.C. 1400 et seq., The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)
  - 42 U.S.C. 2000c et seq., Title IV of the Civil Rights Act of 1964
  - 42 U.S.C. 2000d et seq.
  - 42 U.S.C. 2000e et seq.
  - 42 U.S.C. 1983
  - 34 C.F.R. Part 106
  - Dear Colleague Letter on Sexual Violence (Office for Civil Rights, 2011)
  - OCR's Revised Sexual Harassment Guidance (2001)

The Board of Directors does not discriminate on the basis of race, color, national origin, sex (including sexual orientation or transgender identity), disability, age (except as authorized by law), religion, military status, ancestry, or genetic information (collectively, "Protected Classes") in its education programs and activities. The Board is committed to maintaining an education and work environment that is free from all forms of unlawful harassment, including sexual harassment.

Sexual harassment, including sexual violence, interferes with students' rights to receive an education free from discrimination, and, in the case of sexual violence, is a crime. Pursuant to its Title IX obligations, the Board is committed to eliminating sexual violence in all forms and will take appropriate action against any individual found responsible for violating this policy. To further its commitment against sexual violence, the Board provides reporting options, an investigative and disciplinary process, and other related services as appropriate.

This policy applies to all student complaints, whether filed by a student, his/her parent, an employee, or third party on the student's behalf. It applies to all Academy operations, programs, and activities, as well as to unlawful conduct occurring on academy property or during a Board-sponsored activity. All students, administrators, teachers, staff, and all other academy personnel share responsibility for avoiding, discouraging, and reporting any form of unlawful harassment.

### Definitions

#### Sexual Harassment

As detailed further in Policy 5517, sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature. Sexual harassment may involve the behavior of a person of either gender against a person of the same or opposite gender.

Examples include, but are not limited to:

- A. unwelcome sexual propositions, invitations, solicitations, and flirtations;
- B. unwanted physical and/or sexual contact;
- C. threats or insinuations implying that a person's conditions of education may be adversely affected by not submitting to sexual advances;
- D. unwelcome sexual verbal expressions, including graphic sexual



- commentaries about a person's body, dress, appearance, or sexual activities; unwelcome sexually degrading language, jokes or innuendoes; unwelcome suggestive or insulting sounds or whistles; obscene telephone calls;
- E. sexually suggestive objects, pictures, videotapes, audio recordings or literature;
  - F. unwelcome and inappropriate touching, patting, or pinching; obscene gestures;
  - G. a pattern of conduct, which can be subtle in nature, that has sexual overtones and is intended to create or has the effect of creating discomfort and/or humiliation to another;
  - H. speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history;
  - I. inappropriate boundary invasions into a student's personal space and personal life; and
  - J. verbal, nonverbal or physical aggression, intimidation, or hostility based on sex or sex-stereotyping that does not involve conduct of a sexual nature.

#### Sexual Violence

Sexual violence, as used in this policy, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age, intellectual or other disability, or use of drugs or alcohol).

Sexual violence includes rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by academy employees, other students, or third parties. All such acts of sexual violence are forms of sexual harassment and, in turn, sex discrimination prohibited by Title IX.

Harassing conduct creates a hostile environment when it interferes with or limits a student's ability to participate in or benefit from the academy's program. A single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For example, a single instance of rape is sufficiently severe to create a hostile environment.

#### Anti-Harassment Compliance Officers

The Board designates the following individuals to serve as "Anti-Harassment Compliance Officers" for the Academy. They are hereinafter referred to as the "Compliance Officers."

**[NOTE: For the complainant's comfort, Academies are advised to appoint both a male and a female Compliance Officer. The Compliance Officers may also serve as the Academy's Section 504/ADA and Title IX Coordinators.]**

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)



\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Phone Number)

The names, titles, and contact information of these individuals will be published annually:

- ( ) in the student, parent and staff handbooks.
- ( ) in the Academy Annual Report to the public.
- ( ) on the Academy's Web site.
- ( ) on each individual Academy's Web site.
- ( ) in the Academy 's calendar.
- ( ) \_\_\_\_\_.

The Compliance Officers are available during regular academy/work hours to discuss Title IX questions, sexual violence concerns, and to assist students, other members of the Academy community, and third parties. Compliance Officers shall accept sexual violence complaints directly from any members of the Academy community or a visitor to the Academy, as well as those initially filed within an academy building administrator. Upon receiving a complaint, the Compliance Officer or designee will discuss confidentiality issues with the complainant (and his/her parent, if the complainant is a minor), and open an investigation as described below.

#### Complaint Procedures

##### Reporting

Students and Board employees are required, and parents, community members, and third parties are encouraged, to report sexual violence promptly to a teacher, administrator, supervisor, or other academy official. Reports can be made orally or in writing, and should be as specific as possible. The person making the report shall identify the alleged victim, perpetrator(s), and witness(es), and describe in detail what occurred, including date(s), time(s), and location(s). The Academy, however, will investigate and address all reports to the extent possible.

A student has a right to file criminal and/or Title IX complaints simultaneously. A student does not need to wait until the Title IX investigation is completed before filing a criminal complaint. Likewise, questions or complaints relating to sexual violence or any other Title IX concerns may also be filed with the U.S. Department of Education's Office for Civil Rights.

**[OPTIONAL: The Academy's harassment reporting form (Form 5517.02 F1) is an optimal, but not required, way to report sexual harassment, including sexual violence. This form is available at \_\_\_\_\_.]**

Any teacher, administrator, supervisor, or other academy employee or official who receives such a complaint shall file it with the Academy's Compliance Officer within two (2) school days, and shall comply with his/her mandatory reporting responsibilities. The Compliance Officer will oversee the Academy's investigation and response to any Title IX-related



complaints, but s/he may delegate the investigative process to another individual ("Designee"). The Board reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy.

### Confidentiality

The Academy respects students' privacy and will only disclose information regarding alleged sexual violence to individuals who are responsible for handling the academy's response, the student's parents (if the student is a minor or is considered a dependent under Section 152 of the Internal Revenue Code), or as otherwise required by law. During the course of a formal investigation, the Compliance Officer/designee will instruct all interviewees about the importance of maintaining confidentiality. Interviewees will be directed not to disclose any information that s/he learns or that s/he provides during the course of the investigation to third parties.

Students or their parents sometimes ask that the students' names not be disclosed to the alleged perpetrators or that no investigation or disciplinary action be pursued to address the alleged sexual violence. Upon such a request, the Compliance Officer/designee will inform the student and his/her parent that honoring the request may limit the Academy's ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. The official will also explain that Title IX includes protections against retaliation, and that academy officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

Should the student or his/her parents continue to request complete confidentiality, the Compliance Officer/designee will balance the student's privacy request with the Academy's obligation to provide a safe and non-discriminatory environment for all students. Should the official determine that the Academy can honor the student's or parent's request and remain in compliance with its Federal and State obligations, the Academy may limit its investigation and/or formal action against the alleged perpetrator. The Academy will, however, take other action to address the sexual violence. This may include increasing monitoring and security, offering schedule changes, and conducting climate surveys.

If the Compliance Officer/designee determines that the Academy must disclose the student's identity to an alleged perpetrator, s/he will inform the student and his/her parents prior to disclosure. The Academy will then afford interim protection measures to the student as appropriate.

### Investigation

The Academy is committed to investigating all sexual violence complaints in an adequate, reliable, impartial, and prompt manner. The investigation will seek to determine whether the conduct occurred, and if so, what actions the academy will take to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and remedy its effects.

The investigation may include:

- A. interviewing the complainant, perpetrator, and any witnesses;
- B. reviewing law enforcement investigation documents;
- C. reviewing student and personnel files;



- D. gathering and examining other relevant documents or evidence; and
- E. providing a disciplinary hearing as needed.

The Academy affords both parties a balanced and fair process. Specifically, the complainant has the same rights throughout the proceeding as the alleged perpetrator. Both parties, for example, will have an equal opportunity to present relevant witnesses and other evidence at a disciplinary hearing. Likewise, the Academy's appeal process is available to both parties. The Academy, however, does not require complainants to be present for the hearing or appeal. Further, the Academy will not permit parties to personally question or cross-examine each other directly.

**[OPTION]**

**[ ]** Additionally:

- ( ) The Academy permits both parties to have legal counsel or other advisors at any stage of the proceedings. Any restrictions on legal counsel participation apply to both parties equally.
- ( ) The Academy permits both parties to submit third-party testimony.
- ( ) The Academy permits both parties to be present for the entire hearing, but it will not require the complainant and alleged perpetrator to be present in the same room at the same time.

**[END OF OPTION]**

In resolving a complaint, the Academy uses a preponderance of the evidence standard, determining whether it is more likely than not that sexual violence occurred.

Timeline

The Compliance Officer/designee must contact the student, if age eighteen (18) or older, or the student's parents if under the age eighteen (18), within two (2) school days after receipt of a report of sexual violence to advise s/he/them of the Board's intent to investigate the alleged misconduct. The Compliance Officer/designee will also inform the alleged perpetrator of the opportunity to submit a written response to the complaint within five (5) business days. The Academy's investigation, including a disciplinary hearing process (but not appeal), may take up to sixty (60) calendar days to complete. This timeframe may be extended on a case-by-case basis, depending on the complexity and severity of the matter, criminal investigation requirements, and academy breaks. During this period, the Academy will provide the complainant with periodic updates on the status of the investigation.

Interim Measures

During the investigation, the Academy will take interim steps to facilitate the complainant's equal access to its education programs. These steps may include, but are not limited to: 1) notifying the complainant of his/her options to avoid contact with the alleged perpetrator; 2) allowing the complainant to change his/her academic, extracurricular, transportation, dining, and working situation as appropriate; and 3) informing complainant of other available resources, such as counseling, legal assistance, and victim advocacy. Specific interim measures will be considered and offered on a case-by-case basis.



### Notice

Upon completing its investigation, the Academy will notify both parties in writing about the outcome of the complaint and any appeal. Specifically, the Academy will notify the complainant: 1) as to whether the investigation substantiated the allegations; 2) of individual remedies offered to the complainant; 3) of sanctions imposed on the perpetrator that directly relate to the complainant; and 4) other steps the Academy has taken to eliminate the hostile environment and prevent recurrence. The alleged perpetrator will be notified of the investigation's result and disciplinary consequence to him/her, if any. The Academy will not notify the alleged perpetrator about the individual remedies afforded to the complainant. All aforementioned notifications will comply with Federal and State privacy laws, including the Family Education Rights and Privacy Act (FERPA).

### Remedies

The Academy will provide a prompt and equitable resolution. If the investigation substantiates the complaint, the Academy will take steps to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and remedy its effects. In addition to imposing disciplinary consequences on the perpetrator, the Academy will consider the following individual and global remedies, on a case-by-case basis:

- A. providing medical, counseling, and academic support services to the complainant and/or perpetrator;
- B. re-arranging schedules at the complainant's request;
- C. affording the complainant extra time to complete or retake classes without academic penalty;
- D. reviewing any disciplinary proceedings against the complainant;
- E. training or retraining employees;
- F. developing materials on sexual violence;
- G. conducting sexual violence prevention programs; and
- H. conducting climate checks.

The Academy will not offer mediation in cases involving sexual violence. Disciplinary consequences against offenders may include suspension, expulsion, termination, and any other sanctions the Board deems appropriate. Any discipline meted out to offenders will comply with special education and Section 504 laws and regulations.

### Appeals Process

Both complainants and perpetrators may appeal the outcome of the investigation. Any appeal opportunities afforded to the alleged perpetrator are also afforded to the complainant. Any party wishing to appeal the outcome of the investigation must submit a written appeal to the Board within ten (10) school days after receipt of the written notice of the outcome of the investigation. The Board shall, within twenty (20) work days, conduct a hearing concerning



the appeal. The Board shall provide a written decision to the appealing individual within ten (10) work days following completion of the hearing.

#### Retaliation

Federal law strictly prohibits retaliation against a complainant or witness. The Academy will inform complainant of this prohibition and direct him/her to report retaliation, whether by students or academy officials, to the Compliance Officer. Upon learning of retaliation, academy officials will take strong responsive action as appropriate.

#### Training

All staff will be trained so they know to report harassment to appropriate academy officials. This training will include practical information about how to identify and report sexual harassment, including sexual violence. The training will be provided to any employees likely to witness or receive complaints involving sexual harassment and/or sexual violence, including teachers, academy law enforcement unit employees or academy resource officers, academy administrators, academy counselors, and health personnel. Further, academy administrators responsible for investigating allegations of sexual harassment and sexual violence will be trained how to conduct such investigations and respond properly to such charges.

#### Retention of Investigatory Records and Materials

All individuals charged with conducting investigations under this policy shall retain all documents, electronically stored information ("ESI"), and electronic media (as defined in Policy 8315) created and/or received as part of an investigation, which may include but not be limited to:

- A. all written reports/allegations/complaints/grievances/ statements/responses pertaining to an alleged violation of this policy;
- B. any narratives that memorialize oral reports/allegations/complaints/grievances/statements/responses pertaining to an alleged violation of this policy;
- C. any documentation that memorializes the actions taken by Academy personnel related to the investigation and/or the Academy's response to the alleged violation of this policy;
- D. written witness statements;
- E. narratives, notes from, or audio, video, or digital recordings of witness interviews/statements;
- F. e-mails, texts, or social media posts that directly relate to or constitute evidence pertaining to an alleged violation of this policy (i.e., not after-the-fact commentary about or media coverage of the incident);
- G. notes or summaries prepared contemporaneously by the investigator in whatever form made (e.g., handwritten, keyed into a computer or tablet, etc.), but not including transitory notes whose content is otherwise memorialized in other documents;



- H. written disciplinary sanctions issued to students or employees and other documentation that memorializes oral disciplinary sanctions issued to students or employees for violations of this policy;
- I. dated written determinations/reports (including summaries of relevant exculpatory and inculpatory evidence) and other documentation that memorializes oral notifications to the parties concerning the outcome of the investigation, including any consequences imposed as a result of a violation of this policy;
- J. documentation of any interim measures offered and/or provided to complainants and/or the alleged perpetrators, including no contact orders issued to both parties, the dates the no contact orders were issued, and the dates the parties acknowledged receipt of the no contact orders;
- K. documentation of all actions taken, both individual and systemic, to stop the discrimination or harassment, prevent its recurrence, eliminate any hostile environment, and remedy its discriminatory effects;
- L. copies of the Board policy and/or procedures/guidelines used by the Academy to conduct the investigation, and any documents used by the Academy at the time of the alleged violation to communicate the Board's expectations to students and staff with respect to the subject of this policy (e.g., Student and/or Employee Handbooks or Codes of Conduct);
- M. copies of any documentation that memorializes any formal or informal resolutions to the alleged discrimination or harassment;

**[DRAFTING NOTE: The following options should be selected if the Academy concludes that the following items are not adequately encompassed in the preceding paragraphs.]**

- ( ) documentation of any training provided to Academy personnel related to this policy, including but not limited to, notification of the prohibitions and expectations of staff set forth in this policy and the role and responsibility of all Academy personnel involved in enforcing this policy, including their duty to report alleged violations of this policy and/or conducting an investigation of an alleged violation of this policy; [REMINDER: Documentation of training should be maintained regardless of whether there is an investigation of an alleged violation of this policy. It is best practice to maintain a log of all staff members who participate in a training, along with the date, time and location of the training, and a copy of the materials reviewed and/or presented during the training.]
- ( ) documentation that any rights or opportunities that the Academy made available to one party during the investigation were made available to the other party on equal terms;
- ( ) copies of any notices sent to the alleged perpetrator/responding party of the allegations constituting a potential violation of this policy;
- ( ) copies of any notices sent to the complainant and alleged perpetrator in advance of any interview or hearing;



- ( ) copies of any documentation or evidence used during informal and formal disciplinary meetings and hearings, including the investigation report, and any written responses submitted by the complainant or the alleged perpetrator.

The documents, ESI, and electronic media (as defined in Policy 8315) retained may include public records and records exempt from disclosure under Federal (e.g., FERPA, ADA) and/or State law (e.g., R.C. 3319.321) – e.g., student records and confidential medical records.

The documents, ESI, and electronic media (as defined in Policy 8315) created or received as part of an investigation shall be retained in accordance with Policy 8310, Policy 8315, Policy 8320, and Policy 8330 for not less than three (3) years, but longer if required by the Academy's records retention schedule.

DELETE