

Resolution of the Governing Authority of Discovery Academy
TITLE IX POLICY AND PROCEDURES

At a meeting of the Governing Authority of Discovery Academy held on September 21, 2020 a quorum being present, the following resolution was duly enacted:

WHEREAS, the Governing Authority of the Academy reviewed the Title IX Policy and Procedures .

Attested to by my signature as the President of the Board of Directors of Discovery Academy, and approved by a vote of _____ to _____ at a meeting held September 21, 2020.

Jason Flynn

Board President

TITLE IX POLICY AND PROCEDURES

The Board of Directors of Discovery Academy (“Board”) adopts the following policies, procedures and protocols regarding matters specifically relating to the prevention of discrimination on the basis of sex (including sexual orientation, gender identity, and gender expression) in the Discovery Academy’s education programs or activities, as defined in Title IX of the Civil Rights Act of 1964 (20U.S.C. Sections 1681 *et seq.* and its interpretive regulations at 34 C.F.R. Part 106 (“Title IX”). It is the express intention of the Board that these policies, procedures and protocols (collectively “Title IX Policy”), notwithstanding anything contained in the other policies of the Board, take precedent over and supersede such other policies as to all matters at Discovery Academy (“Academy”) falling within this Title IX Policy as described herein, to the extent that such other policies are in conflict with this Title IX Policy.

1. **Introduction.** As required by Title IX, the Academy does not discriminate on the basis of sex (including sexual orientation, gender identity, and gender expression) in its education programs or activities, including admission to and employment at the Academy. The Academy is committed to creating and maintaining a safe school environment free from discrimination on the basis of sex, including sexual harassment. The Academy prohibits such harassment in the school environment, including all academic, extracurricular and school-sponsored activities. Students are encouraged to immediately report incidents of sexual harassment to any staff member. Staff members must promptly report to the Title IX Coordinator, all incidents of sexual harassment of which they become aware, by whatever means they become aware.

This policy sets forth how the Academy will proceed in a prompt manner that is not deliberately indifferent once it has actual knowledge of sexual harassment in its education programs or activities against a person in the United States. 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. Individuals who violate this policy, will be 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.

2. **Definitions.** For purposes of this Title IX Policy, some key terms are defined below. Additional terms are defined within the text of the Title IX Policy.

- 2.1. **“Academy Community”** means students, Academy staff members, Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.
- 2.2. **“Actual Knowledge”** means notice of sexual harassment or allegations to the Title IX Coordinator, member of the Board, or any staff member employed at the Academy. The Academy does not have actual knowledge if the Title IX Coordinator, a member of the Board, or a staff member employed at the Academy is the only individual to receive notice and is also the Respondent.
- 2.3. **“Complainant”** means an individual who is alleged to be the victim of conduct that constitute sexual harassment.
- 2.4. **“Consent”** means 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 a temporary or permanent mental or physical incapacity. A person who is incapacitated is not capable of giving consent.
- 2.5. **“Day(s)”** means, unless expressly stated otherwise, business days.
- 2.6. **“Education Program or Activity”** means any location, event, or circumstance where the Academy exercises substantial control over both the Respondent and the context in which the conduct occurs, including but not limited to in-person, online and remote instruction, employment, extracurricular activities, 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. Conduct that occurs off campus or at events with no connection to the Academy is unlikely to occur in an Education Program or Activity of the Academy.
- 2.7. **“Exculpatory Evidence”** means evidence that tends to clear or excuse a Respondent from allegations of sexual harassment.
- 2.8. **“Formal Complaint”** means a document signed by a Complainant or by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting initiation of the Academy’s formal grievance process.

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 any complainant or respondent.

- 2.9. **“Incapacitated”** means the state where a person does not understand and/or appreciated 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.
- 2.10. **“Inculpatory Evidence”** means evidence that tends to establish a Respondent’s responsibility for alleged sexual harassment.
- 2.11. **“Reasonable Person“** means a person using average care, intelligence, and judgment in the known circumstances.
- 2.12. **“Sexual Harassment”** means conduct on the basis of sex that satisfies one or more of the following:
 - 2.12.1. A Board Member or Academy staff member conditioning the provision of aid, benefits, or services of the Academy on an individual’s participation in unwelcome sexual conduct (often called quid pro quo harassment);
 - 2.12.2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the Academy’s education program or activity; or
 - 2.12.3. **”Sexual Assault”** means any sexual act directed against another person, forcibly and/or against that person’s will; or not forcibly or against the person’s will where the victim is incapable of giving consent because of their temporary or permanent mental or physical incapacity (or because of their youth). Sexual assault includes rape, sodomy, sexual assault with an object, fondling, incest and statutory rape.
 - **“Rape”** means the carnal knowledge of a person, forcibly and/or against that person’s will; or not forcibly or against that persons

will where the victim is incapable of giving consent because of their temporary or permanent mental or physical incapacity (or because of their youth).

- **“Sodomy”** means oral or anal sexual intercourse with another person, forcibly and/or against that person’s will; or not forcibly against that person’s will where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.
- **“Sexual Assault With An Object”** means the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person’s will; or not forcibly against the person’s will where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical in capacity.
- **“Fondling”** means the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will; or not forcibly or against that person’s will where the victim is incapable of giving consent because of their youth or because of their temporary mental incapacity.
- **“Incest”** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **“Statutory Rape”** means sexual intercourse with a person who is under the statutory age of consent.
- **“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; and
 - where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - the length of the relationship
 - the type of relationship

- frequency of interaction between the persons involved in the relationship

- **“Domestic Violence”** means a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by 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.
- **“Stalking”** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for his or her safety or the safety of others; or
 - Suffer substantial emotional distress.

2.13. **“Supportive Measures”** means individualized services, accommodations, and other assistance offered as appropriate, as reasonably available, without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Supportive Measures are designed to restore or preserve equal access to the Academy’s education program and activities, protect the safety of all parties and the Academy’s educational environment, and/or deter sexual harassment, without being punitive or disciplinary in nature or unreasonably burdening the other party. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions of contact between parties, changes in work location, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

2.14. **“Third Parties”** include, but 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 participate in an Academy education program or activity, but who, for purposes of alleged sexual harassment, is neither enrolled at the Academy nor employed at the Academy.

3. **Policy Scope and Applicability.** This Title IX Policy applies to sexual harassment committed by a member of the Academy community or Third Parties when the sexual harassment occurs on campus or other property owned or controlled by the Board in the context of the Academy's education programs or activities in the United States.

This Title IX Policy does not cover sexual harassment that occurs off Academy grounds, in a private setting, and outside the scope of the Academy's education programs and activities; or outside the United States of America. Such misconduct may be prohibited and governed by the student code of conduct, employee handbook or other Board policies.

4. **Title IX Coordinator(s).** The Board designates and authorizes the following individual(s) to oversee and coordinate its efforts to comply with Title IX and its implementing regulations:

Title IX Coordinator
TitleIXCoordinator@leonagroup.com
2125 University Park Dr.
Okemos, Michigan 48864
517- 203-3774

Questions about this policy should be directed to the Title IX Coordinator.

5. **Reporting Sexual Discrimination/Harassment.** The Academy strongly encourages any individual, whether or not the person reporting is the alleged victim, to make a report of suspected sexual discrimination, including sexual harassment, directly to the Title IX Coordinator, in person, by mail, telephone, electronic mail, or any other means that results in the Title IX Coordinator receiving the person's oral or written report. Reports may also be made to any Board member or Academy staff member, but the Academy strongly encourages reporting directly to the Title IX Coordinator so that the Title IX Coordinator may promptly discuss the availability of Supportive Measures and available grievance processes with the Complainant. Academy staff members must report incidents of alleged sexual harassment they witness, or of which they have received reports or information directly to the Title IX Coordinator, whether such incidents are verbal, physical or amount to harassment in other forms.

Recognizing that some forms of sexual harassment may also constitute crimes, the Academy strongly encourages any individual who experiences, witnesses, or learns of possible criminal conduct to report it to local law enforcement. Prompt reporting allows law enforcement to collect and preserve evidence. A person does not need to wait until the Academy's 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.

Set forth below is information regarding how to make a report of sexual discrimination, including sexual harassment:

- 5.1. **Reporting to the Title IX Coordinator.** Reports of sexual harassment/discrimination should be made to the Title IX Coordinator. Making a report means informing the Title IX Coordinator of the suspected sexual discrimination/harassment. Reports should be as detailed as possible, and to the extent known, identifying the alleged victim(s), perpetrator(s), and witness(es), and describe in detail what occurred, including date(s), time(s), and location(s). Reports may be made at any time (including non-business hours) by using the Title IX Coordinator's contact information as provided in Section 4.
- 5.2. **Reporting to Board members or Academy staff members.** Reports of sexual discrimination/harassment may also be made to any Board member or Academy staff member. A Board member or Academy staff member that receives a report of sexual discrimination/harassment should not attempt to determine whether the behavior at issue constitutes a violation of this Title IX Policy; instead, within two (2) days of receiving the report, they must forward the report to the Title IX Coordinator, and the Title IX Coordinator will determine how to appropriately handle the report. The Academy staff member must also comply with any mandatory reporting responsibilities pursuant to state law, if applicable. If an Academy staff member fails to report an incident of sexual harassment of which they are aware, the Academy staff member may be subject to disciplinary action, up to and including termination.
- 5.3. **Time Frame for Reporting an Incident.** While there are no time limits for reporting sexual discrimination or harassment, individuals should make every effort to file a report or Formal Complaint as soon as possible after the discriminating or harassing conduct occurs, as it may be more difficult for the Academy to gather relevant and reliable evidence or to take corrective action regarding conduct that is reported to have occurred relatively long ago.

If the Respondent is no longer a student, Board member, Academy staff member, or a person who is participating or attempting to participate in any Academy education program or activity at the time of the report, and/or if the reported conduct does not fall within the definition of sexual harassment, the Academy's ability to take action against the Respondent under this Title IX Policy may be limited. The Academy will, however, help a Complainant identify other options outside the Academy, such as local law enforcement, and provide support and resources.

6. **Receipt by the Academy of Reports of Sexual Discrimination or Harassment.**

6.1. **Initial Contact with the Complainant.** When the Title IX Coordinator receives a report of sexual discrimination/harassment, the Title IX Coordinator will in all cases where the Complainant is identified, contact the Complainant (including the parent/guardian if the Complainant is under 18 years of age or under guardianship) to: (1) discuss the availability of Supportive Measures; (2) ask about the Complainant's wishes with respect to Supportive Measures; (3) inform the Complainant Supportive Measures are available whether or not they file a Formal Complaint, and (4) explain how to file a Formal Complaint.

6.2. **Complainant Shall Not Be Coerced from Exercising Rights Under Title IX.** Under no circumstances shall a Complainant be required to waive any right to an investigation and adjudication of a Formal Complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right. Similarly, no party shall be required to participate in an informal resolution process.

6.3. **Closure of a Report.** A report may move to closure if: (1) a Complainant cannot be identified; (2) specific circumstances prevent gathering information sufficient to reach a determination as to whether the reported conduct is covered under this Title IX Policy, which may include Complainant's declining to file a Formal Complaint or not responding to the Title IX Coordinator's outreach; or (3) the report is not covered under the criteria for a formal grievance process as described below.

The process for filing a Formal Complaint is described in greater detail in Section 9, but a Formal Complaint may be filed by a Complainant when a report is made or at another time thereafter, even after closure. In some cases, as explained in further detail in Section 9, the parent/guardian of the Complainant, or the Title IX Coordinator may file a Formal Complaint even where the Complainant has not decided to do so.

6.4. **Supportive Measures.** The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. Supportive measures may remain available to the parties even if the matter moves to closure. 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.

6.5. **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 purpose 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 notify the student Respondent and the student Respondent will have an opportunity to challenge the decision immediately following the removal.

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 Academy grounds and other properties at any time and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

7. **Advisors or Support Persons.** Complainants and Respondents may each have one advisor and one support person of their respective choice present at any meeting related to this Title IX Policy. A witness may also have an advisor or support person at any meeting related to this Title IX Policy. An advisor may be an attorney, but is not required to be an attorney.

An advisor or support person who is verbally abusive, disruptive to the investigative process, or persists in trying to substantially interfere with the Academy's process after a warning to cease and desist may be asked to leave and may be precluded from attendance at future meetings or conferences.

8. **Grievance Procedure.**

- 8.1. **Timeframe; Extension for Good Cause.** The Board is committed to promptly and equitably resolving complaints alleging sexual harassment. After a Formal Complaint has been filed by the Complainant or the Title IX Coordinator, the Academy University will commence the grievance process as set forth herein. The Academy will seek to conclude the grievance process, including resolving any appeals, within sixty (60) days of receipt of the Formal Complaint.

The grievance process may be subject to a temporary delay or limited extension for good cause with written notice to the Complainant and Respondent of the delay or extension and the reasons for the action. Good cause may include, but not limited to, use of informal grievance process; 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.

- 8.2. **Equitable Treatment.** 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. All procedures, rules, and practices adopted as part of the formal grievance process will apply equally to both parties. Parties will receive identical copies of all investigation reports and written decisions.
- 8.3. **Objective Evaluation of Relevant Evidence.** 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. Evidence is considered relevant if it has a tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in making a determination regarding responsibility.
- 8.4. **Presumption of Non-Responsibility and Standard of Evidence.** A Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The presumption may be overcome only where a preponderance of evidence supports a finding that the respondent is responsible for violating this Title IX Policy.
- 8.5. **Standard of Proof.** The standard of proof is “preponderance of evidence.” “Preponderance of the evidence standard” means that the respondent will be found responsible if, based upon all relevant evidence, it is “more likely true than not” that respondent is responsible for the reported conduct. If the evidence on a particular allegation is equally balanced, then that allegation is not “more likely true than not.”
- 8.6. **No Conflicts of Interest.** The Title IX Coordinator(s), along with any investigator(s), decision-maker(s), or any person(s) designated to facilitate an informal grievance process, shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. A conflict of interest exists when an individual’s knowledge of the matter or personal or professional relationship with a Complainant, Respondent, or witness would preclude the individual from being able to investigate or decide the case fairly and impartially. Any concern regarding bias or conflict of interest should be submitted to the Title IX Coordinator immediately.
- 8.7. **Burden of Gathering Evidence.** The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the Academy and not on the parties. Notwithstanding, the Academy

cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a nurse practitioner, 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 Academy obtains that party's voluntary, written consent to do so.

- 8.8. **Evidentiary Decisions.** There are limited circumstances in which prior or subsequent conduct or prior sexual history may be relied upon as evidence.
 - 8.8.1. **Prior or Subsequent Conduct.** Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive or absence of mistake. For example, evidence of a pattern may be deemed relevant if the prior or subsequent conduct is substantially similar to the conduct under investigation.
 - 8.8.2. **Prior Sexual History.** Questions or evidence about a Complainant's sexual history, sexual identity, and prior sexual experiences are prohibited. Questions and evidence about a Complainant's prior sexual behavior are prohibited subject to two exceptions: i) if offered to prove that someone other than the Respondent committed the reported prohibited behavior; or ii) if the question or evidence concerns sexual behavior between the Complainant and the respondent and is offered to prove consent for the reported prohibited conduct.
- 8.9. **Remedies.** 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.
9. **Formal Complaint.** The formal grievance process is initiated only when a Formal Complaint is signed and filed by the Complainant (or the parent/guardian of the Complainant in some cases) or the Title IX Coordinator.
 - 9.1. **Content.** A Formal Complaint must set forth the specific allegations of sexual harassment against the Respondent(s), must be signed (in writing or electronically), and must request that the Academy investigate the allegation(s).
 - 9.2. **Submission.** A Formal Complaint may be submitted to Title IX Coordinator in person, by mail, or by email using the contact information provided in Section 4.

- 9.3. **Formal Complaint Filed by Parent/Legal Guardian of Complainant.** A parent or legal guardian may file a Formal Complaint on the Complainant's behalf when the Complainant is under 18 years of age or under guardianship. Where the parent/legal guardian files a Formal Complaint, the parent/legal guardian is not a Complainant or otherwise a party to a formal or informal grievance process.
- 9.4. **Formal Complaint Filed by Title IX Coordinator.** The Title IX Coordinator has discretion to file a Formal Complaint even if the Complainant chooses not to, and even if the Complainant chooses not to participate in the grievance process. In general, the Title IX Coordinator will seek to respect the Complainant's wishes not to file a Formal Complaint, however, when the Respondent is an Academy staff member; when a significant safety concern is presented; or when the Title IX Coordinator concludes that failure to pursue a Formal Complaint may fail to meet the Academy's duties under the law; the Title IX Coordinator will usually sign a Formal Complaint. Where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party to a formal or informal resolution process.
- 9.5. **False Statements are Prohibited.** It is a violation of this Title IX Policy for a Complainant, Respondent, and/or witness to knowingly make false statements or knowingly submit false information during the grievance process, including intentionally making a false report of sexual harassment or submitting a false Formal Complaint. Such conduct will not be tolerated, which is a violation of the Student Code of Conduct and/or the Employee Handbook.
- 9.6. **Consolidation.** The Academy may consolidate Formal Complaints involving more than one Complainant or more than one Respondent, including where allegations of sexual harassment arise out of the same facts or circumstances. When consolidated, Formal Complaints proceed through the formal grievance process jointly, but determinations regarding responsibility will be made as to each party and allegation.
10. **Notice.** Upon receipt of a Formal Complaint and within three (3) business days, the Title IX Coordinator will provide written notice of the following to the parties who are known:
- Notice of the grievance process, including the informal grievance process
 - Notice of the allegations of misconduct with sufficient details to allow the Respondent to prepare a response. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual discrimination/harassment, and the date and location of the alleged incident, if known.

- Notice 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.
- Notice that the parties may have an advisor of their choice, who may be, but is not required to be an attorney, and who may inspect and review evidence.
- Notice that the parties may request to inspect and review evidence.
- Notice of any provision in the Student Code of Conduct or Employee Handbook that prohibits knowingly making false statements, false or providing false information or evidence during the grievance process.

11. **Dismissal of a Formal Complaint.** Once a Formal Complaint is filed, it will proceed to an investigation under Section 13 unless dismissed for the reasons set forth below.

11.1. **Mandatory Dismissal.** A Formal Complaint *must* be dismissed under Title IX if the alleged conduct:

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

If a Formal Complaint is dismissed due to one of the preceding reasons, the Academy may still investigate and take action with respect to the alleged misconduct under another provision of an applicable Student Code of Conduct, Board policy, and/or Employee Handbook.

11.2. **Discretionary Dismissals.** A Formal Complaint, or any allegations therein, *may* be dismissed under Title IX, if at any time during the investigation:

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

allegations therein (e.g. passage of time, lack of cooperation by complainant).

If the Title IX Coordinator dismisses a Formal Complaint or allegations therein, the Title IX Coordinator must promptly send written notice of the dismissals and the reason(s) therefore simultaneously to the parties. Both parties have the right to appeal the Title IX Coordinator's dismissal decision.

12. **Informal Grievance Process.** An informal grievance process may only be offered if a Formal Complaint is filed and if the Respondent is not an Academy staff member or Board member. The informal grievance process may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, or restorative justice. The informal grievance process may be used at any time prior to the decision-maker(s) reaching a determination regarding responsibility. During the informal grievance process, the investigation and adjudication processes that would otherwise occur during the formal grievance process are stayed and all related deadlines are suspended. If the informal grievance process is chosen, both parties must consent to the informal grievance process in writing and be provided a written notice disclosing:

- The allegations;
- The requirements of the informal grievance process including the circumstances under which it precludes the parties from resuming the formal grievance process;
- The right of any party to withdraw from the informal grievance process and resume the formal grievance process at any time prior to agreeing to a resolution; and
- Any consequences resulting from participating in the informal grievance process, including the records that will be maintained or could be shared.

13. **Investigation.**

13.1. **Meeting Notifications.** The investigator will notify and seek to meet separately with the parties and witnesses. The investigator will provide written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the party to prepare to participate in a meaningful way. Sufficient time is determined on a case by case basis but generally is considered to be one (1) business day.

Both parties have the right to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor, 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 party in any meeting or grievance proceeding, except for the reasons stated in Section 7 of this Title IX Policy.

- 13.2. **Evidence Gathering.** The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility is on the Academy, not the parties. The investigator will gather relevant and available information including, without limitation, electronic or other records of communications between the parties or witnesses, photographs, and/or medical records (subject to the voluntary, written consent of the applicable party).

The investigator cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the investigator obtains that party's voluntary, written consent. If a party is under 18 years old, the investigator must obtain voluntary, written consent of the party's parent or guardian.

Complainants and Respondents will have an equal opportunity to identify potential witnesses and provide any evidence or other information relevant to the investigation. The Academy must not restrict the rights of either party to discuss the allegations in the Formal Complaint, or gather or present relevant evidence. The investigator will review and determine the relevance of any proffered information and evidence.

- 13.3. **Status Updates.** The parties will receive regular, bi-weekly updates regarding the status of the investigation.
- 13.4. **Witness Statements.** Witness statements may be considered as evidence as permitted by this Title IX Policy. Witnesses will be provided an opportunity to review the investigator's summary of their interview.
- 13.5. **New Allegations During Investigation.** If during 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.

- 13.6. **Evidence Review By Parties.** At the end of the investigation, the investigator will give each of the parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in 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 conclusion of the investigation.

Prior to the completion of the investigative report, the investigator or the Title IX Coordinator will send to each party and the party's advisor, if any, the evidence subject to inspection and review in electronic format or hard copy. Each party will have ten (10) calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report.

- 13.7. **Investigation Report and Review Period.** Following the parties' review of the evidence, the investigator will prepare a written investigation report fairly summarizing the investigation and relevant evidence directly related to the allegations. The investigator or Title IX Coordinator will send the investigative report to the parties in an electronic format or hard copy, at least ten (10) calendar days prior to the decision-maker(s) issuing a determination regarding responsibility.

14. **Determination of Responsibility.** At the conclusion of the investigation, the decision-maker(s) shall evaluate the evidence and decide, based on a preponderance of the evidence, whether the Respondent is responsible for violating this Title IX Policy. The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator or the investigator. The decision-maker shall objectively evaluate all relevant evidence—including both inculpatory and exculpatory evidence—and credibility determinations shall not be based on a person's status as a Complainant, Respondent, or witness.

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.

- 14.1. **Refusal to Participate.** Title IX and its implementing regulations protect every person's right to choose to participate or not participate in any party of the grievance process. No one should be forced, threatened, coerced or

discriminated against for choosing not to be a part of the grievance process. If a party or witness chooses not to answer cross-examination questions, the decision-maker must exclude that party's or witness' statements and evaluate any evidence that does not involve those statements. The decision-maker must never make inferences about the determination regarding responsibility based on the fact that a party or witness did not submit to cross-examination.

- 14.2. **Written Decision.** The decision-maker shall issue a written determination regarding responsibility. The written determination will include the following content:
- Identification of the allegations potentially constituting sexual harassment;
 - Description of the procedural steps taken from receipt of the Formal Complaint through determination, including:
 - Notifications to the parties;
 - Interviews with the parties and witnesses;
 - Site visits; and
 - Methods used to gather other evidence;
 - Findings of fact in support of the determination;
 - Portion of the Academy's policies that was violated, and conclusions after applying facts to said policies
 - Statement of rationale for result as to each allegation including:
 - Determination of responsibility
 - Any disciplinary sanctions imposed on Respondent
 - Whether the remedies to restore or preserve equal access to the Academy's program or activity will be provided to Complainant
 - The procedures and permissible bases for an appeal by either party.
- 14.3. **Simultaneous Notification of Decision.** The decision-maker(s) or the Title IX Coordinator will provide the written decision to the parties simultaneously. The parties will also be informed in writing of the right to appeal and the appeal procedures.
- 14.4. **Discipline.** When imposing discipline, the Academy will consider the severity of the incident, previous disciplinary violations (if any), and any mitigating circumstances. The Title IX Coordinator is responsible for effective implementation of any remedies.

14.4.1. **Student Discipline.** The disciplinary sanctions that may be imposed on a student Respondent who is determined responsible for violating this Title IX Policy may include, but are not limited to:

- Writing assignments
- Seating or location change
- Pre-school, lunchtime, or after-school detention
- In-school discipline
- Suspension of Academy transportation privileges
- Removal from co-curricular and/or extracurricular activities, including athletics
- Emergency removal
- Suspension for up to ten (10) school days
- Long-term suspension or expulsion
- Any other sanction authorized by the Student Code of Conduct

If the decision-maker(s) determines the student Respondent is responsible for violating this Title IX Policy and is not an authorized administrator, the decision-maker(s) will recommend appropriate remedies, including disciplinary sanctions, to the Title IX Coordinator who will notify an authorized administrator of the decision-maker's recommendations for consideration and implementation by the authorized administrator in compliance with all applicable Board policies, and state and federal laws.

14.4.2. **Academy Staff Member Discipline.** The disciplinary sanctions that may be imposed on an Academy staff member Respondent who is determined responsible for violating this Title IX Policy may include, but are not limited to:

- Oral or written warning
- Written reprimands
- Performance improvement plan
- Required counseling
- Required training or education
- Demotion
- Suspension with pay
- Suspension without pay
- Termination
- Any other sanction authorized by any applicable employee handbook

If the decision-maker(s) determines the Academy staff member Respondent is responsible for violating this Title IX Policy and is not an authorized administrator, the decision-maker(s) will recommend appropriate remedies, including disciplinary sanctions, to the Title IX Coordinator who will notify an authorized administrator of the decision-maker's recommendations for consideration and implementation by the authorized administrator in compliance with all applicable Board policies, employee handbook, and state and federal laws.

14.4.3. **Third Party Discipline.** The disciplinary sanctions that may be imposed on non-student/non-staff member of the Academy Community or a Third Party Respondent who is determined responsible for violating this Title IX Policy may include, but are not limited to:

- 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
- Any combination of the above

If the decision-maker(s) determines the Third Party Respondent is responsible for violating this Title IX Policy and is not an authorized administrator, the decision-maker(s) will recommend appropriate remedies, including disciplinary sanctions, to the Title IX Coordinator who will notify an authorized administrator of the decision-maker's recommendations for consideration and implementation by the authorized administrator.

15. **Appeals.** Complainant(s) and Respondent(s) may file a written appeal regarding the determination of responsibility or dismissal of a Formal Complaint with the Title IX Coordinator within five (5) business days from the date that a written decision or notice is issued on any of the following bases:

- Procedural irregularity that affected the outcome of the matter
- 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

- 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 or Respondent that affected the outcome of the matter

If an appeal is filed, the Title IX Coordinator will notify the other party in writing and implement appeal procedures equally for both parties. The other part(ies) will have five (5) business days to respond to an appeal in writing. The response may include a written statement in support of, or challenging, the decision.

The appeal officer will review the appeal and any response(s) and issue a written decision describing the result of the appeal and the rationale for the result within five(5) business days of receiving the appeal documents, including any responses. 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 appeal decision will be issued simultaneously to all parties by the appeal officer or the Title IX Coordinator.

The appeal officer assigned to an appeal will not be the same person as the decision-maker, investigator, or Title IX Coordinator. The appeal officer shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent and shall receive the same training as required of other decision-makers.

Nothing herein shall prevent the Academy from imposing any remedy, including disciplinary sanctions, while the appeal is pending.

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 appeal officer's written determination is delivered to the Complainant and Respondent. No further review beyond the appeal is permitted.

16. **Training.** The Title IX Coordinator, Investigators, Decision-makers, person(s) designated to facilitate an informal resolution process, and Appeal Officers shall receive training on:

- The definition of Sexual Harassment
- The scope of the Academy's education programs and activities
- How to conduct an investigation and grievance process, including appeals and informal resolution processes

- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- The standard of review; evaluating evidence in a fair and impartial manner; issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

Training materials are publicly available on the Academy's website.

17. **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, 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.

18. **Confidentiality.** The Academy will keep confidential the identity of any individual who has made a report or complaint of sex discrimination/harassment, including parties and witnesses, except as may be permitted by law, or to carry out the purposes of 34 CFR part 106.

19. **First Amendment Rights.** This Title IX Policy shall not be interpreted to abridge First Amendment rights. The protections of the First Amendment must be carefully considered in all complaints involving speech or expressive conduct. The fact that speech or a particular expression is offensive is not, standing alone, a legally sufficient basis to establish a violation of this Title IX Policy. In order to violate this Title IX Policy, speech or expressive conduct must constitute sexual harassment, as defined above. Speech or expressive conduct that constitutes sexual harassment is not legally protected expression.

20. **Recordkeeping.** The Academy will document actions it takes in response to reports and Formal Complaints at each stage of the investigation and grievance process, including supportive measures. Regarding each report or Formal Complaint received, the Title IX Coordinator or designee will document the basis for concluding that the Academy's 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 a Complainant is not provided with supportive measures, the Title IX Coordinator or designee must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The Academy will maintain such records for a minimum period of seven (7) years, including:

- Each sexual harassment investigation, including any determination regarding responsibility, any disciplinary sanctions recommended and/or imposed on the Respondent, and any remedies provided to the Complainant

- Any resulting appeal

- Any informal resolution and the result therefrom

- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal grievance process