

NEW POLICY- FALL 2018 **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.]

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*The names, titles, and contact information of these individuals will be published annually on the Academy's Web site.

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 with 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.

The Academy's harassment reporting form (Form 5517F1) is an optimal, but not required, way to report sexual harassment, including sexual violence. This form is available at the Academy's office.

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.

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;
- N. 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.

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.