

Liberty Charter School District #458

STUDENTS

3085

Sexual Harassment, Discrimination and Retaliation Policy

Policy Purpose

The purpose of this policy is to promote working and learning environments that are free from sex and gender-based harassment, discrimination, and retaliation, and to affirm Liberty Charter School's commitment to non-discrimination, equity in education and equal opportunity for employment.

Scope of Policy

This policy applies to all members of Liberty Charter School's community, including students, employees, and other members of the public including guests, visitors, volunteers, and invitees.

Policy Statement

Liberty Charter School is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sex and gender-based harassment, discrimination, and retaliation. Accordingly, the Charter School prohibits harassment and discrimination on the basis of sex, sexual orientation, gender, gender identity, and pregnancy, as well as retaliation against individuals who report allegations of sex and gender-based harassment and discrimination, file a formal complaint, or participate in a grievance process.

Students, employees, or other members of the Charter School community who believe that they have been subjected to sex or gender-based harassment, discrimination, or retaliation should report the incident to the Title IX Coordinator, who will provide information about supportive measures and the applicable grievance process(es). Violations of this policy may result in discipline for both students and Liberty Charter School employees.

Title IX Coordinator

The Federal Programs/Community Outreach Coordinator serves as Liberty Charter School's Title IX Coordinator and oversees implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating the Charter School's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sex and gender-based harassment, discrimination, and retaliation prohibited under this policy. The Title IX Coordinator acts with independence and authority and is free from bias and conflicts of interest.

To raise any concern involving bias, conflict of interest, misconduct or discrimination committed by the Title IX Coordinator, contact the clerk of the board at clerk@libertycharterschool.com.

If the Charter School's Title IX Coordinator is the subject of any complaint regarding sex or gender-based harassment or has an apparent bias or conflict of interest regarding such a case, another person shall be appointed to act as the Title IX Coordinator for handling that case. Such appointees may include, but are not limited to:

1. The Title IX Coordinator of another school Charter School which the Charter School has an agreement with;
2. Another employee of the Charter School who is qualified and trained to address the matter, such as a deputy Title IX Coordinator;
3. A qualified and trained individual who enters into a professional services contract with the Charter School; including but not limited to the Charter School's legal counsel and/or contracted Human Resources or Title IX professionals.

Concerns of bias, conflict of interest, misconduct, or discrimination committed by any other official involved in the implementation of this policy or related grievance processes should be raised with the Title IX Coordinator.

Mandatory Reporters

Liberty Charter School has classified all employees as mandatory reporters of any knowledge they have that a member of the Charter School community experienced sex or gender-based harassment, discrimination, and/or retaliation. Accordingly, all Charter School employees must promptly report actual or suspected sex and gender-based harassment, discrimination, and/or retaliation to the Title IX Coordinator. Charter School employees must share with the Title IX Coordinator all known details of a report made to them in the course of their employment, as well as all details of behaviors under this policy that they observe or have knowledge of. Failure of a Charter School employee to report an incident of sex or gender-based harassment, discrimination, or retaliation to the Title IX Coordinator of which they become aware is a violation of this policy and can be subject to disciplinary action for failure to comply.

In addition, Charter School employees must also report allegations of suspected child abuse and/or neglect to either law enforcement or the Idaho Department of Health and Welfare as described in the Board's policy on reporting suspected abuse, abandonment, or neglect.

Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and related procedures, may be made internally to Liberty Charter School Title IX Coordinator using the contact information below:

Mrs. O'Donahue
Liberty Charter School Title IX Coordinator
9955 Kris Jensen Lane, Nampa, ID 83686
208-466-7952
godonahue@libertycharterschool.com
www.libertycharterschool.com

Liberty Charter School's Title IX team members include:

1. **Investigator(s):** person or persons assigned to gather facts during the formal grievance process, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report: Mrs. Brooke Stimpson, Ms. McKnight, Mrs. O'Donahue.
2. **Decision-maker(s):** Those who have decision-making and sanctioning authority within the Charter School's formal grievance process. Decision maker has had no previous involvement with the investigation. They read investigation report, come to a finding, present to administration. Decision makers are used when complaint is not resolved through informal result: Mrs. Stallcop, Mr. Wachsmuth, Mr. Ashton.
3. **Appeal Decision-maker(s):** Those who will serve if an appeal is filed. Person cannot have had any previous involvement in investigation. In other words, if a Decision-maker the first time around, he or she can't be the appeal decision-maker the second time around: Mrs. Stallcop, Mr. Wachsmuth, Mr. Ashton.
4. **Athletic Director:** If complaint involves athletics, AD will be added to the team: Mr. Wachsmuth.
5. **School Attorney:** The school's attorney may also serve in any of the Title IX capacities listed above, as necessary.

External inquiries can be made to the U.S. Department of Education, Office for Civil Rights, Region 10, using the contact information below:

Seattle Office
Office for Civil Rights
U.S. Department of Education
915 Second Avenue, #3310
Seattle, WA 98174-1099
OCR.Seattle@ed.gov
1-800-877-8339

Notice/Formal Complaints of Sex and Gender-Based Harassment, Discrimination, and/or Retaliation

Notice or formal complaints of sex or gender-based harassment, discrimination, and/or retaliation may be made using any of the following options:

1. File a complaint with, or give verbal notice to, the Title IX Coordinator. Such a report may be made at any time, including during non-business hours, by using the telephone number, email address, or by mail to the office address listed for the Title IX Coordinator (or any other official as listed above).
2. Report by phone at 208-466-7952.

When notice is received regarding conduct that may constitute Title IX sexual harassment, Liberty Charter School shall provide information about supportive measures and how to file a

formal complaint, as described in Policy 3085P, found at
http://www.libertycharterschool.com/uploads/7/2/1/4/7214198/3000.3090p_policies_2020.02.pdf

A formal complaint means a document filed/signed by the alleged victim or signed by the Title IX Coordinator alleging an individual violated this policy and requesting that the Charter School investigate the allegation(s). As used in this paragraph, the phrase “document filed/signed by the alleged victim” means a document or electronic submission (such as by electronic mail) that contains the alleged victim’s physical or digital signature, or otherwise indicates that the alleged victim is the person filing the complaint. For example, an alleged victim may send an email to the Title IX Coordinator, identify herself/himself as the alleged victim and the one sending the email, to file a formal complaint. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the alleged victim to ensure that it is filed correctly.

Parents and legal guardians of primary and secondary school students who have the legal authority to act on their child’s behalf may file a formal complaint on behalf of their child.

Grievance Processes

When a formal complaint is made alleging that this policy was violated, the allegations are subject to resolution using one of Liberty Charter School’s grievance processes noted below, as determined by the Title IX Coordinator. All processes provide for a prompt, fair, and impartial process.

1. For formal complaints regarding conduct that may constitute Title IX sexual harassment involving students or employees, the Charter School will implement procedures detailed in Procedure 3085P.
2. For formal complaints regarding sex and gender-based harassment, discrimination and/or retaliation where students are the accused party, and that do not constitute Title IX sexual harassment, the Charter School will implement procedures described in the applicable procedures, which may include: Uniform Grievance Procedure, General Bullying, Harassment and Intimidation procedures, Relationship Abuse and Sexual Assault Prevention and Response procedures.
3. For formal complaints regarding sex and gender-based harassment, discrimination and/or retaliation where employees are the accused party, and that do not constitute Title IX sexual harassment, the Charter School will implement procedures described in applicable procedures, which may include: Uniform Grievance Procedure, Certificated/Non-certificated Staff Grievance Procedure, Sexual Harassment/Sexual Intimidation in the Workplace, Adult Sexual Misconduct, among others listed at end of this policy.

Cross References:	3270	Student Records
	3270P	Student Records

3285	Relationship Abuse and Sexual Assault Prevention and Response
3290	Sexual Harassment/Intimidation of Students
3295	Hazing, Harassment, Intimidation, Bullying, Cyber Bullying
3295P	Hazing, Harassment, Intimidation, Bullying, Cyber Bullying
3330	Student Discipline
4120	Uniform Grievance Procedure
4600	Volunteer Assistance
4600P	Volunteer Assistance
5240	Sexual Harassment/Sexual Intimidation in the Workplace
5250	Certificated Staff Grievances
5275	Adult Sexual Misconduct
5500	Personnel Records
5500P	Procedures for Releasing Personnel Records to Hiring School Charter Schools
5800	Classified Employment, Assignment, and Grievance
5800P	Classified Employee Grievance Procedure

Legal References:	20 U.S.C. §§ 1681 - 1682	Title IX of the Education Amendments of 1972
	34 CFR Part 106	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Policy History:

Adopted on: 2020.11.06

Revised on:

Reviewed on:

Liberty Charter School District #458

STUDENTS

3085F1

Notice of Investigation & Allegation Template

Note: May also be used for initial Interview Request

[DATE]

**[ADDRESSEE (RESPONDENT AND PARENT/LEGAL GUARDIAN)
[MAILING ADDRESS OR (IF DELIVERED VIA EMAIL) EMAIL ADDRESS]**

Dear **[ADDRESSEE]**:

On **[DATE]** the **[NAME OF OFFICE]** received a formal complaint from **[COMPLAINANT]** (“complainant”) alleging that you may have engaged in behavior that potentially violates Charter School policy, including misconduct alleged on **[DATE(S)]** at **[LOCATION(S)]**.

Specifically, it is alleged that you **[APPROPRIATELY DETAILED DESCRIPTION]**.

This letter serves as formal notice that the Charter School will be conducting a prompt, thorough, and impartial investigation of these allegations pursuant to the procedures detailed in the Policy 3085: **[LINK]**. The Charter School’s Title IX Sexual Harassment Grievance Procedure is compliant with applicable federal and state law, including the 2020 Title IX implementing regulations. A copy of this notice has also been provided to the complainant.

Specifically, you are alleged to have violated the following provision(s) of the Policy 3085 Sexual Harassment, Discrimination and Retaliation Policy:

[ALL POTENTIALLY APPLICABLE POLICY SECTIONS]

[ALL POTENTIALLY APPLICABLE SANCTIONS THAT COULD RESULT]

You are considered “not responsible” for violating Charter School policy, unless and until a preponderance of the evidence proves that a violation of policy has occurred. The burden is on the Charter School to gather evidence, investigate the allegations, summarize all relevant evidence in a final investigation report, and make a final determination of responsibility (subject to appeal). No determination of responsibility will be made until the conclusion of the process and after the parties have been given an opportunity to inspect, review, and respond to all directly related and/or relevant evidence obtained by the Charter School.

Should the allegations need to be modified, or if additional allegations emerge over the course of this investigation, this office will provide you with an updated and revised Notice of Investigation and Allegations.

Below, you will find details included to ensure that the Charter School process is transparent to you, so that you fully understand your rights and the Charter School's procedures.

1. The Charter School's applicable procedures can be found online at http://www.libertycharterschool.com/uploads/7/2/1/4/7214198/3000.3090p_policies_2020.02.pdf If you need a hardcopy or accessible copy of these procedures, you should direct a request to the Charter School's Title IX Coordinator, [NAME], at [Title IX coordinator contact information], with your contact information.
2. You are expected to preserve any evidence in your possession related to the allegations. Examples include, but are not limited to, screenshots of social media posts or electronic conversations (e.g., Snapchat, Facebook Messenger, WhatsApp, TikTok, text messages, etc.), written communication, audio or video recordings, photos, receipts, call logs, or any other relevant information.
3. Please plan to bring all evidence, documents, and items that you believe will be helpful to the investigator(s) to your interview or provide them beforehand. Originals are preferred to copies, and all materials should be in unaltered form. Expect that you will be asked to verify the accuracy and authenticity of evidence you provide. If information is stored on an electronic device (e.g., cell phone) it is recommended that you be able to show the device itself to the investigator(s) during the interview.
4. You may not record any meetings pursuant to this process. Doing so is a violation of Procedure 3085P. The Charter School will record or transcribe proceedings, and those recordings or transcriptions will be made available to you.
5. Breaks are permitted during the interview, upon request.
6. You should plan to be available for the interview for at least one hour.
7. You may bring materials into the interview that are relevant to the investigation, but no other materials, bags, backpacks or personal items are permitted. Your phone should be silenced if you will have one with you.
8. You will be permitted to ask questions of the investigator(s), and should be prepared for them to ask many questions of you. Your honesty and cooperation are expected. You are expected to maintain decorum during the interview and to respect the serious nature of the proceedings.
9. The Charter School cannot obligate you to participate in the interview. If you do not intend to attend, please notify the Title IX Coordinator, [NAME], at [Title IX coordinator contact information] or by calling the school office.
10. Your rights in the process are detailed throughout the Charter School's procedures.

Investigation and Interview

Investigator(s) has/have been assigned to this matter. Investigators are neutral professionals whose role is to objectively collect and compile all available information relevant to the allegations and compose a thorough, detailed investigation report. They will be taking notes and recording during the interview. A summary or transcript of your interview will be provided to you following the interview and you will be asked to verify its accuracy, in writing, to the investigator(s).

If you have any questions regarding the qualifications or training of an investigator, please feel free to contact me directly. Similarly, if you have a concern that an investigator is potentially biased or has a conflict of interest, you must raise that issue with me prior to your scheduled interview.

At this time, we ask you to schedule an interview with the Charter School's investigator(s). Two suggested times that work for an appointment to interview you are below, and we have already checked to make sure that these times work with your class schedule. Please contact the investigator at [CONTACT INFORMATION] to confirm which of these times work best for you.

1. [OPTION 1]
2. [OPTION 2]

[SPECIFY ANY MEETING PROCEDURES OR CONDITIONS IF THE STUDENT/EMPLOYEE HAS BEEN SUBJECT TO EMERGENCY REMOVAL.]

**[ONLY INCLUDE IF ISSUING A NO CONTACT ORDER BETWEEN THE PARTIES:
No Contact Order**

Effective immediately, I am instituting a no contact order that prohibits you and the complainant from having direct or indirect contact with one another. This information will also be provided to the complainant and other appropriate officials as needed. This order is not a determination that Policy 3085 has been violated. If you have questions or concerns about the no contact order, please contact me.]

Advisors

You have the right to an advisor of your choosing, who can be an attorney, to accompany you to all meetings, interviews, and hearings and to assist you in this process. Upon request, a pre-interview meeting between you, your advisor, and the investigator(s) to explain the Charter School process and answer any questions may be arranged by contacting the investigator.

Retaliation

This letter also serves as a reminder that Charter School policy prohibits retaliation, as defined in Procedure 3085P. Retaliation exists when an individual harasses, intimidates, or takes other adverse actions against a person because of that person's participation in an investigation or because of their support of someone involved in an investigation.

The Charter School will impose sanctions on any faculty, student, or staff member found to be engaging in retaliation, and on individuals who encourage third parties to retaliate on their behalf.

If you experience any retaliation, please contact me immediately.

False Statements and/or False Information

Please also be reminded that Procedure 3085P prohibits making false statements and knowingly providing false information in the course of a Charter School grievance process.

To ensure that the investigator(s) can obtain as much accurate and objective information about this matter as possible, please do not suggest to any witness that they distort or align their accounts.

Should it be alleged that you have violated these rules, the Charter School reserves the right to address those allegations inside of this process or to address the allegations as a separate matter pursuant to Procedure 2085P.

Confidentiality

You have the right to discuss this matter with your advisor and others, but the Charter School will conduct this investigation confidentially, meaning that it will only share information as permitted or required by law. The Charter School asks for your discretion in what you choose to share and hopes that you will respect the private and sensitive nature of these allegations. The complainant has been provided with the same information.

Campus Resources

I understand that receiving this notice may result in many questions and potential distress. I encourage you to avail yourself of any of the following resources that you may find helpful as you work to resolve this matter.

[OPTIONAL: Counselor]

{SERVICES PROVIDED AND CONTACT INFORMATION}

{ANY OTHER INTERNAL OR EXTERNAL APPLICABLE SUPPORTIVE SERVICES}

{DESCRIPTION OF SERVICES PROVIDED AND CONTACT INFORMATION}]

Disability Services

If you or another individual needs reasonable accommodations due to a qualifying disability in order to fully and meaningfully participate in this process, please contact **[OFFICE]** at **[PHONE NUMBER]** prior to any meeting or interview in which reasonable accommodations may be needed.

Should you have any questions about the process and/or the interview, please contact your investigator(s) for this matter at **[PHONE NUMBER]** or **[EMAIL ADDRESS]**.

Sincerely,

[NAME]
Title IX Coordinator
[CONTACT INFORMATION]

LIBERTY CHARTER SCHOOL DISTRICT #458

STUDENTS

3085F2

Sexual Misconduct Reporting Form for Students

Liberty Charter School

Date _____

Student's Name _____

(If you feel uncomfortable leaving your name, you may submit an anonymous report, but please understand that an anonymous report will be much more difficult to investigate. We assure you that we'll use our best efforts to keep your report confidential.)

Who was responsible for the harassment or incident(s)? _____

Describe the incident(s): _____

Date(s), time(s), and place(s) the incident(s) occurred: _____

Were other individuals involved in the incident(s)? ☐ yes ☐ no

If so, name the individual(s) and explain their roles: _____

Did anyone witness the incident(s)? ☐ yes ☐ no

If so, name the witnesses: _____

Did you take any action in response to the incident? ☐ yes ☐ no

If yes, what action did you take? _____

Were there any prior incidents? ☐ yes ☐ no

If so, describe any prior incidents: _____

Signature of complainant _____

Signatures of parents/legal guardian _____

Title IX Sexual Harassment Grievance Procedure, Requirements, and Definitions

Scope of Procedure

This Title IX Grievance Process applies to all members of Liberty Charter School's community, including students, employees, and Board members as well as Charter School patrons, guests, visitors, volunteers, and invitees.

Purpose of This Policy and Procedure

Liberty Charter School is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, which are free from sex and gender-based harassment, discrimination, and retaliation. Accordingly, the Charter School prohibits harassment and discrimination on the basis of sex, sexual orientation, gender, gender identity, and pregnancy, as well as retaliation against individuals who report allegations of sex and gender-based harassment and discrimination, file a formal complaint, or participate in a grievance process.

Students, employees, or other members of the Charter School community who believe that they have been subjected to sex or gender-based harassment, discrimination, or retaliation should report the incident to the Title IX Coordinator, who will provide information about supportive measures and the applicable grievance procedure. Violations of this Charter School procedure or its related policy may result in discipline to either students or employees.

Guiding Principles

Title IX requires school Charter Schools to put into place policies and procedures that promote the goal of Title IX, specifically, to prohibit discrimination based on sex, and to respond appropriately if and when sex discrimination occurs or may occur. Title IX explains that when an appropriate official at the Charter School has "actual knowledge" of "sexual harassment" of a student or employee that occurs in one of its educational programs or activities, the Charter School must respond promptly and in a manner that is not "deliberately indifferent." This standard does not require a perfect response; rather, it requires a response that is not "clearly unreasonable" in light of the known circumstances over which the Charter School exercises control.

Grievance Procedure

1. Receipt of a Complaint, Report, or Information Alleging Sexual Harassment

Upon receipt of a complaint or report (whether verbal or written) of possible sexual harassment, the Charter School shall first determine whether to initiate a formal or informal

response. Thus, any and all complaints, reports, or information received by any Charter School employee that sexual harassment is occurring or has occurred shall be immediately forwarded to the Charter School's Title IX Coordinator or other designated employee for review and action as appropriate.

The Title IX Coordinator (Coordinator) shall promptly contact the complainant or reporting party and discuss with them the availability of supportive measures, and will consider the complainant's wishes with respect to the provision of supportive measures. The Coordinator shall explain the availability of these measures to the complainant with or without the filing of a "formal complaint." During this initial meeting, the Coordinator or designee shall explain to the complainant the process for filing a written formal complaint, and shall provide assistance to the complainant to ensure the written formal complaint is properly prepared and submitted.

Emergency Removal (of students): Nothing in this procedure prevents the Charter School from removing a respondent from a Charter School education program or activity on an emergency basis, provided that an individualized safety and risk analysis is performed by the Coordinator and Executive Director who determine that an immediate threat to the physical health or safety of any student or other individual arise from the allegations of sexual harassment that justify removal. The Coordinator and Executive Director shall provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights and requirements under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Administrative Leave (of employees). Nothing in this procedure precludes the Charter School from placing a non-student employee respondent on administrative leave during the pendency of a grievance investigation under this procedure. Notwithstanding the above, prior to placing an employee respondent on administrative leave, the Coordinator or designee shall ensure any rights provided by Section 504 of the Rehabilitation Act of 1973 and/or the Americans with Disabilities Act are not impaired or violated.

2. Providing Supportive Measures

If an informal complaint is filed, (for instance, because the complainant does not wish to file a written formal complaint,) as well as during the pendency of the investigation and the decision concluding a formal complaint, the following supportive measures may be implemented to restore or preserve the complainant's access to the Charter School's educational programs without unreasonably burdening the other party (also referred to herein as respondent).

Supportive measures may include actions taken to protect the safety of all parties or the Charter School's educational environment, or which otherwise deter sexual harassment from occurring in the future. Additional supportive measures may include, but are not limited to: counseling, the availability of a safe place or person in the event complainant feels threatened or uncomfortable, extensions of deadlines or other course-related adjustments, modifications

of work or class schedules, escort services at school, mutual restriction of contact between the parties, changes in work locations, leaves of absence, increased security and/or monitoring of locations where prohibited conduct has occurred or may occur in the future, as well as additional measures to protect the complainant, provided the supportive measures initiated are not punitive to the respondent.

3. Filing a Written Formal Complaint

Upon receipt of a written formal complaint, the Coordinator or designee is required to provide written notice to all known complainants and respondents of the allegations and the resulting investigation.

A. General Notice Requirements: The notice will include the Charter School's Title IX grievance process as well as information regarding the Charter School's informal resolution process.

B. Specific Notice Requirements: The written notice shall include the following information:

- i. Information describing the alleged conduct potentially constituting sexual harassment, including sufficient details known at the time the notice is prepared to allow the parties to prepare a response prior to the investigator's initial interview, and shall be delivered to the parties in enough time to allow their preparation for the initial interview.
- ii. Sufficient details include but are not limited to the identities of the parties involved, the conduct allegedly constituting sexual harassment, the date(s), and location(s) of the incident(s).
- iii. A statement that the respondent is presumed to not be responsible for the alleged conduct, and that a determination of responsibility will not be made until the conclusion of the grievance process.
- iv. A statement informing the parties that they are entitled to have an advisor or representative of their choosing who may be, though is not required to be, an attorney, and that the advisor is authorized to review all evidence submitted in the matter.
- v. The notice must inform the parties that Charter School policy and procedure prohibit knowingly making false statements or knowingly submitting false information to the investigator or at any other time during the grievance process.
- vi. The notice must warn the parties that retaliation is prohibited. Accordingly, the parties must be informed that no Charter School employee or 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 or this procedure, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this procedure. Retaliation includes circumstances where intimidation, threats, coercion, or discrimination are made for the purpose of interfering with any right or privilege secured by Title IX or this procedure. This includes threatening 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. The Charter School shall keep confidential the identity of:

- a. 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;
- b. Any complainant;
- c. Any individual who has been reported to be the perpetrator of sex discrimination;
- d. Any respondent; and
- e. Any witness

except:

- a. As may be permitted by FERPA (20 U.S.C. § 1232g) or a FERPA regulation (34 CFR Part 99);
- b. As required by law; or
- c. To carry out the purposes of this procedure, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Complaints alleging retaliation may be filed as an additional charge or counter-charge under these procedures.

- C. Additional Charges: If, during the course of the investigation, it is determined based on the information gathered that additional allegations or charges are warranted, an amended notice shall be prepared and submitted to the parties including the new allegations and charges as appropriate.
- D. Consolidation: The Coordinator may consolidate two or more formal complaints into a single action provided that the allegations of sexual harassment and retaliation arise out of a common set of facts or circumstances and if in the course of an investigation, it is determined that:
 - i. There is more than one respondent and/or more than one complainant; or

- ii. There are cross-complaints, or additional complaints raised by the original complainant against the original respondent (such as retaliation), or by the respondent against any other party.

4. Conduct of the Investigation, Informal Resolution

In the course of their investigation, the Charter School's Coordinator and designees shall comply with the following requirements.

Investigation

- A. **Burden of Investigation:** The burden of gathering evidence sufficient to make a determination of responsibility is the responsibility of the Charter School's investigator(s) and not the parties. However, the Charter School's investigator is not authorized to access a party's records that are made or maintained by a health care provider such as a physician, psychiatrist, psychologist, or other recognized health care provider, if the record was made in the course of providing treatment to the party, unless and until written consent from an authorized person is provided to obtain such privileged records for purposes of investigating and resolving the allegations of the formal complaint.
- B. **Evidence Offered by Parties:** The parties shall be provided an equal opportunity to call witnesses, including fact and expert witnesses, as well as other inculpatory and exculpatory evidence.
- C. **No Restrictions:** The ability of the parties to discuss the allegations under investigation or to gather and present evidence shall not be restricted.
- D. **Equal Representation Rights:** All parties shall have the same opportunity to have others present, or to be represented by the advisor of their choice throughout the grievance process, including attendance at related meetings or proceedings. If the Charter School limits access to representation in any way at any time during the proceedings, such limitation shall be equally applied to all parties in the same manner. Access to representation may be limited only where a party is already represented as authorized by this procedure, and the additional representation will unduly increase the cost to the parties, and/or will not otherwise serve to significantly promote a legitimate purpose under this procedure.
- E. **Notice of Interviews and Hearings:** Adequate notice of the purpose, date, time, place, and the identities of all participants involved shall be provided to any party whose participation at a hearing, interview, or meeting is invited or expected, and allowing sufficient time for the party to prepare and fairly participate.
- F. **Evidentiary Considerations:** The investigation shall not consider:

- i. Incidents not directly related to the possible violation, unless they evidence a pattern;
 - ii. The character of the parties; or
 - iii. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, 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, 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.
- G. **Right to Inspect Evidence:** All parties shall be provided equal access to inspect and review any or all evidence gathered during the investigation related to the allegations of the formal complaint, whether or not relied upon or referred to in the investigator's report. This will ensure that the parties can respond to the evidence prior to the conclusion of the investigation. Prior to completion of the investigation report, the investigator shall provide the parties and their respective advisors, when advisors are identified, a secured electronic or hard copy of the evidence subject to inspection. The parties must have at least ten school days to submit a written response which the investigator shall consider prior to completion of the investigative report. All such evidence shall be made available to all parties at any hearing to give the parties equal opportunity to refer to such evidence during the hearing, including cross-examination of adult parties.
- H. **Investigative Report:** At least ten school days prior to a hearing, or other time of determination regarding responsibility, the investigator shall send to all parties and their advisors, if any, by electronic format or hard copy, a copy of the investigative report for the parties' review and written response. The parties' responses shall be made part of the record.

Informal Resolution: The informal resolution process may include mediation, or other meeting of the parties that does not involve a full investigation and adjudication of the complaint. The Charter School may not require the parties to participate in an informal resolution process. Informal resolution is available only if a written formal complaint was submitted to the Coordinator. If these conditions are satisfied, then at any time during the course of an investigation, but prior to the time of the Decision-Maker's final determination of responsibility, the parties may request the Coordinator to initiate the informal resolution by process. In so doing, the Coordinator is required to comply with the following:

- A. Provide the parties with written notice informing them of the allegations at issue and the requirements of the resolution process. These requirements include the fact that a written agreement signed by the parties that resolves the allegations at issue will preclude the parties from resuming the formal complaint process that arose from the same allegations. The parties will also be informed that at any time prior to reaching a resolution, any party has the right to withdraw from the informal resolution process

and resume the grievance process with respect to the formal complaint, and will be notified that the records submitted or discussed during the informal process will be maintained by the Charter School as part of the record, and may be used by the Decision-Maker to determine responsibility.

- B. Require the parties submit voluntary, written consent to participate in the informal resolution process.
- C. Ensure that the informal resolution process is not made available to resolve allegations that an employee sexually harassed a student.
- D. An informal resolution, signed and agreed to by the parties thereto, is not appealable.

Dismissal of a Formal Complaint: A written formal complaint may be dismissed by the Coordinator under any of the following circumstances, and prior to a finding of responsibility:

- A. After investigating the allegations of the written formal complaint, dismissal is required if:
 - i. The Coordinator or designee determines that the conduct alleged in the complaint, even if proven, would not constitute sexual harassment as defined herein; or
 - ii. The alleged conduct did not occur in a Charter School education program or activity; or
 - iii. The alleged conduct did not occur against a person in the United States.

Dismissal of the Title IX formal complaint, however, does not preclude action under another provision of the Charter School's Code of Conduct or other Charter School Policy.

- B. If the Complainant notifies the Coordinator in writing that he or she would like to withdraw the formal complaint or any allegations contained therein.
- C. If the respondent is no longer enrolled or employed by the Charter School.
- D. If specific circumstances exist which prevent the investigator from gathering evidence sufficient to reach a determination regarding the merits of the formal complaint or allegations therein.

Upon dismissing a formal complaint, the Coordinator shall simultaneously inform the parties in writing that the complaint has been dismissed, and shall identify the reason(s) for the dismissal. This decision may be appealed in accordance the Appeals portion of this procedure, below.

5. Decision-Maker's Participation

If the matter is not dismissed for one of the reasons set forth above and is not resolved by the parties through the informal resolution process then, (following completion of the investigation, including issuance of the investigator's final investigation report,) the matter shall be submitted to the Decision-Maker for review and issuance of a determination of responsibility. The Decision-Maker cannot make a determination regarding responsibility until ten school days after the date the final investigation report is transmitted to the parties and the Decision-Maker, unless all parties and the Decision-Maker agree to an expedited timeline.

The Coordinator shall designate a single Decision-Maker and inform the parties and their advisors.

The Decision-Maker may not have had any previous involvement with the investigation. Those who have served as investigators in the investigation cannot serve as Decision-Makers. Those who are serving as advisors for any party cannot serve as Decision-Makers in that matter. The Coordinator is also prohibited from serving as a Decision-Maker in the matter.

All objections to any Decision-Maker must be raised in writing. Any written objection must detail the rationale for the objection and must be submitted to the Coordinator no later than two school days after being notified of the Decision-Maker's identity. A Decision-Maker shall not be removed unless the Coordinator concludes that the Decision-Maker's bias or conflict of interest precludes a fair and impartial consideration of the evidence.

The Coordinator shall give the Decision-Maker a list of the names of all parties, witnesses, and advisors. Upon review thereof, if the Decision-Maker believes he/she cannot make an objective determination, they must recuse themselves from the proceedings. If a Decision-Maker is unsure whether a bias or conflict of interest exists, they shall immediately disclose their concern(s) to the Coordinator and simultaneously inform the parties and their advisors.

No less than ten school days prior to any meeting or the decision-making phase of the process, the Coordinator or the Decision-Maker shall send notice to all parties. Once mailed, emailed, or received in-person, Notice will be presumptively delivered.

The Notice shall contain the following:

- A. A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions that could result.
- B. The time, date, and location of any meeting.
- C. Any technology that will be used to facilitate the meeting.
- D. The name and contact information of the Decision-Maker, along with an invitation to object to any Decision-Maker on the basis of demonstrated bias. Such objections must be raised with the Coordinator at least two school days prior to the meeting.
- E. Information on whether the meeting will be recorded and, if so, information on access to the recording for the parties after the meeting.

- F. A statement that if any party does not appear at the scheduled meeting, the meeting will only be rescheduled for compelling reasons.
- G. Notification that the parties may have the assistance of an advisor of their choosing at the meeting.
- H. A copy of all the materials provided to the Decision-Maker about the matter.
- I. An invitation for the parties to review and submit a written response to the final investigation report within ten school days of the date of the notice.
- J. An invitation to each party to submit to the Decision-Maker any written, relevant questions they want the Decision-Maker to ask of any other party or witness within ten school days of the date of the notice.
- K. An invitation to each party to submit to the Decision-Maker an impact statement, pre-meeting, that the Decision-Maker will review during any sanction determination.
- L. An invitation to contact the Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at any meeting or in the decision-making process, at least five school days prior to the meeting/final determination.
- M. Whether parties can or cannot bring mobile phones or devices into the meeting.

Meetings for possible violations that occur near or after the end of a school year, assuming the respondent is still subject to Policy 3085 and Procedure 3085P, and are unable to be resolved prior to the end of the school year will typically be held as soon as possible given the availability of the parties, but no later than immediately upon the start of the following school year. The Charter School will implement appropriate supportive measures intended to correct and remediate any hostile environment while the resolution is delayed.

- A. **Evidentiary Consideration by the Decision-Maker:** Whether at a hearing or through an exchange of questions, only relevant, credible evidence will be admitted into evidence and considered by the Decision-Maker. Any evidence that the Decision-Maker determines is relevant and credible may be considered. The Decision-Maker will not consider:
 - i. Incidents not directly related to the possible violation, unless they evidence a pattern;
 - ii. The character of the parties; or
 - iii. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, 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, 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.

Previous disciplinary action of any kind involving the respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This

information may only be considered at the sanction stage of the process and cannot be shared with the Decision-Maker until that time.

The parties may each submit a written impact statement for the consideration of the Decision-Maker at the sanction stage of the process when a determination of responsibility is reached.

- B. Hearing Procedure and Exchange of Questions Procedure:** At the time the matter is referred to the Decision-Maker, the Coordinator shall determine, based on the parties involved and the circumstances of the alleged sexual harassment, whether to hold a hearing or to initiate an exchange of questions procedure, and shall so inform all parties and their advisors. Both of these decision-making procedures are discussed below. Upon their selection, the Decision-Maker shall review the evidence and issue a determination of responsibility based on the following circumstances and procedures.
- C. Exchange of Questions Procedure:** Where a party involved is an elementary student, or where the Coordinator otherwise determines that a hearing is not appropriate under the circumstances, the Coordinator will initiate the Exchange of Questions Procedure, which provide as follows.

After the Coordinator or designee has submitted the investigative report to the parties pursuant to this procedure and before reaching a determination regarding responsibility, the Decision-Maker shall provide each party an opportunity to submit written, relevant questions that party desires to ask of any party or witness, and shall subsequently provide each party with the answers. The Decision-Maker will also allow for additional, limited follow-up questions from each party to the other, and provide both with complete copies of the answers. Upon receipt of the proposed questions, the Decision-Maker will review the proposed questions and determine which questions will be permitted, disallowed, or rephrased. The Decision-Maker shall limit or disallow any questions that are irrelevant, repetitive (and thus irrelevant), or abusive. The Decision-Maker shall have full authority to decide all issues related to questioning and determinations of relevance. The Decision-Maker may ask a party to explain why a question is or is not relevant from their perspective. The Decision-Maker shall explain any decision to exclude a question as not relevant or to reframe it for relevance. Whether a hearing is held or not, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant:

- i. 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
- ii. 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. This basis for asking questions or presenting evidence shall not be

allowed if the respondent is an adult, non-student employee, because consent is not a recognized defense in cases where the complainant is a student and the respondent is an employee.

The Decision-Maker, after any necessary consultation with the parties, investigator(s), and/or Coordinator, shall provide the parties and witnesses with:

- i. The relevant written questions to be answered; and
- ii. A deadline for the parties and witnesses to submit written responses to the questions and any appropriate follow-up questions or comments by the parties.

The exchange of questions and responses by the parties and witnesses shall be concluded within 10 school days.

- D. Hearing procedure:** Where both parties are adult employees, or a mature secondary school student, the Coordinator may initiate the live Hearing Procedure. If either party, however, objects and requests the Exchange of Questions Procedure, then the Exchange of Questions procedure shall be followed by the Decision-Maker. The Hearing Procedure shall include the following:

At the live hearing, the decision maker must 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 live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the Charter School to restrict the extent to which advisors may participate in the proceedings, as long as the restrictions apply equally to all parties. At the request of either party, the Charter School must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Decision-Maker and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other relevant 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 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 live hearing, the Charter School shall provide without fee or charge to that party, an advisor of the Charter School's choice to conduct cross-examination on behalf of that party. The advisor may be, but is not required to be, an attorney.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless:

- i. 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

- ii. 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.

In cases where both parties are 18 or older, if a party or witness does not submit to cross-examination at the live hearing, the Decision-Maker is prohibited from relying on any statement of that party or witness in reaching a determination regarding responsibility. However, that the Decision-Maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the Charter School's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants to simultaneously see and hear each other. The Charter School shall create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

At the hearing, the Decision-Maker shall have the authority to hear and make determinations on all allegations of Title IX sexual harassment and may also hear and make determinations on any additional alleged violations of policy or procedure that have occurred in concert with the Title IX sexual harassment, even though those collateral allegations may not specifically fall within the definition of sexual harassment set for in these procedures.

Any witness scheduled to testify before the Decision-Maker must have been first interviewed by the investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Decision-Maker agree to the witness's participation.

If the parties and Decision-Maker do not agree to the admission of evidence newly offered at the hearing, the Decision-Maker may delay the meeting and instruct that the investigation needs to be re-opened to consider that evidence.

If the parties raise an issue of bias or conflict of interest of an investigator or Decision-Maker at the hearing, the Decision-Maker may elect to address those issues, consult with legal counsel, and/or refer them to the Coordinator, and/or preserve them for appeal. If bias is not in issue during the hearing, the Decision-Maker shall not permit irrelevant questions regarding bias.

6. Decision Making Process and Determination Requirements

Following its review of the evidence submitted by the investigator and the parties, the Decision-Maker, (who cannot be the Coordinator) shall issue a written determination of responsibility. To reach this determination, the Charter School's burden of proof — **preponderance of the evidence** -- must be described, and the burden satisfied, before the respondent can be found responsible for sexual harassment in violation of Title IX.

The written determination of responsibility shall include the following information:

- A. Identification of the allegations potentially constituting sexual harassment in violation of Title IX.
- B. A description of the procedural steps taken from receipt of the written formal complaint through the determination, including notifications to the parties, interviews of the parties and witnesses, site visits, methods used to obtain other evidence, and hearings used.
- C. Findings of fact supporting the determination.
- D. Conclusions regarding application of the Charter School's code of conduct to the facts.
- E. A statement of and rationale for the determination as to each allegation, including any determination regarding responsibility, any disciplinary action to be imposed on the respondent, and identification of remedies and measures, if any, that will be provided to restore or preserve equal access to the Charter School's educational programs and activities to be provided to the complainant.
- F. Considerations for disciplinary action. Factors considered when determining discipline may include, but are not limited to:
 - i. The nature, severity of, and circumstances surrounding the violation(s);
 - ii. The respondent's disciplinary history;
 - iii. Previous allegations or allegations involving similar conduct;
 - iv. The need for discipline to bring an end to the Title IX sexual harassment;
 - v. The need for discipline to prevent the future recurrence of Title IX Sexual harassment;
 - vi. The need to remedy the effects of the Title IX sexual harassment;
 - vii. The impact on the parties; and
 - viii. Any other information deemed relevant by the Decision-Maker.
- G. The discipline imposed shall be implemented as soon as is feasible, either upon the outcome of any appeal or upon the expiration of the window to appeal if no appeal is requested. The sanctions described in this process are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.
- H. Identification of the procedures for filing an appeal and the permissible grounds for complainant or respondent to base their appeal.

The Decision-Maker shall simultaneously provide their written determination to all parties. The determination becomes final either, (where an appeal is filed,) on the date the parties are

provided copies of the written determination of the result of the appeal; or, (if no appeal is filed,) the date on which an appeal would no longer be considered timely.

The Coordinator is responsible for the effective implementation of any and all remedies set forth in the written determination of responsibility. In the event a student expulsion is recommended, pursuant to and in accordance with the requirements of Idaho Code § 33-205, the Coordinator shall ensure that an expulsion hearing is scheduled and heard by the Board of Trustees.

7. Appeals

Any party may file a request for appeal in writing with the Coordinator within seven school days of the delivery of the notice of a final decision.

A single appeal decision-maker shall chair the appeal. No appeal decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The request for appeal shall be forwarded to the appeal chair for consideration to determine whether the request meets the grounds for appeal. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is filed in a timely manner.

Appeals shall be limited to the following grounds:

- A. Procedural irregularity that affected the outcome of the matter;
- 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;
- C. The Coordinator, investigator(s), or Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter;

Appeal procedure: Upon receipt of a valid appeal, the Coordinator shall:

- A. Notify the other party in writing that an appeal has been filed, and implement the appeal procedure fairly and equally for both parties.
- B. Ensure the appeal Decision-Maker is not:
 - i. The same person(s) as the Decision-Maker that issued the written determination of responsibility;
 - ii. The person who issued the dismissal;
 - iii. The investigator; or

iv. The Coordinator.

- C. Ensure the appeal decision-maker has been trained in accordance with the requirements of this grievance procedure.
- D. The appealing party shall have ten school days following the delivery of the notice of the appeal to submit a written statement in support of the appeal and challenging the outcome. The responding party shall have ten school days following the delivery of the appealing party's statement in support of appeal to submit the responding party's written statement in opposition to the appeal (and supporting the outcome that is the subject of the appeal). In the event the parties and the appeal decision-maker agree to a different briefing schedule (whether allowing more or less time), the time allowed to prepare a written statement shall be the same for all parties.
- E. Issue a written decision describing the result of the appeal and identifying the bases and rationale for the decision.
- F. Provide the written decision simultaneously to all parties.

Requirements of the Title IX Grievance Procedure

The following requirements apply to the conduct of the Title IX Grievance procedure set forth above.

1. **Equitable treatment of the parties:** At all times, both complainants and respondents shall be equitably treated by providing remedies to a complainant until a determination of responsibility for sexual harassment has been made against the respondent. No sanction or discipline may be imposed against the respondent unless and until the process required by this procedure has been completed. Until a final determination of responsibility has been issued only "supportive measures" may be initiated that are non-disciplinary or non-punitive and avoid burdening the respondent. Any and all final remedies, however, must be designed to restore or preserve equal access to the Charter School's education program or activity. Such remedies may include the same individualized services described as "supportive measures;" however, following the decision, such remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent
2. **Objective evaluation of the evidence:** The formal grievance process involves an objective evaluation of all relevant evidence obtained, including evidence that supports the conclusion the respondent engaged in a violation of policy or procedure and evidence that supports the conclusion the respondent did not. Credibility determinations may not be based solely on an individual's status or participation as a complainant, respondent, or witness.
3. **Lack of bias:** Any individual materially involved in the administration of the formal grievance process including the Coordinator, investigator(s), Decision-Maker and appeal

Decision-Maker may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific complainant or respondent.

4. **Title IX training of Charter School participating staff:** Any individual designated by the Charter School as a Coordinator, investigator, decision-maker, or any person designated by the Charter School to facilitate an informal resolution process, cannot have a conflict of interest or bias for or against complainants or respondents generally, or against any individual complainant or respondent. The Charter School shall ensure that Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receives training on the definition of “sexual harassment” set forth in this procedure, the scope of the Charter School’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The Charter School shall ensure that Decision-Makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, as required by this procedure. The Charter School shall also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in this procedure. All materials used to train Coordinators, investigators, decision-makers, and any persons facilitating an informal resolution process, shall not rely on stereotypes based on gender, and must promote impartial investigations and adjudications of formal complaints of sexual harassment, and provide guidance therefor.
5. **Presumption of innocence:** The Charter School presumes that the respondent is not responsible for the reported misconduct unless and until a final determination is made, in accordance with this procedure, that Policy 3085 or procedure 3085P prohibiting sex discrimination and sexual harassment has been violated.
6. **Promptness:** Investigations are completed promptly, normally within 30 school days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations; availability of witnesses; police involvement; and other factors.

The Charter School shall make a good faith effort to complete the investigation as promptly as possible and will communicate regularly with the parties to update them on the progress and timing of the investigation.

Notwithstanding the above, the Charter School may undertake a delay in its investigation, lasting from several days to a few weeks, if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or a need for accommodations for disabilities or health conditions.

The Charter School shall communicate in writing the anticipated duration of the delay and the reason for it to the parties and provide the parties with status updates if necessary. The Charter School will promptly resume its investigation and formal grievance process as soon as feasible. During such a delay, the Charter School will implement supportive measures as deemed appropriate.

Charter School action(s) or processes may be delayed, but are not stopped by, civil or criminal charges involving the underlying incident(s). Dismissal or reduction of those criminal charges may or may not impact on the Charter School's action(s) or processes.

7. **Description of sanctions.** The following describes the range of sanctions that may be implemented following a finding of responsibility.

Student Discipline: The following are the usual sanctions that may be imposed upon students singly or in combination:

- A. A warning;
- B. Required counseling;
- C. A required substance abuse treatment program;
- D. Exclusion from participating in extracurricular activities or other Charter School programs/activities;
- E. Suspension, which may be in-school, out-of-school, long-term, short-term, extended, or other suspensions;
- F. Expulsion (in compliance with I.C. § 33-205); and
- G. Other actions: In addition to or in place of the above sanctions, the Charter School may assign any other sanctions deemed appropriate.

Employee Sanctions: Sanctions for an employee may include:

- A. A verbal or written warning;
- B. A performance improvement plan or management process;
- C. Enhanced supervision, observation, or review;
- D. Required counseling;
- E. Required training or education;
- F. Probation;
- G. Denial of pay increase or pay grade;
- H. Loss of oversight or supervisory responsibility;
- I. Demotion;
- J. Reassignment;
- K. Restriction of professional development resources;
- L. Suspension with pay;
- M. Suspension without pay;
- N. Termination (in compliance with I.C. § 33-513(5), in the case of certificated employees);
- O. Other actions: In addition to or in place of the above sanctions, the Charter School may assign any other sanctions as deemed appropriate.

8. Burden of proof. When determining whether the respondent is responsible for violating Policy 3085 or Procedure 3085P by discriminating based on sex and/or for sexual harassment as defined herein, the decision-maker shall apply the preponderance of the evidence standard, which means the evidence proves on a more likely than not basis that respondent violated the policy or procedure.
9. **Appeals.** Any party may file a request for appeal in writing to the Coordinator within seven school days of the delivery of the notice of a final outcome.
10. **Supportive measures:** Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties. Supportive measures are designed to restore or preserve access to the Charter School's education program or activity, including measures designed to protect the safety of all parties or the Charter School's educational environment, and/or deter Title IX sexual harassment. Examples of supportive measures may include, but are not limited to:
 - A. Referral to counseling, medical, and/or other healthcare services;
 - B. Referral to community-based service providers;
 - C. Visa and immigration assistance;
 - D. Education of the school community or community subgroup(s);
 - E. Altering work arrangements for employees;
 - F. Safety planning;
 - G. Providing school safety escorts;
 - H. Providing transportation accommodations;
 - I. Implementing contact limitations, such as no contact orders, between the parties (note: allegations of violations of a no contact order will be investigated as collateral misconduct under this process);
 - J. Academic support, extensions of deadlines, or other course or program-related adjustments;
 - K. Emergency warnings;
 - L. Class schedule modifications, withdrawals, or leaves of absence;
 - M. Increased security and monitoring of certain areas of the school;
 - N. Any other actions deemed appropriate by the Coordinator.
11. **Recognition of privileges:** At no time during this grievance procedure may any evidence (whether through testimony or documents) be required, admitted, relied upon, or otherwise obtained by asking questions or admitting evidence that constitutes, or seeks disclosure of, information protected by a legally recognized privilege, unless the person holding the privilege has knowingly and freely waived the privilege.
12. **Recordkeeping;**
 - A. The Charter School shall maintain for a period of seven years records of:

- i. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required where a hearing is held, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the Charter School's education program or activity;
 - ii. Any appeal and the result therefrom;
 - iii. Any informal resolution and the result therefrom; and
 - iv. All materials used to train Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The Charter School shall make these training materials publicly available on its website.
- B. For each response to a report of harassment or discrimination based on sex, the Charter School shall create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the Charter School shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it took measures designed to restore or preserve equal access to the Charter School's education program or activity. If the Charter School does not provide a complainant with supportive measures, then the Coordinator must document the reasons why such a response was not clearly unreasonable in light of the known circumstances (i.e., was not a result of sex discrimination). The documentation of certain bases or measures does not limit the Charter School in the future from providing additional explanations or detailing additional measures taken or to be taken.

Title IX Grievance Procedure Definitions

The following definitions apply to the identified terms used in this procedure:

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to:

1. The Charter School's Coordinator; or
2. Any Charter School official possessing the authority to institute corrective measures on behalf of the Charter School; or
3. Any employee of the Charter School.

Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the Charter School with actual knowledge is the respondent. 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 Charter School. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Coordinator as set forth in this procedure.

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

Under circumstances where a sexual assault is alleged by a student against an adult, non-student employee, the Charter School does not recognize the defense of “consent,” however it is defined. Where the parties are both adults, however, the following definition of **“consent”** will apply: Consent occurs where there is a knowing, voluntary, and clear grant of permission, by word or action, to engage in sexual activity. Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged. Consent may be withdrawn. A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. It is a violation of policy if a respondent engages in sexual activity with someone who is incapable of giving consent, or is otherwise incapacitated.

“Incapacitation” occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing, informed consent. For example, they cannot understand the “who, what, when, where, why, or how” of their sexual interaction.

“Formal Complaint” means a document filed by a complainant, or signed by the Coordinator, alleging sexual harassment against a respondent and requesting that the Charter School investigate the allegation of sexual harassment. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the educational programs or activities of the Charter School. A formal complaint may be filed with the Coordinator in person, by mail, or by electronic mail, or by using the contact information listed on the Charter School’s website. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission, (such as by electronic mail or through an online portal provided for this purpose by the Charter School,) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Coordinator signs a formal complaint, the Coordinator is not a complainant or otherwise a party to this grievance procedure, and must comply otherwise comply with the requirements of this procedure.

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

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

1. “Quid pro quo” harassment, which occurs when a Charter School employee conditions the provision of a Charter School benefit, service, or assistance on an individual’s participation in unwelcome sexual conduct;

2. “Hostile Environment,” which is defined as unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Charter School education program or activity; or
3. Physical threats and attacks, including “sexual assault,” defined as forcible and non-forcible sex offenses as defined in the Clery Act, or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act.

“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 in cases where either no formal complaint has been filed, or both before and/or after the filing of a formal complaint. Such measures are designed to restore or preserve equal access to the Charter School’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Charter School’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The Charter School shall maintain as confidential any supportive measures provided to the complainant or respondent, provided that maintaining such confidentiality will not impair the ability of the Charter School to provide the supportive measures. The Coordinator is responsible for coordinating the effective implementation of all supportive measures.

“Elementary school” and **“secondary school”** as used in this procedure refer to a local educational agency, as defined in the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, a preschool, or a private elementary or secondary school, and include this Charter School.

Revision of These Procedures

The Charter School reserves the right to make changes to these procedures as necessary. If laws or regulations change or court decisions alter the requirements in a way that impacts these procedures, this document shall be construed to comply with the most recent government regulations or holdings.

References: 34 CFR Part 106

Nondiscrimination on the Basis of Sex in Educational Programs or Activities Receiving Federal Financial Aid

Procedure History:

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