

Delta Charter School, MST

Title IX Policy and Grievance Procedure

Title IX states “[n]o Person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a)

Delta Charter School, MST does not discriminate on the basis of sex in the education program or activity that it operates, and Delta Charter School, MST is required by Title IX, as amended, not to discriminate in such a manner.

Title IX was originally enacted in 1972. Amended regulations addressing student and employee sexual harassment under Title IX were issued on May 6, 2020 and became effective as of August 14, 2020. The amended regulations define student and employee sexual harassment under Title IX and establish procedures to respond to an allegation of Title IX sexual harassment. Delta Charter School, MST is updating its policies implementing the amended regulations. Below is a summary of these amendments/updated policies.

This Policy explains how to report a complaint of sexual harassment, the steps Delta Charter School, MST takes to investigate the complaint, the decision making process, and the appeal process.

I. NOTIFICATION REGARDING REPORTING ALLEGATIONS OF SEXUAL HARRASSMENT

To all students, parents or legal guardians, employees, and applicants for employment:

Delta Charter School, MST’s Title IX Personnel Team consists of the following individuals:

Title IX Coordinator

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Title IX Investigator

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The Title IX Coordinator is the person authorized by Delta Charter School, MST to coordinate its Title IX compliance program. Any person may report sex discrimination, including sex harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination), in person, by mail, by telephone, or e-mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Any Delta Charter School, MST employee who knows or learns information concerning conduct related to sexual harassment or allegations of sexual harassment should immediately notify the Title IX Coordinator.

Reports may be made at any time (including during non-business hours) by using the Title IX Coordinator's telephone number or email address, or by mail to the Title IX Coordinator's office address, listed above. Inquiries about the application of Title IX may be directed to the Title IX Coordinator or to the Assistant Secretary of Education at the United States Department of Education, or both.

II. DEFINITIONS UNDER TITLE IX

"Actual knowledge" is present when the Title IX Coordinator, any official with authority to institute corrective measures, or ANY EMPLOYEE (excluding respondent) of Delta Charter School, MST has notice or receives a report or information or learns of sexual harassment or allegations of sexual harassment. Any employee with actual knowledge of sexual harassment or allegations of sexual harassment is required to make a report to the Title IX Coordinator.

"Complainant" means the individual who is alleged to be the victim of conduct that could constitute sexual harassment. A person may be a complainant even when no report is filed and no grievance is pending. At the time of filing, the complainant must be participating in or attempting to participate in the educational program or activity of Delta Charter School, MST.

"Decision-maker" means the persons tasked with the following: 1) the responsibility of making initial determinations or responsibility (also referred to as the "initial decision-maker" or 2) the

responsibility to decide any appeal (also referred to as the “appeal decision-maker”) in formal complaints of sexual harassment in the Title IX grievance process.

“Deliberate indifference” is when Delta Charter School MST’s response is clearly unreasonable in light of known circumstances.

“Determination regarding responsibility” is the formal conclusion of the initial decision-maker on each allegation of sexual harassment as to whether the respondent did or did not engage in the alleged conduct constituting sexual harassment.

“Education program or activity” was previously defined as all the “operations of Delta Charter School, MST....” In 34 C.F.R. § 106.44(a), the definition has been enlarged to include any location, event or circumstance over which Delta Charter School, MST exercised substantial control over both the respondent and the context in which the harassment occurs.

“Formal complaint” is a document filed by a complainant, the complainant’s parent/guardian, or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that Delta Charter School, MST investigate the allegations.

“Respondent” means the individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment. A person may be a respondent even when no report is filed and no grievance is pending.

“Sexual harassment” - Conduct “on the basis of sex” that meets one or more of the following:

1. An employee of Delta Charter School, MST conditioning the provision of an aid, benefit or service of Delta Charter School, MST on an individual’s participation in unwelcome sexual conduct (quid pro quo sexual harassment);
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Delta Charter School MST’s education program or activity;
3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v) means an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
4. “Domestic violence” as defined in 34 U.S.C. 12291(a)(8). “Domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction;

5. "Dating violence" as defined in 34 U.S.C. 12291(a)(10). "Dating violence" means violence committed by a person-
 - (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - (b) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) the length of the relationship;
 - (ii) the type of relationship;
 - (iii) the frequency of interaction between the persons involved in the relationship; or
6. "Stalking" as defined in 34 U.S.C. 12291(a)(30). "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to- (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

"Supportive measures" are non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to a complainant or a respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures should be designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party. Examples of supportive measures include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, increased monitoring or supervision, mutual contact restrictions between the parties, etc.

III. REPORTS OF SEXUAL HARASSMENT

Any person may report sex discrimination, including sex harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination), in person, by mail, by telephone, by email, or by any other means that results in Delta Charter School MST's Title IX Coordinator receiving the person's verbal or written report. Any Delta Charter School MST employee who knows or learns information concerning conduct related to sexual harassment or allegations of sexual harassment should immediately notify Delta Charter School MST's Title IX Coordinator. Failure to report will subject the employee to discipline up to and including termination.

Delta Charter School, MST shall follow all state laws regarding reporting allegations of criminal misconduct (i.e., sexual assault on a student) and all state laws and regulations regarding mandatory reporting.

IV. RESPONSE TO NOTICE OF SEXUAL HARASSMENT

Delta Charter School, MST has specific obligations in responding to the notice of sexual harassment. Each of the procedural requirements set forth in the amended regulations are to

ensure a fair process for both parties. Delta Charter School, MST must respond promptly to actual knowledge of sexual harassment in an education program or activity and respond in a manner that is not deliberately indifferent. Delta Charter School, MST must treat complainants and respondents equitably by offering supportive measures to a complainant and following a grievance process before imposing any disciplinary sanctions on a respondent.

A. **Complainant.** The Title IX Coordinator will contact the complainant promptly (even if a formal complaint has not been filed) to:

1. discuss the availability of supportive measures;
2. consider the complainant's wishes regarding supportive measures;
3. inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
4. explain the process for filing a formal complaint.

The process for filing a formal complaint is described below in the section of the policy entitled "Formal Complaint Process."

B. **Respondent.** The Title IX Coordinator's response to the respondent will also protect the respondent's due process rights so as not to impact the respondent's access to education prior to the completion of the grievance process and a determination regarding responsibility. However, the regulations permit Delta Charter School, MST to immediately remove a respondent from the education program or activity on an emergency basis if Delta Charter School, MST conducts an individualized safety and risk analysis and determines that an emergency removal is necessary to protect any student or other individual from an immediate threat to physical health or safety. This provision shall not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act or regulations promulgated thereunder. An employee respondent may also be placed on administrative leave when a formal complaint has been filed. In either instance, Delta Charter School, MST must provide respondent with notice and an opportunity to challenge the decision immediately after removal.

V. FORMAL COMPLAINT PROCESS

A. Basic Elements of Grievance Procedure

The following are all components of Delta Charter School, MST's grievance procedure:

1. Treat complainants and respondents equitably by providing remedies to a complainant after a determination of responsibility for sexual harassment has been made against a respondent, and by following this grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to the Delta Charter School MST's education program or activity. Remedies may include supportive measures but may also include disciplinary action against respondent.
2. Provide an objective evaluation of all available evidence without making credibility

determinations based on a party's status as complainant, respondent, or witness.

3. The Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal process must not have a conflict of interest or bias for or against complainant or respondent. Training is provided for these individuals on definition of sexual harassment, scope of Delta Charter School, MST's program or activity, how to conduct an investigation and grievance process, hearings, the use of any technology to be used at hearings, appeals and informal processes. Investigators are trained on how to prepare an investigation report. Decision-makers are trained on issues of evidence and questioning.
4. There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the grievance process.
5. Delta Charter School, MST will provide reasonably prompt time frames for completing the grievance process, including a process for temporary delays or limited extension of time frames for good cause such as law enforcement involvement, absence of a witness, party, etc. with written notice to both parties explaining the reasons for the delay.
6. Identify possible disciplinary sanctions and remedies that may be implemented. Remedies may include disciplinary action up to and including suspension or termination of employment (if an employee) and suspension or expulsion (if a student). Please refer Delta Charter School, MST's general disciplinary policy for further information regarding possible disciplinary sanctions.
7. Delta Charter School, MST has adopted the *preponderance of the evidence standard OR clear and convincing standard* to determine responsibility.
8. Provide procedures and permissible reasons for appeal by a respondent or a complainant.
9. Provide a description of the range of supportive measures available to complainants and respondents.
10. Disallow evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.

B. Written Notice

Delta Charter School, MST provides a written notice to all known parties upon receipt of a formal complaint. The Notice shall be sent to the parties contemporaneously. The Notice includes all of the following:

1. Notice of the grievance process, including any informal resolution process;

2. Notice of the allegations potentially constituting sexual harassment as defined in Title IX with sufficient details (names, dates, conduct, location, etc.) to allow the respondent to prepare a response before any initial interview;
3. A statement that the respondent is presumed not responsible for the conduct and responsibility will be determined at conclusion of grievance process;
4. Notice of the parties' right to have an advisor (may be an attorney) and to inspect and review evidence, and that
5. The code of conduct prohibits knowingly making false statements or providing false information in the grievance process.

If a formal complaint is initiated (1) without knowledge of the respondent's identity or (2) by the Title IX coordinator without knowledge of the complainant's identity, and the identity of the complainant and/or respondent is later discovered through the Title IX investigation, Delta Charter School, MST shall provide an additional, updated Notice to all parties.

C. Dismissal of Formal Complaint

1. A complaint must be dismissed if the allegations do not constitute sexual harassment as defined even if proved, did not occur in the Delta Charter School, MST's program or activity, or did not occur against a person in the United States.
2. A complaint may be dismissed if complainant notifies the Title IX Coordinator at any time that he/she wishes to withdraw the complaint or an allegation, if the respondent's enrollment or employment ends, or if specific circumstances prevent Delta Charter School, MST from gathering evidence (e.g. passage of several years between complaint and alleged conduct, non-cooperation of complainant, etc.).
3. Notice of dismissal must be provided to both parties, including the reasons for dismissal.

D. Consolidation of Complaints

Where allegations arise out of the same facts or circumstances, formal complaints can be consolidated against more than one respondent, by more than one complainant against one or more respondents, or by one party against another party.

E. Investigations

Delta Charter School, MST's investigative process:

1. Ensures that the burden of proof and gathering evidence rests on Delta Charter School, MST rather than the parties (note: certain treatment records cannot be obtained without voluntary, written consent; also parent consent may be sought under FERPA if applicable);
2. Provides an equal opportunity for the party to present witnesses and evidence;

3. Does not restrict either party's ability to discuss the allegations or gather and present evidence;
4. Provides the same opportunity to have others present during interviews or other proceedings, including an advisor (who may be an attorney) and ensures that any restrictions on advisor participation apply equally to both parties;
5. Provides written notice to a party who is invited or expected to attend and includes, the date, time, participants, purpose, and location of any investigative interview or other meeting with enough time to allow the party to prepare to participate;
6. Provides both parties and their advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which Delta Charter School, MST does not intend to rely and any exculpatory or inculpatory evidence from any source. This evidence must be provided prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response, which investigator must consider before completing the investigation report; and
7. Includes preparation of a written investigation report that fairly summarizes the relevant evidence; report will be provided to the parties and their advisors at least 10 days before a determination of responsibility for review and written response.

F. Hearings and Written Questions

No hearing is required in K-12 educational institutions. School officials may determine that hearings will be held in certain circumstances, and under such circumstances written notice to the parties will be provided. With or without a hearing, after Delta Charter School, MST has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker must provide each party the opportunity to submit written, relevant questions that the party wants asked of another party or witness, provide each party with the answers, and provide for limited follow-up questions. Title IX permits Delta Charter School, MST to place restrictions, with limited exceptions, on certain types of questions related to the complainant. If the decision-maker determines that any submitted questions shall be omitted as irrelevant, the decision-maker will provide written notice and explanation as to why such question(s) were omitted.

G. Determination of Responsibility

The decision-maker cannot be the investigator or the Title IX Coordinator. After review of all the evidence, the investigation report, the parties' responses, and any written questions/responses, the decision-maker issues a written determination of responsibility that:

1. Identifies the allegations that potentially constitute sexual harassment as defined in the amendments;
2. Describes Delta Charter School, MST's procedural steps taken from the receipt of the complaint to the determination;
3. Includes findings of fact supporting the determination;
4. Includes conclusions regarding application of the code of conduct to the facts;
5. Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions imposed upon the respondent, and whether remedies to restore or preserve equal access to Delta Charter School, MST's education program or activity will be provided to the complainant; and
6. Includes procedures for appeals.

H. Appeals

1. Both parties have the right to appeal a determination of responsibility and Delta Charter School, MST's dismissal of a complaint or any allegations for the following reasons:
 - a. A procedural irregularity that affected the outcome;
 - b. New evidence that was not reasonably available at the time of the determination regarding responsibility and could affect the outcome; or
 - c. Conflict of interest on the part of the Title IX Coordinator, investigator, or decision-maker that affected the outcome
2. Delta Charter School, MST will ensure that written notice is provided to both parties of the appeal and provide both parties an equal opportunity to submit a written statement in support of, or challenging, the determination.
3. A written decision of the appeal will be provided to both parties simultaneously.
4. The decision-maker for the appeal (the appeal decision-maker) cannot be the Title IX Coordinator, the investigator or the initial decision-maker.

I. Informal Resolution

At any point during the formal complaint process, Delta Charter School, MST may offer to facilitate an informal process that does not require a full investigation as long as both parties receive written notice of their rights and the parties provide written, voluntary consent. Delta Charter School, MST cannot require the waiver of the right to an investigation and adjudication of formal complaints as a condition of employment or continuing employment of an employee, or enrollment or continuing enrollment of a student. Delta Charter School, MST cannot offer to facilitate an informal resolution process unless a formal complaint has been filed. Delta Charter School, MST cannot offer informal resolution in the context of a complaint alleging that an employee harassed a student. At any point prior to agreeing to an informal final resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

VI. Record Keeping

- A. Delta Charter School, MST must keep records related to reports of sexual harassment for a minimum of seven (7) years, including investigation records, disciplinary sanctions, remedies, appeals and records of any action taken, including supportive measures or the complainant's decision not to file a formal complaint under Title IX.
- B. Records should reflect that Delta Charter School, MST's response was not deliberately indifferent and that measures were taken to restore or preserve equal access to the education program or activity.
- C. If Delta Charter School, MST does not provide a complainant with supportive measures, it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
- D. Delta Charter School, MST must also retain for seven (7) years any materials used to train Title IX Coordinators, investigators, decision-makers and any employee designated to facilitate an informal process.
- E. Delta Charter School, MST must post training materials on its website.

VII. Retaliation

- A. Retaliation is prohibited against any person for the purpose of interfering with Title IX rights or because the person participated, or refused to participate, in any manner in a proceeding under Title IX regulations.
- B. Complaints of retaliation may be reported and filed under the Title IX grievance process.

- C. Delta Charter School, MST must keep confidential the identity of a person who complains of or reports sexual harassment, including parties and witnesses, except as permitted by law to carry out the purpose of the regulations with regard to conducting an investigation into the complaint.

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