

NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES

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

This guideline provides additional information about the Academy's procedures in addressing allegations of sex discrimination, including Sexual Harassment. All information below supplements Board Policy 2266 – Nondiscrimination on the Basis of Sex in Education Programs or Activities. To the extent, there is a conflict between these guidelines and Policy 2266, the Policy controls.

General Information

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

- A. An Educational Service Provider employee conditioning the provision of an aid, benefit, or service of the Academy on an individual's participation in unwelcome sexual conduct (often called "*quid pro quo*" harassment);
- B. Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature that is determined by a reasonable person to be so severe, pervasive, *and* objectively offensive that it effectively denies a person equal access to the Academy's education program or activity; or
- C. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)A(v), or "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Sexual Harassment may involve the behavior of a person of any gender against a person of the same or another gender.

The following conduct – if sufficiently severe, pervasive, *and* objectively offensive – may constitute Sexual Harassment (this list provides examples and is not meant to be exhaustive or exclusive):

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

- D. unwelcome sexual verbal expressions, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; unwelcome sexually degrading language, profanity, jokes, or innuendoes;
- E. sexually suggestive objects, pictures, graffiti, videos, posters, audio recordings or literature;
- F. unwelcome and inappropriate touching, patting, or pinching;
- G. asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities;
- H. speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history;
- I. giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship; and
- J. leering or staring at someone in a sexual way, such as staring at a person's breasts, buttocks, or groin.

Sexual assault, for purposes of Policy 2266, refers to any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent (e.g., due to the person's age, intellectual or other disability, or use of drugs or alcohol). Sexual assault includes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape. All such acts of sexual assault are forms of Sexual Harassment and, in turn, sex discrimination prohibited by Title IX and Policy 2266.

Two critical components of assessing allegations of sexual assault involve the concepts of "consent" and a person being "incapacitated." Policy 2266 states that "consent" involves words or actions that a reasonable person would understand as agreement to engage in the sexual conduct at issue. A person, however, may be incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. A person who is incapacitated is not capable of giving consent.

Determining whether there was consent is a critical factor in evaluating whether a sexual assault occurred. As defined above, consent is a mutual, voluntary, and informed agreement to participate in specific sexual acts with another person that is not achieved through manipulation, force, or coercion of any kind, and requires having cognitive ability to agree to participate.

Force involves the use, or the threatened use, of physical violence to achieve sexual access. Force further includes the use of a person's body in a physically imposing manner to elicit unwelcome or unwanted sexual contact. Coercion involves unreasonable pressure for sexual activity or contact.

Consent requires an outward demonstration, through mutually understandable words, conduct or action, indicating that an individual has freely chosen to engage in the specific sexual acts. A verbal "no" constitutes lack of consent, even if it sounds insincere or indecisive. Silence or an absence of resistance does not imply consent, and consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Even in the context of an ongoing relationship, consent must be sought and freely given for each specific sexual act. Consent may be withdrawn at any time. When consent is withdrawn, sexual activity must immediately stop.

Impairment or incapacitation due to alcohol and/or drug use, permanent/ temporary mental or physical disability, and being below the age of consent (age 16) are factors that detract from or make consent impossible. Incapacity is defined as an inability to make rational, reasonable decisions or judgments. Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation is found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person. One’s own intoxication is not an excuse for failure to recognize another person’s incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual’s:

1. decision-making ability;
2. awareness of consequences;
3. ability to make informed judgments;
4. capacity to appreciate the nature or circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

Title IX Coordinator(s)

The following individual(s) serve as the Academy Title IX Coordinator(s) and are responsible for overseeing and coordinating the Academy’s efforts to comply with Title IX and its implementing regulations:

School Director
(810) 667-8970
231 Lake Drive
Lapeer, MI 48446

The Title IX Coordinator(s) reports directly to the School Leader or Educational Service Provider. Questions about Policy 2266 and/or this Administrative Guideline should be directed to the Title IX Coordinator(s).

Notices

The Title IX Coordinator’s(s’) name(s), title(s), and contact information – including office address(es), telephone number(s), and email address(es) - must be published:

1. on the Academy's website;
2. in the student, and parent handbooks;

Board Policy 2266 must also be published on the Academy's website and in each handbook or catalog that the Academy makes available to applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the Board.

Reports of Sexual Harassment

All students and Educational Service Provider employees share responsibility for avoiding, discouraging, and reporting Sexual Harassment.

The Title IX Coordinator(s) shall be available during regular school/work hours to discuss Title IX questions, including questions related to Sexual Harassment, and assist students, parents/guardians, employees, other members of the Academy community and Third Parties with any issues they may have related to Policy 2266. The Title IX Coordinator(s) shall accept reports of Sexual Harassment directly from any member of the Academy community or any Third Party. Reports may be submitted in person, by mail, by telephone, or by electronic mail, using the Title IX Coordinator's(s') published contact information, or by any other means that results in the Title IX Coordinator receiving the person's oral or written report. Reports may be made at any time (including during non-work hours).

The Academy will be considered to have actual knowledge of Sexual Harassment or an allegation of Sexual Harassment if: (1) a Formal Complaint is filed by a Complainant (or a parent/guardian on behalf of a minor child); (2) an Educational Service Provider employee receives a report or otherwise has notice of an incident of Sexual Harassment or allegations of Sexual Harassment; or (3) an Educational Service Provider employee witnesses the misconduct. The Academy may also receive notice about Sexual Harassment in an indirect manner from a member of the local community, social networking sites, the media, or if the information is shared by survivors during public awareness events or campaigns.

When an Educational Service Provider employee files a report of Sexual Harassment or allegations of Sexual Harassment with the Title IX Coordinator, the employee is required to report all known details about the alleged Sexual Harassment, including: (1) the name of the alleged Respondent; (2) the person who experienced the alleged Sexual Harassment (i.e., the Complainant); (3) other persons involved in the alleged Sexual Harassment; and (4) any other relevant facts, such as date, time, and location.

When possible, before a reporting student or parent/guardian discloses the above information, the Educational Service Provider employee should inform the student and/or parent/guardian of the employee's obligation to report the information to the Title IX Coordinator.

The Educational Service Provider employee may also inform the student and/or parent/guardian of his/her right to file a Formal Complaint with the Academy and a separate complaint with local law enforcement.

Upon receiving a report of Sexual Harassment or allegations of Sexual Harassment, the Title IX Coordinator will provide the appropriate notice to the Complainant, discuss supportive measures with the Complainant, and explain the Formal Complaint process. The Title IX Coordinator will also inform the Complainant that s/he is available to assist the Complainant in filing a Formal

Complaint if that is what the Complainant wants to do. The Title IX Coordinator will further explain to the Complainant that Federal law includes protections against retaliation, and that the Academy will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

When it comes to allegations of stalking, the Title IX Coordinator will inform the Complainant that it is important to take steps to preserve evidence in cases of stalking, to the extent such evidence exists. Such evidence is more likely to be in the form of letters, emails, text messages, etc. rather than evidence of physical contact and violence. This type of non-physical evidence will also be useful in all types of Sexual Harassment investigations.

If the report involves a student Respondent, while the Title IX Coordinator is communicating with the Complainant concerning supportive measures and whether to file a Formal Complaint, the School Leader and/or Educational Service Provider will determine whether the circumstances warrant consideration of emergency removal of the student Respondent.

If the Title IX Coordinator decides that the situation calls for possible emergency removal of the student Respondent, the Title IX Coordinator will convene a team of educators and other appropriate staff members (e.g., school psychologist, guidance counselor, mental health counselor, etc.) to conduct an individualized safety and risk analysis. The team will be tasked with determining whether the student Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment that justifies removal.

If the team determines the student Respondent poses such a threat, it will recommend to the School Leader or Educational Service Provider that the Academy implement an emergency removal (i.e., removal of the student Respondent from the school premises). If the School Leader agrees with the recommendation, the School Leader will notify the student Respondent, remove the student Respondent from the school premises for the remainder of the school day, and begin the process of suspending or expelling the Respondent pursuant to M.C.L. 380.1311. The student Respondent will have an opportunity challenge the team's recommendation and the School Leader's corresponding decision to remove the student Respondent immediately following the implementation of the removal. The challenge may be filed directly with the School Leader or Educational Service Provider – even before any recommendation for expulsion is processed by the School Leader or Educational Service Provider – or by following the due process procedures outlined in Policy 5610 – Emergency Removal, Suspension, and Expulsion of Students and Policy 5611 – Due Process Rights.

Formal Complaint of Sexual Harassment

The Complainant (or his/her parent/guardian if the Complainant is a minor) may file a Formal Complaint with the Title IX Coordinator. Alternatively, the Title IX Coordinator may sign a Formal Complaint. When deciding whether to sign a Formal Complaint, the Title IX Coordinator should consider a variety of factors, including but not limited to: (1) circumstances that suggest an increased risk of repeated Sexual Harassment, such as the alleged Respondent's previous history of threats; (2) whether the Sexual Harassment was perpetrated with a weapon; (3) the age of the student subjected to the Sexual Harassment; (4) and whether the school can obtain relevant evidence through other means, such as from security cameras or witnesses.

The Title IX Coordinator must balance the student's or parent's request that a Formal Complaint not be initiated with the Academy's obligation to provide a safe and non-discriminatory environment for all students.

Even when the Title IX Coordinator signs the Formal Complaint, the Title IX Coordinator is not a Complainant; the Complainant remains the individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

Upon receipt of a Formal Complaint, the Academy will follow its Grievance Process, and undertake an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence. The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

Grievance Process

The Academy's grievance process are detailed in Policy 2266. The grievance process seeks a prompt and equitable resolution of the Formal Complaint.

It is critical that the Title IX Coordinator, and any investigator, decision-maker or person designated to facilitate an informal resolution, does not have a conflict of interest or bias for or against Complainants and Respondents generally or any individual Complainant(s) or Respondent(s).

The Title IX Coordinator shall appoint an investigator (unless the Title IX Coordinator intends to serve as the investigator) and a decision-maker to assist the Academy in resolving the Formal Complaint. Upon being assigned to conduct an investigation or to serve as a decision-maker, the investigator and the decision-maker shall confirm in writing that they do not have a conflict of interest or bias for or against Complainants and Respondents generally. The investigator and decision-maker shall also – after learning the name(s) of the Complainant(s) and Respondent(s) – confirm in writing that they do not have a conflict of interest or bias for or against the individual Complainant(s) and Respondent(s) involved in the specific Formal Complaint.

In appropriate circumstances, the Title IX Coordinator may appoint/assign a person to facilitate an informal resolution process. The facilitator must confirm in writing that s/he does not have a conflict of interest or bias for or against Complainants and Respondents generally, and does not have a conflict of interest or bias for or against the individual Complainant(s) and Respondent(s) involved in the specific Formal Complaint.

Within two (2) days of learning of the identity of the investigator, decision-maker, and/or facilitator of the informal resolution process, the Complainant and/or Respondent may submit a written objection to the Title IX Coordinator concerning the investigator, decision-maker and/or facilitator of the informal resolution process, based upon an actual or perceived conflict of interest or bias for or against complainants and/or respondents generally or either party to the Formal Complaint. The objecting party must explain the basis for the contention that the investigator, decision-maker and/or facilitator of the informal resolution process has a conflict of interest or is biased and submit any substantiating evidence. Within two (2) days of receiving the written objection, the Title IX Coordinator will decide whether to replace the investigator, decision-maker and/or facilitator of the informal resolution process, and notify the parties of the decision, including the reasons for it.

If there is an ongoing criminal investigation involving the incident that is the subject of the Formal Complaint, the Title IX Coordinator will seek to implement the Academy's grievance process in a manner that does not unduly impact the criminal investigation. To the extent appropriate, the Title IX Coordinator and/or the Academy-assigned investigator will consider whether information can be shared among the criminal investigators and the Academy-assigned investigator so that the Complainant(s) is/are not unnecessarily required to give multiple

statements about an alleged traumatic event. If the investigation includes forensic evidence, the Academy-assigned investigator may consult with local law enforcement or a forensic expert to ensure that the Academy-assigned investigator is correctly interpreting the evidence.

While the Academy will not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation, it may delay temporarily the investigation portion of the grievance process while the police are gathering evidence. During this delay in the Title IX investigation, the Title IX Coordinator will implement supportive measures. The Title IX Coordinator will also continue to provide reasonable updates to the parties on the status of the investigation and inform the parties when the school resumes its Title IX investigation.

If the Title IX Coordinator delays the investigation portion of a Title IX investigation due to an ongoing criminal investigation, it will promptly resume and complete the investigation once the Academy learns that the applicable law enforcement has completed its evidence-gathering stage of the criminal investigation. The Academy will not unreasonably delay its investigation or the determination of responsibility until the ultimate outcome of the criminal investigation or the filing of any charges. The Academy may work with its local law enforcement, and local prosecutor's office to learn when the evidence-gathering stage of the criminal investigation is complete.

Off Campus Sexual Harassment

The Academy is required to investigate a Formal Complaint that involves conduct that occurred in the Academy's education program or activity, even if the conduct occurred off academy property. The Academy's education program or activity includes locations, events, and circumstances in the United States over which the Board exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs. The Title IX Coordinator shall determine whether any alleged off-campus Sexual Harassment occurred in an educational program context or academy activity. If it did, the grievance process shall apply and be implemented in the same manner as with an on-campus complaint. Whether the alleged misconduct occurred in this context may not always be apparent from the initial complaint, so the Title IX Coordinator may need to gather additional information to make such a determination. Off-campus educational programs and activities include academy-sponsored field trips, athletic team travel, and academy club events.

Upon receipt of a report of Sexual Harassment made pursuant to Policy 2266, the Title IX Coordinator will conduct a preliminary assessment to determine:

1. Whether the alleged conduct, as reported, falls, or could fall, within the scope of Policy 2266; and
2. Whether the alleged conduct, as reported, constitutes, or could constitute, Sexual Harassment.

If the Title IX Coordinator determines that the alleged conduct could not fall within the scope of Policy 2266, and/or could not constitute Sexual Harassment, even if investigated, the Title Coordinator will close the matter and notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act ("FERPA"). The Title IX Coordinator may refer the report to the Principal or another staff member, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of Policy 2266, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator shall contact the Complainant.

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if such identity is not apparent from the report.

Upon receipt of a Formal Complaint, the Title IX Coordinator will confirm whether the alleged conduct falls within the scope of Policy 2266, including whether the conduct, as reported, constitutes or could constitute Sexual Harassment, and whether the incident(s) occurred within the context of the Academy's education program or activity. If the Title IX Coordinator determines the conduct did not occur in the context of an educational program or activity, or could not constitute Sexual Harassment, even if investigated, the Title IX Coordinator will dismiss the Formal Complaint but may refer the matter to the Principal to consider whether the alleged misconduct, while not a Title IX violation, may still involve the creation of an impermissible hostile or discriminatory environment that is prohibited under the Board's other nondiscrimination and anti-harassment policies.

Supportive Measures

Supportive measures involve non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent. Supportive measures must be offered to the Complainant after a report of Sexual Harassment is made and regardless of whether a Formal Complaint is filed, and to both the Complainant and the Respondent after a Formal Complaint is filed.

The Academy will implement supportive measures that are designed to restore or preserve equal access to the Academy's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Academy's educational environment or deter Sexual Harassment. The Academy will contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, school/campus escort services, mutual restrictions of contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus (including school buildings and facilities), and other similar measures (e.g., instituting changes to extracurricular activities, transportation, and lunch in order to allow the Complainant and Respondent to avoid contact; informing the Complainant of other available resources, such as victim advocacy, academic support, disability services, health and mental health services, the right to report a crime to local law enforcement, the right to seek judicial no-contact, restraining and protective orders, and other forms of legal assistance).

The Title IX Coordinator will determine appropriate supportive measures on a case-by-case basis.

Notice Provided Prior to a Meeting, Interview

In advance of any interview, or meeting, the Title IX Coordinator, investigator and/or decision-maker will transmit a written notice to the Complainant and Respondent that includes:

1. a physical copy of Policy 2266 or a hyperlink to Policy 2266;

2. sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, including the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known);
3. a statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
4. notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice;
5. notifying the Complainant and Respondent of their right to inspect and review evidence;
6. notifying the Complainant and Respondent of the Academy's prohibitions on retaliation and false statements; and
7. information about resources that are available at the Academy and in the community.

Should the Title IX Coordinator decide, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the Title IX Coordinator will provide a supplemental written notice describing the additional allegations to be investigated.

Role of Advisors

All parties are entitled to have an advisor of their choosing to assist them throughout the grievance process. The advisor may be a parent/guardian, relative, friend, attorney, or any other supporter that the party chooses to advise them who is eligible and available. A party may not select a person who is identified as or may be called as a witness to serve as an advisor, with the exception of a parent/guardian.

The parties are expected to notify the Title IX Coordinator, investigator and/or decision-maker of the identity of their advisors at least two (2) days before any meeting, or interview. A party may change advisors during the grievance process but needs to provide a minimum of two (2) days advanced notice to the Title IX Coordinator, investigator and/or decision-maker, as appropriate.

A party's advisor is permitted to accompany the party in all meetings and interviews at which the party is entitled to be present, including intake, investigative interviews, and appeals. Advisors should help their advisees to prepare for each meeting.

Advisors are expected to conduct themselves in a professional and ethical manner, with integrity and in good faith.

All advisors are subject to the same rules, regardless of whether they are an attorney or not. The Title IX Coordinator, the investigator and the decision-maker shall have discretion to determine whether advisors may be permitted to present on behalf of the Complainant or Respondent in a meeting, or interview. Under no circumstances would a parent/guardian be prevented from doing so. Any limitations placed on the advisors shall apply to the advisors for all parties. If it is determined the advisors are not permitted to present on behalf of the Complainant or Respondent, the advisor should request or wait for a break in the proceeding before interacting with Academy officials. Advisors may confer quietly with their advisees as necessary, as long as they do not disrupt the process. Advisors may request breaks, as needed, in order to confer with their advisees.

Prior to the first meeting, interview, the Title IX Coordinator, the investigator or the decision-maker will meet or speak with the advisors to clarify their roles and answer any questions they may have.

Advisors are prohibited from interfering with the investigation or the grievance process. If an advisor acts in a disruptive manner or outside the role at a meeting, interview, the Academy official in charge of the meeting, or interview, will warn the advisor. If the advisor continues to disrupt the proceeding or act in an unprofessional manner, the advisor will be asked to leave and will be dismissed from the meeting, or interview. The meeting or interview will typically continue after the advisor is excused. The Title IX Coordinator will subsequently decide whether the original advisor will be reinstated or will need to be replaced by a different advisor.

In order for the Academy to share documentation related to the allegations pertaining to a student with the student party's advisor, the Eligible Student or the student party's parent/guardian must provide written consent authorizing such sharing.

The parties are not restricted from discussing or sharing information related to the allegations with their advisor or others who may support or assist them in the process.

Consistent with the Title IX regulations, advisors are required to maintain the privacy of records shared with them by the Academy during the grievance process; pursuant to FERPA, the records may not be shared with third parties, disclosed publicly, or used for purposes unrelated to the grievance process.

If an advisor is unable to attend a meeting in person, the Academy official in charge of the meeting will attempt to arrange for the advisor to participate by telephone, video, and/or virtual meeting.

If a party is an Educational Service Provider employee who is entitled to a union representative, the Educational Service Provider employee may be accompanied by both a union representative as well as another advisor at any meeting, or interview.

Remedies

If the decision-maker(s) determines the Respondent is responsible for violating Policy 2266, the Academy will take prompt and effective steps to end the sex discrimination/Sexual Harassment, prevent its recurrence, and remedy its effects. The decision-makers(s)' written determination should recommend to the Title IX Coordinator appropriate remedies that may include, but are not limited to:

1. providing an escort for the Complainant to move safely between classes and activities;
2. ensuring the Complainant and Respondent do not share classes or extracurricular activities (e.g., re-arranging schedules at the Complainant's request);
3. providing medical, counseling, and academic support services to the Complainant and/or Respondent;
4. affording/arranging for the Complainant to have extra time to complete or re-take classes or exams without academic penalty (e.g., the Complainant is provided extensions on due dates for papers, assignments, quizzes, tests, etc.);

5. reviewing disciplinary proceedings/actions against the Complainant to see if there is a causal connection between the Sexual Harassment and the misconduct that may have resulted in the Complainant being disciplined;
6. initiating evaluations for special education or accommodations/modifications under the Individuals with Disabilities Education Improvement Act (IDEA) or Section 504 of the Rehabilitation Act of 1973;
7. imposing disciplinary sanctions/consequences, up to and including expulsion or permanent exclusion on a student Respondent and termination on an employee Respondent; and
8. ordering other global remedies such as:
 1. training or re-training employees;
 2. developing and distributing materials on Sexual Harassment;
 3. conducting Sexual Harassment prevention programs; and/or
 4. conducting climate checks/surveys.

Training

All Employees – given that the Academy is considered to have actual knowledge of Sexual Harassment or allegations of Sexual Harassment if any Educational Service Provider employee has notice of same, all Educational Service Provider employees shall receive training in:

1. the definition of Sexual Harassment (as that term is used in Policy 2266);
2. the person(s) to whom such misconduct must be reported, including the contact information for the Title IX Coordinator(s); and
3. what information should be included in a report, the consequences for failing to report, and what information must be provided to the student and/or parent. For example, Educational Service Provider employees will be trained to inform students about:
 1. the employee's reporting responsibilities; and
 2. their right to file a Title IX complaint with the school and to report a crime to local law enforcement. Educational Service Provider employees shall be trained to report to the Title IX Coordinator(s) both allegations of and actual incident(s) involving Sexual Harassment, without determining first whether the incident or allegations meet the applicable definition of Sexual Harassment or are substantiated.

Title IX Coordinator(s)/Investigator(s)/Decision-Maker(s)/Facilitators of Informal Resolution Process

The Academy's Title IX Coordinator(s), along with any investigator(s), decision-maker(s), or persons designated to facilitate an informal resolution process, shall receive training on the definition of Sexual Harassment (as that term is used in Policy 2266), the scope of the Academy's education program or activity, how to conduct an investigation and grievance

process including appeals and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interests, and bias.

The training shall include information on the following topics:

1. working with and interviewing persons subjected to Sexual Harassment;
2. particular types of conduct that constitute Sexual Harassment;
3. the proper standard of review for Formal Complaints (i.e., preponderance of the evidence);
4. consent, incapacity, coercion, force, and the role age, mental or physical disability, and/or drugs or alcohol can play in a person's ability to consent;
5. the need for remedial actions for the Respondent, Complainant, and school community;
6. how to determine credibility;
7. how to evaluate evidence and weigh it in an impartial manner;
8. how to conduct investigations; and
9. confidentiality.

Decision-makers must also receive training 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.

Investigators must receive training on how to prepare an investigative report that fairly summarizes relevant evidence.

Any materials used to Train IX Coordinators, investigators, decision-makers, and any persons who facilitate an informal resolution process, must not rely on sex stereotypes, and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.

Students

The Academy shall provide age-appropriate education about Sexual Harassment to students. In the younger grades, the Academy will cover these topics in its anti-bullying and harassment training. In the older grades, students will receive training in specific topics, including:

1. Title IX and what constitutes Sexual Harassment under the academy's policies;
2. the academy's definition of consent applicable to sexual conduct, including examples;
3. how the academy analyzes whether conduct was unwelcome under Title IX;
4. how the academy analyzes whether unwelcome sexual conduct creates a hostile environment;

5. reporting options, including how to file a Formal Complaint and any timeframes set by the academy for reporting;
6. the academy's grievance process used to address reports of and Formal Complaints alleging Sexual Harassment;
7. disciplinary code provisions relating to Sexual Harassment and the consequences of violating those provisions;
8. how to report Sexual Harassment to school officials and local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance; and
9. Title IX's protections against retaliation.

The training will also encourage students to report Sexual Harassment, even if they are unsure whether the incident meets the definition of Sexual Harassment contained in Policy 2266. The Academy will emphasize that its primary concern is student safety, and that use of alcohol or drugs never makes the alleged victim at fault for Sexual Harassment.

The Academy shall specifically inform students that all Educational Service Provider employees are responsible for reporting information involving Sexual Harassment to the Title IX Coordinator(s), including the need to report the names of the alleged Complainant and Respondent, as well as relevant facts including the date, time, and location. The issue of confidentiality will be discussed during the training.

The Academy shall provide the above trainings on a regular basis and periodically review their efficacy.

Retaliation

Federal law strictly prohibits retaliation against a Complainant, Respondent, or witness. The Title IX Coordinator will inform the Complainant, Respondent and other individuals who participate in the grievance process of this prohibition and direct the Complainant to report any retaliation, whether by students, Educational Service Provider employees, or other members of the Academy community or Third Parties that is directed toward the Complainant. Upon learning of alleged retaliation, the Title IX Coordinator, School Leader and/or the Educational Service Provider will take strong responsive action as appropriate.

Contact Information for the Office of Civil Rights

Individuals may submit questions or file complaints relating to Title IX with the U.S. Department of Education's Office for Civil Rights at any time. OCR's regional office in Cleveland has jurisdiction for all of Michigan:

U.S. Department of Education
Office for Civil Rights
Cleveland Office
1350 Euclid Avenue
Suite 325
Cleveland, Ohio 44115
(216) 522-4970
FAX: (216) 522-2573

TDD: (216) 522-4944
E-mail: OCR.Cleveland@ed.gov
Web: <http://www.ed.gov/ocr>

Retention of Investigatory Records and Materials

The Title IX Coordinator is responsible for overseeing retention of all records that must be maintained pursuant to Policy 2266. All investigators, decision-makers (including decision-makers of appeals) and facilitators of informal resolution processes shall retain all documents, electronically stored information ("ESI"), and electronic media (as defined in Policy 8315) created and/or received as part of an investigation, determination of responsibility, or informal resolution process, which may include but are not limited to:

1. all written reports, allegations, Formal Complaints, statements, and responses pertaining to an alleged violation of Policy 2266;
2. any narratives that memorialize oral reports, allegations, Formal Complaints, statements, and responses pertaining to an alleged violation of Policy 2266;
3. any documentation that memorializes the actions taken by Academy personnel or individuals contracted or appointed by the Board to fulfill its responsibilities related to the investigation, determination of responsibility, and/or the Academy's response to an alleged violation of Policy 2266;
4. written witness statements;
5. narratives, notes from, or audio, video, or digital recordings of witness interviews/statements;
6. e-mails, texts, or social media posts that directly relate to or constitute evidence pertaining to an alleged violation of Policy 2266 (i.e., not after-the-fact commentary about or media coverage of the incident);
7. notes or summaries prepared contemporaneously by the investigator in whatever form made (e.g., handwritten, keyed into a computer or tablet, etc.), but not including transitory notes whose content is otherwise memorialized in other documents;
8. written disciplinary sanctions issued to students or employees and other documentation that memorializes oral disciplinary sanctions issued to students or employees for violations of Policy 2266;
9. dated written determinations of responsibility/investigative reports (including summaries of relevant exculpatory and inculpatory evidence) and other documentation that memorializes oral notifications to the parties concerning the outcome of the investigation, including any consequences imposed as a result of a violation of Policy 2266;
10. documentation of any supportive measures offered and/or provided to Complainants and/or Respondents, including no contact orders issued to both parties, the dates the no contact orders were issued, and the dates the parties acknowledged receipt of the no contact orders;

11. documentation of all actions taken, both individual and systemic, to stop the discrimination or harassment, prevent its recurrence, eliminate any hostile environment, and remedy its discriminatory effects;
12. copies of the Board policy and/or procedures/guidelines used by the Academy to conduct the investigation, and any documents used by the Academy at the time of the alleged violation to communicate the Board's expectations to students and staff with respect to the subject of Policy 2266 (e.g., Student Code of Conduct and/or Employee/Administrator Handbooks);
13. copies of any documentation that memorializes any informal resolution to a Formal Complaint of Sexual Harassment;
14. documentation of any training provided to Educational Service Provider employees related to Policy 2266, including but not limited to, notification of the prohibitions and expectations of staff set forth in the policy and the role and responsibility of all Educational Service Provider employees related to enforcement of Policy 2266, including their duty to report alleged violations of the policy and/or conducting an investigation and making a determination of responsibility related to any Formal Complaints of Sexual Harassment;
15. documentation that any rights or opportunities that the Academy made available to one party during the investigation were made available to the other party on equal terms;
16. copies of any notices sent to the Respondent that detail allegations of conduct that may constitute a violation of Policy 2266;
17. copies of the notices sent to the Complainant and Respondent in advance of any interview, hearing or meeting;
18. copies of any documentation or evidence used during an investigatory meeting or hearing, including the investigative report, and any written responses submitted by the Complainant or the Respondent to it.

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

The documents, ESI, and electronic media (as defined in Policy 8315) created or received as part of an investigation or proceeding related to determination of responsibility shall be retained in accordance with Policy 8310, Policy 8315, Policy 8320, and Policy 8330 for not less than seven (7) calendar years, but longer if otherwise required by the Academy's records retention schedule.

New Guideline Spring 2020