



**CHEROKEE**  
CHARTER ACADEMY



# **TITLE IX FORMAL GRIEVANCE PROCESS**



**#CCAFAMILY**



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## PURPOSE

The purpose of this grievance process is to address formal complaints of sexual harassment. The process shall be triggered upon receipt of a formal complaint by the Title IX Coordinator.

Any School employee with actual knowledge of sex discrimination, including sexual harassment in an education program or activity as defined in the Policy, must report the sex discrimination to the Title IX Coordinator. Failure to report may result in disciplinary action against the employee, up to and including termination.

Any person may report sex discrimination, including sexual harassment as defined by this Policy, (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), to the Title IX Coordinator in person, by mail, by telephone, by electronic mail, or through other means specified by the School. Reports may be made at any time, including during non-business hours.

Complainants and Respondents shall be treated equitably throughout the process. All evidence, both inculpatory and exculpatory, shall be evaluated objectively. An individual's status as a Respondent will not be considered a negative factor during consideration of the grievance. Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct until the grievance process concludes and a determination regarding responsibility is issued. Similarly, credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

The presumption shall be that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. No disciplinary sanctions or other actions that are not supportive measures shall be imposed against a Respondent prior to the completion of the grievance process. Upon determination of responsibility for sexual harassment by a Respondent, the Complainant shall be provided remedies designed to restore or preserve equal access to the School's education program or activity. Such remedies may include the same individualized services as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

Retaliation against anyone for participation in this process is strictly prohibited.

## A. Definitions

1. **Actual Notice** means notice of sexual harassment or allegations of sexual harassment to a School's Title IX Coordinator or any official of the School who has authority to institute corrective measures on behalf of the School, or to any employee of an elementary and secondary 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 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 School. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.
2. **Appeal Officer** means a trained individual appointed by the School who will review and make a decision on a properly filed appeal. The Appeal Officer must be free from bias or conflict of interest and must not be the Title IX Coordinator, the Investigator, or the Decision Maker(s).
3. **Complainant** is an individual, a student or employee, who is alleged to be the victim of conduct that could constitute sexual harassment. The Complainant must be participating in or attempting to participate in an education program of the School. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party under this Policy, unless the Title IX Coordinator is alleged to be the victim of conduct that could constitute sexual harassment.
4. **Decision Maker** means the trained person(s) responsible for making a determination regarding responsibility. The Decision Maker cannot be the same person(s) as the Title IX Coordinator, the Investigator, or the Appeal Officer.
5. **Education Program or Activity** means locations, events, or circumstances over which the School exercised substantial control over both the Respondent and the context in which the sexual harassment occurs.
6. **Formal complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the School investigate the allegation of sexual harassment. At the time of filing a formal complaint, a Complainant must be participating in or

attempting to participate in the education program or activity of the School with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator, or by any other method specified by the School. 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 School) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.

7. **Grievance Process** means the provisions, rules, or practices included within this Policy and the administrative procedures for processing formal complaints of sexual harassment. The Grievance Process shall be applied equally to both the Complainant and the Respondent.
8. **Investigator** means a trained person(s) appointed by the School who is tasked with conducting the investigation into allegations of sexual harassment addressed in a formal complaint. The Investigator does not need to be an employee of the School and may be outside counsel or any other person designated by the School. The Investigator shall not be the Title IX Coordinator, the Decision Maker, or the Appeal Officer.
9. **Remedial Actions or Remedial Remedies** means those actions intended to restore or preserve a Complainant's equal access to the educational programs and activities of the School.
10. **Respondent** is any individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
11. **Standard of Evidence** means the preponderance of evidence standard that is to be used during the investigation and final determination of a formal complaint. Preponderance of evidence means that the evidences shows that the action alleged is more likely to have occurred than not to have occurred. This standard shall be applied for all formal complaints of sexual harassment against students and employees.
12. **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 before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are

designed to restore or preserve equal access to the School's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the 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 or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The School must maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the School to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

## **B. Notice to Parties**

1. Upon receipt of a formal complaint, the Title IX Coordinator must provide written notice to all known parties that includes the following:
  - a) Notice of the School's grievance process, including the informal resolution process.
  - b) Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
    - (1) Sufficient details include 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.
  - c) A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
  - d) Notice that the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
  - e) A statement that knowingly making false statements or knowingly submitting false information during the grievance process is prohibited and a violation of the School's code of conduct and may be subject to disciplinary action.

Written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings must be provided to a party whose participation is invited or expected, with sufficient time for the party to prepare to participate.

If, in the course of an investigation, the School decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice, then the School must provide subsequent notice of the additional allegations to the parties whose identities are known.

### **C. Consolidation of Complaints**

1. The School may consolidate formal complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular "party," "Complainant," or "Respondent" include the plural, as applicable.

### **D. Dismissal of a Formal Complaint**

1. The School must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in the School's education program or activity, or did not occur against a person in the United States, then the School must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of the School's code of conduct.
  - a) A formal complaint or any allegations therein may be dismissed, if at any time during the investigation or hearing:
  - b) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
  - c) The Respondent is no longer enrolled or employed by the School; or
  - d) Specific circumstances prevent the School from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal required or permitted by this policy section, the Title IX Coordinator must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

## **INVESTIGATION**

### **A. Investigator**

1. The Title IX Coordinator will designate one or more trained individuals to investigate the formal complaint (i.e., the Investigator). The Investigator will begin an investigation as soon as practicable and generally not later than 10 business days after the written notice of the formal complaint was delivered to all parties. The Investigator, however, will ensure that the Respondent receives sufficient time to prepare prior to any initial interview.

### **B. Burden of Proof**

1. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the School and not on the parties, provided that the School cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the School obtains that party's voluntary, written consent to do so for a grievance process under this policy (if a party is a student under the age of 18 then the School must obtain the voluntary, written consent of a his or her parent or legal guardian).

### **C. Timeline**

1. The School will endeavor to complete investigations within sixty (60) days of the date on which the normal complaint was received; however, the School's primary objective is a thorough and equitable investigation and grievance process.

The School shall coordinate its investigation and grievance process with any other ongoing criminal investigation of the incident, if any. The School may determine whether to delay its investigation pending the conclusion of a criminal investigation or for criminal proceedings to begin. If the fact-finding portion of the investigation is suspended due to the existence of a criminal investigation, the



School's investigation shall resume promptly once law enforcement officials have completed their evidence gathering state of the criminal investigation.

In the event of a temporary delay of the process or the limited extension of time frames for good cause, the Title IX Coordinator shall provide written notice to both the Complainant and the Respondent notifying them of the delay or extension and providing the reason for the action.

Good cause for a delay of the process or extension of the time frames may include, but is not limited to, considerations such as: (a) The absence of a party; a party's advisor, or a witness; (b) Concurrent law enforcement activity; or (c) The need for language assistance or accommodation of disabilities.

#### **D. Investigation Process**

1. An investigation must include interviews with the Complainant, Respondent, and any witnesses. An investigation may include, but is not limited to, the following:
  - a) review of any documentary or electronic evidence;
  - b) a review of medical evidence if a waiver has been obtained by the party to which the medical records belong;
  - c) a review of security data; and
  - d) a review of any other material which the Investigator deems relevant to an assessment of the facts surrounding the formal complaint.

Neither party shall be restricted from discussing the allegations under investigation, nor shall they be restricted from gathering and presenting relevant evidence.

#### **E. Advisors**

1. Both parties shall have the same opportunity to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. An advisor may be, but is not required to be, an attorney. The School may not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding; however, the School may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

## **F. Evidence**

1. All parties shall have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.

Both parties shall have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the School does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

Prior to completion of the investigative report, the School must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the Investigator will consider prior to completion of the investigative report. If there will be a hearing, the School must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

## **G. Investigative Report**

1. Upon receipt of each party's review of the evidence or after 10 days, whichever occurs first, the Investigator must create an investigative report that fairly summarizes relevant evidence.

At least ten (10) days prior to submitting the investigative report to the Decision Maker, or prior to a hearing if one will be held, the preliminary report must be sent to each party and their advisor, if any, in an electronic format or a hard copy, for their review and written response. The Investigator shall consider the written responses prior to completion of the report and include the written responses as an exhibit to the report.

## **H. Cross-Examination**

1. After sending the completed investigative report to both parties, elementary and secondary schools are not required to hold an in person hearing prior to making a

determination regarding responsibility. In the absence of a hearing, and prior to making a responsibility determination, the Decision Maker(s) will give each party an opportunity to submit written, relevant questions that a party wants asked of any party or witness; will provide each party with the answers; and will allow for additional, limited follow-up questions from each party. If the Decision Maker(s) determines that a proposed question is not relevant it will be excluded and an explanation must be provided to the proposing party regarding the relevancy determination. With or without a hearing, questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, 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 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.

## **I. Determination of Responsibility**

1. After all questions and answers have been received, the Decision Maker must issue a written determination of responsibility regarding the allegations based on a preponderance of evidence. The written determination must be provided to the parties simultaneously. The Decision Maker will strive to issue the written determination regarding responsibility within 14 days after the hearing. The determination regarding responsibility becomes final either on the date that the School provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The written determination must include the following:
  - a) Identification of the allegations potentially constituting sexual harassment as defined in §106.30;
  - b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - c) Findings of fact supporting the determination;
  - d) Conclusions regarding the application of the School's code of conduct to the facts;

- e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the School imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the School's education program or activity will be provided by the School to the Complainant; and
- f) The School's procedures and permissible bases for the Complainant and Respondent to appeal.

## **J. Sanctions and Remedies**

1. The Title IX Coordinator will be responsible for the effective implementation of any resulting sanctions or remedies. The list of potential sanctions or remedies includes one or more of the following:

### **For Students:**

- Written Warning
- No-contact orders
- Removal from specific courses or activities
- Disciplinary probation
- Suspension
- Expulsion
- Transcript notation
- Other sanctions as appropriate

### **For Employees:**

- Written Warning
- Performance improvement plan
- Required training or education
- Loss of pay increase
- Suspension with or without pay
- Termination
- Other sanctions as appropriate

## **K. Appeal**

1. Either party may appeal a determination regarding responsibility or the dismissal of a formal complaint or any allegations on the following bases:
  - 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 Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or
- d) Any additional bases offered by the School.

The appeal must be submitted in writing to the Principal within ten (10) calendar days from receipt of the Decision Maker's final written determination. The notice of appeal must include the name of the Complainant, name of the Respondent, the decision or action being appealed, and an explanation of the grounds for appeal.

Upon receipt of an appeal, the School will provide written notice of the appeal to both parties and begin to implement appeal procedures equally for both parties. Each party will be given a ten (10) business days to provide a written statement supporting or challenging the appealed action

The Title IX Coordinator shall appoint an Appeal Officer who will review and make a decision on the appeal. The Appeal Officer must be free from bias or conflict of interest and must not be the Title IX Coordinator, the Investigator, or the Decision Maker(s).

As soon as is reasonably practicable, and generally within fourteen (14) business days after receipt of the parties' written statements, the Appeal Officer will issue a written decision regarding the appeal simultaneously to both parties. The decision will describe the result of the appeal and the rationale for the decision. The decision of the Appeal Officer is final.

## **INFORMAL RESOLUTION**

- A. At any time after a formal complaint is filed and before a determination regarding responsibility is made, the School may facilitate an informal resolution process, such as mediation, that does not involved a full investigation and adjudication.

Informal resolution may not be required as a condition of enrollment or employment or continued enrollment or employment, or enjoyment of any other right. Additionally, informal resolution may not be used to resolve allegations that an employee sexually harassed a student.

All parties must provide voluntary, written consent to move forward with the informal resolution process. However, at any time prior to agreeing to 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.

Prior to beginning informal resolution, parties must be notified in writing of (1) the allegations; (2) the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; and (3) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.