

Brevard Academy –Student Title IX Policy and Grievance Procedures

Preamble

As a recipient of federal financial assistance for education programs and activities, Brevard Academy (the “Academy”) is required by Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681 *et seq.* and the rule promulgated on May 19, 2020 by the U.S. Department of Education entitled Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026 (collectively, “Title IX”) to ensure that all of its education programs and activities do not discriminate on the basis of sex or gender, including sexual orientation and gender identity and pregnancy or parenting status.

The Academy is committed to providing an educational environment and workplace that is free from sex and gender discrimination, harassment, misconduct, and retaliation. The Academy values and upholds the rights, dignity, and respect of its faculty, staff, students, and visitors, and is committed to fair and equal grievance processes that align with applicable law and our values as a community.

Sexual harassment, sexual assault, dating violence, domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX and by the Academy. The Academy also prohibits retaliation against any person participating in any Title IX investigation or complaint process internal or external to the Academy. All such behavior falls under the scope of this policy, and all other impermissible conduct will be addressed through the appropriate channels under the student code of conduct. The procedures set forth herein will be reserved only for those alleged actions that fall within the scope of this policy.

The Academy’s Sex/Gender Non-Discrimination and Anti-Retaliation Policy is outlined below. The Academy encourages anyone who has questions or concerns about sex or gender discrimination, harassment, misconduct, or retaliation at the Academy, or who would like to report a Title IX violation in good faith, to contact Ted Duncan, School Director and Title IX Coordinator.

Consistent with the applicable laws of the jurisdiction in which the Academy is located, a student’s parent or guardian must be permitted to exercise the rights granted to their child under the Academy’s policy, whether such rights involve requesting supportive measures, filing a formal complaint, or participating in the investigative and decision-making processes. A student’s parent or guardian must also be permitted to accompany the student to meetings, interviews, and other aspects of the processes outlined in this policy in order to exercise rights on behalf of the student.

Covered Behaviors and Corrective Action

This policy applies to behavior that takes place in connection with any education program or activity sponsored by the Academy. Any violation of this policy is serious and will be addressed with appropriate corrective action by the Academy.

Retaliation

The Academy prohibits and does not tolerate retaliation against any person—student, employee, contractor, volunteer, visitor, or otherwise—for reporting in good faith a violation or reasonably suspected violation of this policy or of Title IX more broadly, supporting someone for reporting in good faith a violation or reasonably suspected violation of this policy or Title IX more broadly, or participating in the investigation of reported violations of this policy or Title IX more broadly. The Academy will take appropriate corrective action against anyone who violates this prohibition on retaliation.

Definitions

Sexual Harassment – Conduct on the basis of sex that satisfies one or more of the following criteria:

- An Academy employee conditioning the provision of an aid, benefit, or service of the Academy on an individual’s participation in unwelcome sexual conduct;
- Unwelcome conduct 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
- Conduct that meets the definition of “sexual assault” as defined in 20 U.S.C. § 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. § 12291(a)(11), “domestic violence” as defined in 34 U.S.C. § 12291(a)(12), or “stalking” as defined in 34 U.S.C. § 12291(a)(36).

Sexual harassment may, but need not, include acts of sexual violence. Sexual violence is one form of sex discrimination prohibited by Title IX. Acts of sexual violence, including sexual assault, dating violence, domestic violence, and stalking, are not only subject to the Academy’s disciplinary procedures, but also to applicable criminal laws. Nothing in this policy should be interpreted to discourage reports of acts subject to Title IX to local law enforcement, as appropriate.

Sexual Assault – An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (defined at 20 U.S.C. § 1092(f)(6)(A)(v)).

Dating Violence – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship is determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship (defined at 34 U.S.C. § 12291(a)(11)).

Domestic Violence – Felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the complainant under the family or domestic violence laws of the State of North Carolina, including the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim; a person

who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; a person who shares a child in common with the victim; or a person who commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the State of North Carolina (as defined at 34 U.S.C. § 12291(a)(12)).

Stalking – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or to suffer substantial emotional distress (as defined at 34 U.S.C. § 12291(a)(36)).

Actual Knowledge – Notice of sexual harassment or allegations of sexual harassment to the Academy’s Title IX Coordinator or to any Academy employee. Imputation of knowledge based solely on vicarious liability or constructive notice is not sufficient to constitute actual knowledge. Actual knowledge is not present when the only employee of the recipient with actual knowledge is the respondent. Notice includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

Complainant – An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Education Program or Activity – Locations, events, or circumstances over which the Academy exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

Formal Complaint – A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the Academy investigate the allegation of sexual harassment.

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

Receiving and Responding to Reports of Sexual Harassment

Any Academy employee with actual knowledge of sexual harassment in any education program or activity of the Academy against a person in the United States must immediately report the violation to the Title IX Coordinator. Students, parents, volunteers, visitors, and others with actual knowledge of such sexual harassment are also strongly encouraged to report sexual harassment to the Title IX Coordinator, although reports may be made to any Academy employee. The Academy will respond promptly and in a manner that is not deliberately indifferent to all reports of sexual harassment.

A report of an actual or reasonably suspected Title IX violation may be made orally or in writing. Although there is no time requirement for making a report or filing a formal complaint under Title IX, a report and/or formal complaint should be submitted or filed as soon as possible after the alleged Title IX violation occurs. Failure to report an alleged violation in a timely manner may impede the ability of the Academy to investigate fully.

It is the Title IX Coordinator’s responsibility to process all reports of Title IX violations. When a complaint or report of sexual harassment is made under this policy, the Title IX Coordinator will: (1) confidentially contact the complainant to offer supportive measures, consider the complainant’s wishes with respect to supportive measures, and inform them of the availability of supportive measures with or without filing a formal complaint; (2) explain the process for how

to file a formal complaint; (3) inform the complainant that any report made in good faith will not result in discipline; and (4) respect the complainant's wishes with respect to whether to investigate unless the Title IX Coordinator determines it is necessary to pursue the complaint in light of a health or safety concern for the community.

A formal complaint must be made in writing, signed, and filed with the Title IX Coordinator by a complainant, an individual authorized to file on behalf of the complainant, or the Title IX Coordinator. The formal complaint must contain information describing the conduct that allegedly constitutes a Title IX violation, and identify with reasonable particularity the respondent(s) and any witnesses to the alleged conduct. If a complainant is unwilling or unable to provide a written statement setting forth this information, the Title IX Coordinator will ask for those details during an oral interview. All formal complaints will be investigated. Once a formal complaint is made, the Academy will respond and offer ongoing supportive measures to the involved parties throughout the investigation and grievance process.

A complainant may withdraw a formal complaint at any time by notifying the Title IX Coordinator in writing of the withdrawal. If a formal complaint does not set forth a Title IX violation, the complaint will be dismissed. Formal complaints that are false or misleading will also be dismissed, as appropriate. Individuals who knowingly submit or file a false or misleading report or formal complaint alleging a Title IX violation are subject to appropriate disciplinary action.

Supportive Measures

Supportive measures are 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. Supportive measures are designed to restore or preserve equal access to the Academy's education programs or activities without unreasonably burdening the other party, and may include measures designed to protect the safety of all parties or the educational environment, or to deter sexual harassment. Supportive measures may include counseling, deadline extensions or other course-related adjustments, modifications of class schedules, security escort services, mutual no-contact restrictions between parties, leaves of absence, increased security and monitoring in certain areas of the Academy's campus, and other similar measures. Supportive measures will be confidential, to the extent that such confidentiality does not impair the Academy's ability to provide the supportive measures.

Training

The Title IX Coordinator, any individuals designated by the Title IX Coordinator to conduct an investigation under this policy, any individuals who facilitate an informal resolution of any complaints under this policy, and any individuals designated by the Title IX Coordinator to make a determination under this policy, including, but not limited to, all members of the Academy's Board of Directors, will receive appropriate training regarding Title IX and its requirements. Such training must occur at least once annually.

Informal Resolution

Informal resolution is available only after a formal complaint has been filed, prior to a determination of responsibility, and if the complainant and respondent voluntarily consent to the process in writing. Informal resolution is not available in cases in which an employee is alleged to have sexually harassed a student. Informal resolution may involve

agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the respondent; indirect action by the Title IX Coordinator; and other forms of resolution that can be tailored to the needs of the parties.

With the voluntary consent of the parties, informal resolution may be used to agree upon disciplinary sanctions. Disciplinary action will only be imposed against a respondent where there is a sufficient factual foundation and both the complainant and the respondent have agreed to forego the additional procedures set forth in the Academy's policy and accept an agreed upon sanction. Any person who facilitates an informal resolution will be trained and free from conflicts of interest or bias for or against either party.

Investigation Process

The Title IX Coordinator will ensure that all formal complaints are timely, impartially, and appropriately investigated in accordance with applicable law. The Academy will maintain the confidentiality of reports or formal complaints and their contents to the extent reasonably possible and consistent with the investigation; however, there may be instances in which confidentiality cannot be maintained. There may also be instances in which the Academy has decided to disclose certain information it receives to state or local authorities, or to others in its discretion in order to protect the Academy community.

The Title IX Coordinator or an investigator designated by the Title IX Coordinator will conduct all investigations of alleged Title IX violations. The investigation will proceed under a presumption that the respondent is not responsible for the alleged conduct. The Title IX Coordinator or its designated investigator will be unbiased and free from conflicts of interest.

The investigator will have full authority to investigate, including authority to interview witnesses and gather evidence. Each party may choose to offer witnesses and other evidence to the investigator for consideration during the investigation. Each party will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint.

The timeframe for completing an investigation may vary depending on the circumstances, but in all events the Title IX Coordinator or designated impartial investigator will ensure that the timeframes for completing investigations are reasonable. The Title IX Coordinator or designated impartial investigator will endeavor to complete any investigation within sixty (60) days of the submission of a formal complaint alleging a violation of this policy. Extensions of this time period may be granted by the Title IX Coordinator or designated impartial investigator for good cause. The Title IX Coordinator or designated impartial investigator will maintain appropriate documentation of the investigation.

Decision-Making Process

Upon the conclusion of the Title IX Coordinator or designated impartial investigator's investigation, a panel of three members of the Academy's Board of Directors (the "Panel"), exclusive of the Chairperson of the Board of Directors (the "Board Chair"), will engage in an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—as gathered by the investigator.

The Panel's evaluation will not include a live hearing; however, the Panel will facilitate a written question and answer period between the complainant and respondent. Each party may submit their written questions for the other party and witnesses to the chairperson of the Panel for review. The questions must be relevant to the case. The chairperson of the Panel will determine if the questions submitted are relevant and will then forward the relevant questions to the other party or witnesses for a written response. The Panel can then review all the responses, determine what is relevant or not relevant, and weigh all the available, relevant evidence.

An individual's character or reputation with respect to other sexual activity is not relevant and will not be considered as evidence by the Panel. Similarly, an individual's prior or subsequent sexual activity is typically not relevant and will only be considered as evidence by the Panel under limited circumstances. For example, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve other questions raised in the investigation. It may also be relevant to show that someone other than the respondent committed the conduct alleged by the complainant. The chairperson of the Panel will determine the relevance of this information, and both parties will be informed in writing if evidence of prior sexual history is deemed relevant.

In considering the evidence, the Panel will not base credibility determinations on a person's status as a complainant, respondent, or witness. Like the investigation, the decision-making process will proceed under a presumption that the respondent is not responsible for the alleged conduct. The Panel will not draw any adverse inferences from a complainant's or respondent's decision not to participate or not to answer questions during the investigative or decision-making process.

The Panel will reach findings and conclusions based on the information available. Using a preponderance of the evidence standard (*i.e.*, a "more likely than not" standard), the Panel will make a determination regarding the respondent's responsibility for the alleged Title IX violation(s). When it reaches its final decision regarding the respondent's responsibility, the Panel will issue a written statement detailing the findings and conclusions supporting its determination. The Panel will notify the complainant and respondent promptly after making its decision.

More information is available from the Office for Civil Rights of the United States Department of Education.

Remedies

If the investigation reveals and the Panel finds a Title IX violation, the Academy will take prompt and appropriate steps to end the offending conduct and prevent its recurrence. Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct, any record of prior discipline for similar violations, or both. Remedies for offending students may include, but are not limited to, as appropriate in the Panel's discretion, the following: in-school or out-of-school suspension, expulsion, and exclusion. Disciplinary consequences for employees are governed by applicable state law and Academy policy and range from a notation in the employee's personnel file up to termination.

Appeals

A party may appeal the decision of the Panel on the following bases: (1) procedural irregularity that affected the outcome of the investigation; (2) new evidence that was not reasonably available at the time the matter was resolved and that could affect the outcome of the matter; and (3) the Title IX Coordinator or designated impartial investigator, or the Panel as decision-maker, 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. An appeal must be made in writing and provided to the Title IX Coordinator within ten (10) days of the date on which written notice of the resolution of the formal complaint is provided to the parties by the Panel. The Board Chair or his/her designee will serve as an impartial reviewer of Title IX appeals. After the review, the Board Chair or his/her designee will make a decision about the appeal and promptly provide written notice of the outcome of the appeal to both parties.

Recordkeeping

The Academy will maintain records regarding Title IX complaints, investigations, resolutions, and appeals, as well as training materials related to Title IX, as required by Title IX.

Title IX Coordinator Contact Information

Please direct questions, concerns, reports, and formal complaints to the Academy's Title IX Coordinator:

Ted Duncan
School Director and Title IX Coordinator
tduncan@brevardacademy.org
828-885-3111