

## **Title IX Policy and Procedure**

### **[PROVISIONS IN BRACKETS/HIGHLIGHTED ARE RECOMMENDATIONS, BUT MAY BE MODIFIED TO MEET SCHOOL SPECIFIC PURPOSES]**

Colorado Springs Charter Academy (the “School”) is committed to providing a safe and inclusive learning and working environment for its community members. In accordance with Title IX, the School does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that the School operates, as required by Title IX, including in admissions and employment. Sex discrimination includes, without limitation, sex-based harassment and retaliation. Except as permitted by law or regulation no person shall, on the basis of sex, be excluded from participation in, be denied admission to, be denied the benefits of, or otherwise be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by the School.

Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. The School must not adopt or implement any policy, practice, or procedure concerning a student’s current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.

For purposes of this Policy, conduct that is deemed to occur under the School’s “education program or activity” will include, but is not limited to, any conduct that is subject to the School’s disciplinary authority. The School has an obligation to address a sex based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the School’s education program or activity or outside the United States.

In the limited circumstances in which Title IX permits different treatment or separation on the basis of sex, the School will not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm. Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex.

### **Definitions**

1. **Appeals Officer** means the person (or group of people) who reviews and rules on any Appeal properly filed by a Party. This person(s) must be free from conflicts of interest and bias.
2. **Complainant** means:
  - a. A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations; or
  - b. A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or its regulations and who was participating or attempting to participate in the School’s education program or activity at the time of the alleged sex discrimination.

3. **Complaint** means an oral or written request to the School that objectively can be understood as a request for the School to investigate and make a determination about alleged discrimination under Title IX or its regulations.
4. **Confidential Employee** means:
  - a. An employee of the School whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
  - b. An employee of the School whom the School has designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services.
5. **Decisionmaker** means the person who reviews the relevant evidence collected by the investigator and makes a determination regarding the responsibility or not of the respondent for the alleged conduct. This person must be free from conflicts of interest and bias. This person must be trained in accordance with this policy. The decisionmaker may be the same individual as the investigator.
6. **Determination** means the finding by the decisionmaker determining, using a preponderance of the evidence standard, that the Respondent was or was not responsible for the alleged conduct; or a finding by the Appeals Officer consistent with the process for Appeals under this policy.
7. **Disciplinary Sanctions** means consequences imposed on a respondent following a determination under Title IX that the respondent violated the School's prohibition on sex discrimination.
8. **Education Program or Activity** means locations, events, or circumstances over which the school exercises substantial control, including disciplinary authority, over both the complainant and respondent and the context in which the sex-based harassment occurs.
9. **Informal Resolution** means an alternative dispute resolution process facilitated by an Informal Resolution Facilitator, which may include but is not limited to a mediation or restorative justice process between the Parties.
10. **Informal Resolution Facilitator** means the person who conducts an Informal Resolution process as outlined in this policy. This person must be free from conflicts of interest and bias. This person must be trained in the methods of Informal Resolution being used, and also must be trained in accordance with this policy.
11. **Investigator** means the person who conducts the evidence gathering phase of the grievance process, and compiles the relevant evidence for the decisionmaker to use to make a determination. This person must be free from conflicts of interest and bias. This person must be trained in accordance with this policy. The investigator may be the same individual as the decision maker.
12. **Parental status** means the status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:
  - a. A biological parent;
  - b. An adoptive parent;
  - c. A foster parent;
  - d. A stepparent;

- e. A legal custodian or guardian;
  - f. In loco parentis with respect to such a person; or
  - g. Actively seeking legal custody, guardianship, visitation, or adoption of such a person.
13. **Party** means a complainant or respondent.
14. **Peer Retaliation** means retaliation by a student against another student.
15. **Pregnancy or Related Conditions** means:
- a. Pregnancy, childbirth, termination of pregnancy, or lactation;
  - b. Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
  - c. Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
16. **Relevant** means related to the allegations of sex discrimination under investigation as part of these grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.
17. **Remedies** means measures provided, as appropriate, to a complainant or any other person the School identifies as having had their equal access to the School's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the School's education program or activity after a School determines that sex discrimination occurred.
18. **Respondent** means a person who is alleged to have violated the School's prohibition on sex discrimination. The requirements related to a respondent apply only to sex discrimination complaints alleging that a person violated the School's prohibition on sex discrimination. When a sex discrimination complaint alleges that a School policy or practice discriminates on the basis of sex, the School is not considered a respondent.
19. **Retaliation** means intimidation, threats, coercion, or discrimination against any person by the School, a student, or an employee or other person authorized by the School to provide aid, benefit, or service under the School's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulations.
20. **Sex-based Harassment** is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:
- a. Quid pro quo harassment. An employee, agent, or other person authorized by the School to provide an aid, benefit, or service under the School's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
  - b. Hostile environment harassment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the School's education program or activity (i.e., creates a hostile environment). Whether a

hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- i. The degree to which the conduct affected the complainant's ability to access the School's education program or activity;
  - ii. The type, frequency, and duration of the conduct;
  - iii. The parties' ages, roles within the School's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
  - iv. The location of the conduct and the context in which the conduct occurred; and
  - v. Other sex-based harassment in the School's education program or activity.
- c. Specific offenses.
- i. Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
  - ii. Dating violence meaning violence committed by a person:
    1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
    2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
      - a. The length of the relationship;
      - b. The type of relationship; and
      - c. The frequency of interaction between the persons involved in the relationship.
  - iii. Domestic violence meaning felony or misdemeanor crimes committed by a person who:
    1. Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the School, or a person similarly situated to a spouse of the victim;
    2. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
    3. Shares a child in common with the victim; or
    4. Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.
  - iv. Stalking, meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
    1. Fear for the person's safety or the safety of others; or
    2. Suffer substantial emotional distress.
21. **Student** means a person who has gained admission.
22. **Student with a Disability** means a student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), (20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3).
23. **Supportive Measures** means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

- a. Restore or preserve that party's access to the School's education program or activity, including measures that are designed to protect the safety of the parties or the School's educational environment; or
  - b. Provide support during the School's grievance procedures or during an informal resolution process.
24. **Title IX Coordinator** means the person designated to ensure the School's compliance with Title IX, including the School's response to reported Title IX concerns and/or complaints and managing the grievance process. This person must be free from conflicts of interest and bias. This person must be trained in accordance with this policy. This person may be the same as the investigator and decision-maker. If the School at any time has more than one Title IX Coordinator, it must designate a lead Title IX Coordinator to retain ultimate oversight over those responsibilities and ensure the School's consistent compliance with its responsibilities under Title IX. As appropriate the School may delegate, and/or the Title IX Coordinator is also permitted to delegate, any specific duties of the Title IX Coordinator to one or more designees.

### **Title IX Training**

The School will ensure that the appropriate persons receive training related to their duties under Title IX promptly upon hiring or change of position that alters their duties under Title IX or this part, and annually thereafter. Any trainings must not rely on sex stereotypes.

1. **Training for All Employees.** All School employees must be trained on:
  - a. The School's obligation to address sex discrimination in its education program or activity;
  - b. The scope of conduct that constitutes sex discrimination under Title IX and this part, including the definition of sex-based harassment; and
  - c. All applicable notification and information requirements under Title IX.
2. **Training for Investigators, Decisionmakers, and Others Responsible for Implementing the Title IX Grievance Procedures or Modifying/Terminating Supportive Measures.** In addition to the training requirements for All Employees, all investigators, decisionmakers, and other persons who are responsible for implementing the School's grievance procedures or have the authority to modify or terminate supportive measures must be trained on the following topics to the extent related to their responsibilities:
  - a. The School's obligations to respond to sex discrimination;
  - b. The School's grievance procedure;
  - c. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and
  - d. The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance
3. **Training for Facilitators of Informal Resolution Process.** In addition to the training requirements for All Employees, all facilitators of an informal resolution process must be trained on the rules and practices associated with the School's informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.

4. **Training for Title IX Coordinator and Designees.** In addition to the training requirements in Sections (1) through (3) of this section, the Title IX Coordinator and any designees must be trained on their specific responsibilities, including:
  - a. Designation and delegation of Title IX Coordinator responsibilities;
  - b. Specific actions to prevent discrimination and ensure equal access;
  - c. Title IX Coordinator requirements;
  - d. Supportive Measures;
  - e. The recordkeeping requirements of Title IX and the School's recordkeeping system; and
  - f. Any other training necessary to coordinate the School's compliance with Title IX.

#### **Notification Requirements**

1. The School requires all of its employees who are not confidential employees to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX, unless it is an employee who has personally been subject to conduct that reasonably may constitute sex discrimination under Title IX.
2. When a student, or a person who has a legal right to act on behalf of the student, informs any employee of the student's pregnancy or related conditions, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee must promptly provides that person with the Title IX Coordinator's contact information and informs that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the School's education program or activity.
3. If the School has knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity the School will respond promptly and effectively; and will comply with Title IX's requirements to address sex discrimination in its education program or activity.
  - a. The School's Title IX Coordinator will:
    - i. Monitor the School's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX; and
    - ii. Take steps reasonably calculated to address such barriers.
4. The School will prominently include the following notice of nondiscrimination on its website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; or which are otherwise used in connection with the recruitment of students or employees.
  - a. If necessary, due to the format or size of any publication, the School may instead include in those publications a statement that the School prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the Title IX Coordinator, and provide the location of the notice on the School's website. The School must not use or distribute a publication stating that the School treats applicants, students, or employees differently on the basis of sex, except as such treatment is permitted by Title IX.

*“The School does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission and employment. Inquiries about Title IX may be referred to the School’s Title IX Coordinator, the U.S. Department of Education’s Office for Civil Rights, or both.*

*The School’s Title IX Coordinator is [name or title, office address, email address, and telephone number].*

*The School’s nondiscrimination policy and grievance procedures can be located at [insert link to location(s) on website or otherwise describe location(s)]. To report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please refer to [insert link to location(s) on website or otherwise describe location(s)].”*

### **Confidential Employees**

1. The School will notify all participants in the School’s education program or activity of how to contact its confidential employees, if any.
2. Any confidential employee must explain to any person who informs the confidential employee of conduct that reasonably may constitute sex discrimination under Title IX:
  - a. The employee’s status as confidential for purposes of this part, including the circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination;
  - b. How to contact the School’s Title IX Coordinator and how to make a complaint of sex discrimination; and
  - c. That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the Title IX grievance procedure.

### **Title IX Record Keeping**

1. The School will maintain for a period of at least seven years:
  - a. For each complaint of sex discrimination, records documenting the informal resolution process or the grievance procedure, and the resulting outcome.
  - b. For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX, records documenting the actions the School took to meet its obligations to promptly and effectively respond.
  - c. All materials used to provide the required Title IX trainings. The School will make these training materials available upon request for inspection by members of the public.

### **Retaliation**

1. The School prohibits retaliation, including peer retaliation, in its education program or activity. When the School has information about conduct that reasonably may constitute retaliation under Title IX or this part, the School is obligated to comply with its Title IX grievance procedure.

Upon receiving a complaint alleging retaliation, the School will initiate its grievance procedure, or, as appropriate, an informal resolution process.

### **Title IX Grievance Procedure**

The School has adopted the following grievance procedure that provides for the prompt and equitable resolution of complaints alleging sex discrimination in violation of Title IX or the Title IX regulations.

#### **General**

1. The School presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of the grievance procedures.
2. The School requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
3. The School's obligation to comply with Title IX is not alleviated by any State or local law or other requirement that conflicts with Title IX; or by FERPA, 20 U.S.C. 1232g, or its implementing regulations.
4. Nothing in Title IX or this policy will derogate or diminish any legal right of a parent, guardian, or other authorized legal representative to act on behalf of a complainant, respondent, or other person, including but not limited to making a complaint through the School's grievance procedures for complaints of sex discrimination.
5. If a complainant or respondent is an elementary or secondary student with a disability, the School must require the Title IX Coordinator to consult with one or more members, as appropriate, of the student's Individualized Education Program (IEP) team; or one or more members, as appropriate, of the group of persons responsible for the student's placement decision to determine how to comply with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, throughout the School's implementation of the Title IX grievance procedures.
6. Notwithstanding any provision of this policy to the contrary, a Respondent shall be afforded due process prior to any disciplinary action, which shall include notice of any allegations, an explanation of the evidence against him/her, and a meaningful opportunity to respond.

#### **Reasonably Prompt Timeframes**

1. The School has established the following timeframes for the major stages of the grievance procedures (references to "days" means school or working days), meaning each phase will be completed within the given timeframe unless it is extended as provided for in this policy:

[Evaluation: Within 5 days of receiving a Complaint]

[Investigation: 1-10 days after the initial Evaluation]

[Determination: Within 60 days from the initial Complain]



[Appeal: An appeal may be submitted within 5 days of the Determination]

2. The School has also established the following process that allows for the reasonable extension of time-frames on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay:
  - a. Temporary delay of the grievance procedure or the limited extension of time frames may occur for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include without limitation considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. These delays and/or extensions may apply to any deadline described in this policy.
3. The School may unilaterally extend timelines for good cause. The Parties and the School may request and mutually agree to extend timelines for good cause.

### **Complaints**

1. The School will treat complainants and respondents equitably.
2. The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that the School investigate and make a determination about alleged discrimination under Title IX:
  - a. A “complainant,” which includes:
    - i. a student or employee of the School who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
    - ii. a person other than a student or employee of the School who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in the School’s education program or activity;
  - b. A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
  - c. The School’s Title IX Coordinator, when a Title IX Coordinator is notified of conduct that reasonably may constitute sex discrimination under Title IX (and in the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process), the Title IX Coordinator must determine whether to initiate a complaint of sex discrimination as required under Title IX. The requirements for such a fact-specific determination are set forth in 34 CFR § 106.44(f)(1)(v).
3. With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint: Any student or employee of the School; or any person other than a student or employee who was participating or attempting to participate in the School’s education program or activity at the time of the alleged sex discrimination.

### **Title IX Coordinator Actions Upon Receipt of Complaint**

1. The Title IX Coordinator is required, when notified of conduct that reasonably may constitute sex discrimination under Title IX, to take the following actions to promptly and effectively end any sex discrimination in the School's education program or activity, prevent its recurrence, and remedy its effects:
  - a. Treat the complainant and respondent equitably;
  - b. Offer and coordinate supportive measures, as appropriate, for the complainant; and if the School has initiated a Title IX grievance procedure or offered an informal resolution process, then also offer and coordinate supportive measures for the respondent;
  - c. Notify the complainant or, if the complainant is unknown, the individual who reported the conduct, of the Title IX grievance procedure and the informal resolution process (if available and appropriate);
  - d. If a complaint is made, notify the respondent of the Title IX grievance procedure and the informal resolution process (if available and appropriate);
  - e. In response to a complaint, review the complaint and either:
    - i. Dismiss the complaint in accordance with the dismissal procedure;
    - ii. Assign an investigator/decisionmaker that does not have a conflict of interest or bias and initiate the Title IX grievance procedure; or
    - iii. Assign an informal resolution facilitator and initiate the informal resolution process (if available and appropriate and requested by all parties).
  - f. In the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process, determine whether to, as the Title IX Coordinator, initiate a complaint of sex discrimination that complies with the Title IX grievance procedure. To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors (if, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents the School from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint):
    - i. The complainant's request not to proceed with initiation of a complaint;
    - ii. The complainant's reasonable safety concerns regarding initiation of a complaint;
    - iii. The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
    - iv. The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
    - v. The age and relationship of the parties, including whether the respondent is an employee of the School;
    - vi. The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
    - vii. The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and

- viii. Whether the School could end the alleged sex discrimination and prevent its recurrence without initiating its Title IX grievance procedure.
  - g. If initiating a complaint as the Title IX Coordinator under this section, the Title IX Coordinator will notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures;
  - h. Regardless of whether a complaint is initiated, the Title IX Coordinator will take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual complainant, if any, to ensure that sex discrimination does not continue or recur within the School's education program or activity.
  - i. A Title IX Coordinator is not required to comply with subsections a-h of this subsection upon being notified of conduct that may constitute sex discrimination if the Title IX Coordinator reasonably determines that the conduct as alleged does not constitute sex discrimination under Title IX.
4. If the Title IX Coordinator has a conflict of interest or bias, or for some other reason is unable to fill his/her role, he/she will immediately work with a supervisor to ensure an appropriate designee is appointed.
  5. The Title IX Coordinator may, as appropriate, notify law enforcement agencies if the allegations could constitute criminal violations.

### **Sex-based Harassment Complainants**

1. A person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

### **Supportive Measures**

1. The School will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to the School's education program or activity or provide support during the School's Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include (by way of example, not an exhaustive list): Counseling; Schedule changes; Class changes; Breaks; Course modifications; Counseling resources; Deadline extensions for assignments; Mutual restrictions on contact; changes in work locations; Check-ins with a trusted adult; Monitoring/supervision; or Online Learning.
2. In implementing supportive measures the following will apply:
  - a. For allegations of sex discrimination other than sex-based harassment or retaliation, a School's provision of supportive measures does not require the School, its employee, or any other person authorized to provide aid, benefit, or service on the School's behalf to alter the alleged discriminatory conduct for the purpose of providing a supportive measure.
  - b. Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties or the School's educational environment, or to provide

support during the School's Title IX grievance procedure or during an informal resolution process.

- c. Supportive measures may vary depending on what the School deems to be reasonably available. These measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.
- d. The School will not impose supportive measures for punitive or disciplinary reasons. The School may, as appropriate, modify or terminate supportive measures at the conclusion of the Title IX grievance procedure or informal resolution process, or the School may continue them beyond that point.
- e. The School will provide a complainant or respondent with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the School's decision to provide, deny, modify, or terminate supportive measures applicable to them. The impartial employee must be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision, if the impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures. The School must also provide a party with the opportunity to seek additional modification or termination of a supportive measure applicable to them if circumstances change materially. The impartial employee will be the Head of School or a designee.
- f. A School must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity, or when an exception in subsection 2 of the "Privacy and Confidentiality" section below applies.
- g. If the complainant or respondent is a student with a disability, the Title IX Coordinator will consult with one or more members, as appropriate, of the student's Individualized Education Program (IEP) team, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision, to determine how to comply with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, in the implementation of supportive measures.

### **Dismissal of a Complaint**

1. The School may dismiss a complaint of sex discrimination if:
  - a. The School is unable to identify the respondent after taking reasonable steps to do so;
  - b. The respondent is not participating in the School's education program or activity and is not employed by the School;
  - c. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the School determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the

- complaint, if any, would not constitute sex discrimination under Title IX even if proven;  
or
- d. the School determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX.
2. Before dismissing the complaint, the School will make reasonable efforts to clarify the allegations with the complainant, when necessary.
  3. Upon dismissal, the School will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the School will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.
  4. The School will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then the School will also notify the respondent that the dismissal may be appealed.
  5. When a complaint is dismissed, the School will, at a minimum:
    - a. Offer supportive measures to the complainant as appropriate;
    - b. If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
    - c. Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the School's education program or activity.

### **Notice of Allegations**

1. Upon initiation of the School's Title IX grievance procedures, the Title IX Coordinator will notify the parties of the following:
  - a. The School's Title IX grievance procedures and any informal resolution process;
  - b. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
  - c. Retaliation is prohibited; and
  - d. The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If the School provides a description of the evidence the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
2. If, in the course of an investigation, the School decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, the School will notify the parties of the additional allegations.

### **Consolidation of Complaints**

1. The School may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against

another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references herein to a party, complainant, or respondent include the plural, as applicable.

2. The School is not permitted to consolidate complaints if consolidation would violate the Family Educational Rights and Privacy Act (“FERPA”). Consolidation would not violate FERPA when/if the School obtains prior written consent from the parents or eligible students (i.e. over the age of 18) to the disclosure of their education records to other parties.

### **Investigation**

1. The School will, through an assigned investigator, accomplish the following:
  - a. Provide for adequate, reliable, and impartial investigation of complaints. The burden is on the School—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.
  - b. Provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible. The School will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.
  - c. Provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:
    - i. The School will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence.
    - ii. If the School provides a description of the evidence the School will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party;
    - iii. The School will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
    - iv. The School will take reasonable steps to prevent and address the parties’ unauthorized disclosure of information and evidence obtained solely through the grievance procedures.
  - d. Create a report of all relevant evidence for a review by the decisionmaker, who may be the same as the investigator.

### **Review of Evidence**

1. The School will, through an assigned decisionmaker, who may be the same as the investigator, accomplish the following:
  - a. Objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person’s status as a complainant, respondent, or witness.
  - b. The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the School as needed to determine

whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- i. Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
  - ii. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the School obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
  - iii. Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.
- c. The decisionmaker is able to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. To accomplish this the decisionmaker may schedule interviews or submit written questions, as necessary, with/to a party or a witness to ask questions of the party or witness. If the investigator and the decisionmaker are the same individual, this can occur during the investigation phase.
2. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

### **Determination**

1. Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the School's decisionmaker will:
  - a. Use the preponderance of the evidence standard of proof, meaning based on the evidence it is "more likely than not" the allegations occurred, to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness.
  - b. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
2. The School will:
  - a. Notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;

- b. Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
3. If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - a. Coordinate the provision and implementation of remedies to a complainant and other people the School identifies as having had equal access to the School's education program or activity limited or denied by sex discrimination;
  - b. Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
  - c. Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the School's education program or activity.
4. The School will comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent. If emergency removal is necessary, see below for Emergency Removal requirements.
5. The School may discipline a party, witness, or other for making a false statement during the grievance procedures, except the School will not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

### **Disciplinary Sanctions and Remedies**

1. Following a determination that sex-based harassment occurred, the School may impose disciplinary sanctions, which may include sanctions ranging from a formal reprimand up to and including expulsion from School for students or termination of employment for employees. The School may also provide remedies, which may include a range of actions including, without limitation, modifications of policies, discipline in accordance with this policy, required training, schedule changes, no-contact requirements, forced transfers, or the same individualized services utilized as Supportive Measures. However, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent if a determination finds a respondent responsible.
2. Any suspensions or expulsions implemented or recommended by the decisionmaker shall be subject to the additional requirements imposed by School policies and state law, including under C.R.S. 22-33-105 and 106.

### **Emergency Removal**

1. Nothing in this policy precludes a School from removing a respondent from the School's education program or activity on an emergency basis, provided that the School undertakes an individualized safety and risk analysis, determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. Any removal of a student with a disability must only be done in compliance with Individuals with Disabilities



Education Act, 20 U.S.C. 1400 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

2. Nothing in this policy precludes the School from placing an employee respondent on administrative leave from employment responsibilities during the pendency of the School's grievance procedure.

### **Appeals**

1. Appeals from a determination will be provided to the extent appeals are typically provided by the School for similar proceedings (including without limitation proceedings relating to other forms of discrimination or grievances); under the School's policies regarding school discipline, for any disciplinary sanctions; or if required by law. For example if the determination results in an expulsion then the respondent will have the opportunity for a hearing and an appeal from that hearing and decision consistent with C.R.S. 22-33-106.
2. Dismissals may be appealed on the following bases:
  - a. Procedural irregularity that would change the outcome;
  - b. New evidence that would change the outcome and that was not reasonably available when the dismissal was made; or
  - c. The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.
3. If a dismissal is appealed, the School will:
  - a. Assign an appeals officer;
  - b. Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
  - c. Implement appeal procedures equally for the parties;
  - d. Ensure that the appeals officer for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
  - e. Ensure that the appeals officer for the appeal has been trained consistent with the Title IX regulations;
  - f. Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
  - g. Notify the parties of the result of the appeal and the rationale for the result.
4. The individual(s) reviewing and deciding an appeal, referred to as Appeals Officers, must not be the same as the Title IX Coordinator, investigator, or decisionmaker, and must be free from conflict of interest or bias.

### **Privacy and Confidentiality**

1. The School will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties are reminded that retaliation is prohibited, including against witnesses.

2. The School will not disclose personally identifiable information obtained in the course of complying with this part, except in the following circumstances:
  - a. When the School has obtained prior written consent from a person with the legal right to consent to the disclosure;
  - b. When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
  - c. To carry out the purposes of this part, including action taken to address conduct that reasonably may constitute sex discrimination under Title IX in the School's education program or activity;
  - d. As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
  - e. To the extent such disclosures are not otherwise in conflict with Title IX or this part, when required by State or local law or when permitted under FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.

### **Informal Resolution**

1. At any time prior to determining whether sex discrimination occurred under the Title IX grievance procedure, the School may offer to a complainant and respondent an informal resolution process, unless the complaint includes allegations that an employee engaged in sex based harassment of a student or such a process would conflict with Federal, State or local law. The informal resolution process shall be in compliance with the following:
  - a. The School has discretion to determine whether it is appropriate to offer an informal resolution process when it receives information about conduct that reasonably may constitute sex discrimination under Title IX or when a complaint of sex discrimination is made, and may decline to offer informal resolution despite one or more of the parties' wishes. Circumstances when a School may decline to allow informal resolution include but are not limited to when the School determines that the alleged conduct would present a future risk of harm to others.
  - b. The School will not require or pressure the parties to participate in an informal resolution process.
  - c. The School must obtain the parties' voluntary consent to the informal resolution process and must not require waiver of the right to an investigation and determination of a complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.
  - d. Before initiation of an informal resolution process, the School will provide to the parties notice that explains:
    - i. The allegations;
    - ii. The requirements of the informal resolution process;
    - iii. That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the School's grievance procedures;

- iv. That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations;
- v. The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties. Potential terms that may be included in an informal resolution agreement include but are not limited to:
  - 1. Restrictions on contact; and
  - 2. Restrictions on the respondent's participation in one or more of the School's programs or activities or attendance at specific events, including restrictions the School could have imposed as remedies or disciplinary sanctions had the School determined at the conclusion of the School's grievance procedures that sex discrimination occurred.
- vi. What information the School will maintain and whether and how the School could disclose such information for use in grievance procedures if grievance procedures are initiated or resumed.
- e. The facilitator for the informal resolution process must not be the same person as the investigator or the decisionmaker in the School's grievance procedures.
- f. Any person designated by a School to facilitate an informal resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- g. Any person facilitating informal resolution must receive the requisite training.