

## SEXUAL DISCRIMINATION POLICY AND GRIEVANCE PROCEDURE

As noted in its Nondiscrimination Policy, Explorer West Middle School ("School") prohibits discrimination based on sex, sexual orientation, and gender identity and expression, in any of its education programs or activities. The following policy addresses School's prohibition against sex discrimination, including sexual harassment and sexual assault, and the procedure to follow if violation of this policy is alleged. Sexual harassment under this policy can occur adult to student, student to student, or can be carried out by a group of students or adults and will be investigated by the School even if the alleged harasser is not an employee, such as a volunteer or third-party consultant. For allegations of sexual harassment where an employee is the alleged victim, please refer to the applicable policy in the employee handbook.

**DEFINITIONS.** For purposes of this policy and procedure, the following definitions apply:

**Complainant.** Person who is alleged to be the victim of conduct that could constitute sexual harassment under this policy. Under this policy, parents and guardians may act on behalf of a Complainant, including by filing a formal complaint.

**Education Program or Activity.** School's education program and activity includes locations, events, or circumstances over which School exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred, such as school-sponsored sporting events, field trips, and other off-campus programs and activities.

**Formal Complaint.** Document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and that triggers School to investigate.

**Remedies.** After a Determination with a finding of responsibility has been made, Remedies are individualized services that are designed to restore equal educational access, protect safety, or deter sexual harassment. Examples include disciplinary sanctions, dismissal, no-contact orders, and grade adjustments.

**Reporter.** Person who makes the initial report of alleged sexual harassment. This person may or may not be the alleged victim, and may or may not be an employee of School.

**Respondent.** Person who has been reported to be the perpetrator of conduct alleged to be sexual harassment.

**Sexual Harassment.** Sexual harassment is defined as:

- Any instance of *quid pro quo* harassment by a School employee. This includes sexual demands, sexual advances, or requests for sexual favors when submission is a stated or implied condition of obtaining an educational benefit; and/or sexual demands, sexual

advances, or requests for sexual favors where submission or rejection is a factor in an academic or other school-related decision affecting an individual.

- *Unwelcome conduct* on the basis of sex or gender that a reasonable person would find so *severe, pervasive, and objectively* offensive that it effectively denies a person equal access to the School's educational program or activity.
- Any instance of *Sexual assault*, which is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
- *Dating violence*, which is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
- *Domestic violence*, which is a felony or misdemeanor crime committed by a current or former intimate partner of the victim.
- *Stalking*, which is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their or others' safety or suffer substantial emotional distress.

**Supportive measures.** Individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party that are designed to preserve or restore equal educational access, protect safety, or deter sexual harassment. Supportive measures may be applied prior to a finding of responsibility and with or without a formal complaint, and include: course adjustments; class schedule changes; counseling; no-contact orders.

**REQUIRED REPORTING FOR EMPLOYEES.** Any employee who receives a report of or witnesses sexual harassment or assault is obligated to inform the Title IX Coordinator as soon as possible. This obligation is separate and apart from any mandatory obligation the employee may have under state law to report on reasonable cause to believe that a child is being abused or neglected.

**FILING A REPORT.** Any person may report sex discrimination, including sexual harassment (whether or not the Reporter is the person alleged to be the victim), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the Reporter's verbal or written report. Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.

TITLE IX PERSONNEL. School's response to a report of sexual harassment under this policy and procedure shall be under the supervision and/or with the cooperation of the relevant Title IX personnel, to include the:

- **Title IX Coordinator** who is the School official charged with receiving and managing the School's response to formal complaints of sexual discrimination.
  - School Year 2020-21, the Title IX Coordinator may be reached at 10015 28th Ave SW, Seattle, WA 98146, (206) 935-0495, dawnf@explorer-west.org.
- **Investigator** who is the person charged with fulfilling School's obligation to gather evidence, disclose evidence to the parties, where applicable, and prepare the investigative report.
- **Decision-maker** who is the person identified to review the evidence obtained by the Investigator and make the Determination applying the standard of proof.

All Title IX personnel shall be free from conflicts of interest or bias for or against the Complainant or Respondent, and shall be trained on the:

- Definition of sexual harassment,
- Scope of the School's education program or activity,
- Conduct of investigations, grievance procedures, appeals, and informal resolution process,
- Avoidance of prejudgment of facts, conflicts of interest, and bias, and
- Application of relevance to consideration of evidence.

Any and all materials used to train Title IX personnel shall be posted on the website or made available to the public for review.

AFTER REPORT IS RECEIVED. After a report of alleged sexual harassment is received, the Title IX Coordinator shall take the following actions on behalf of School:

- Promptly and confidentially contact the Complainant to discuss the availability of supportive measures,
- Consider the Complainant's wishes with respect to supportive measures,
- Inform the Complainant of the availability of supportive measures with or without filing a formal complaint, and

- Explain to the Complainant the process for filing a formal complaint.
- School shall offer supportive measures to the Complainant.

FORMAL COMPLAINT. Following discussion with the Title IX coordinator, the Complainant may choose to file a formal complaint. Generally, School will respect a Complainant's wishes with respect to whether to proceed with a formal complaint and investigation. However, if the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances, the Title IX Coordinator may do so. There is no time limit or statute of limitations filing a formal complaint but, at the time a formal complaint is filed, a Complainant must be participating in or attempting to participate in the School's education program or activity.

A formal complaint filed by a Complainant must:

- allege sexual harassment against a respondent,
- request that the School investigate the allegations of sexual harassment,
- contain the Complainant's physical or digital signature, or otherwise indicate the Complainant is the person filing the formal complaint, and
- be filed with the Title IX Coordinator in person, by mail, or by electronic mail.

COMPLAINT INVESTIGATION and GRIEVANCE PROCEDURES. On receipt of a formal complaint, the following procedures shall be implemented within thirty (30) calendar days:

- School will send notice of the formal complaint and allegations to both parties (Complainant and Respondent).
- School may, in its discretion, consolidate formal complaints where the allegations arise out of the same facts.
- Throughout the investigation process, School will send written notice of any investigative interviews, meetings, or hearings, to both parties.
- School will carry the burden of proof and gathering evidence, not the parties.
- The presumption of innocence shall apply throughout the process.
- School will not have access to or use a party's medical, psychological, or other treatment records unless School obtains the party's voluntary and written consent.

- School will provide equal opportunity for the parties to present inculpatory and exculpatory evidence, including fact and expert witnesses.
- School may not restrict the ability of any party to discuss the allegations or gather evidence (e.g., no "gag" orders).
- School must keep confidential the identity of complainants, respondents, and witnesses, except as may be required by law, or as necessary to carry out a Title IX proceeding.
- Both parties will have opportunity to select an advisor of their choosing, who may or may not be an attorney.
- School shall send the parties and their advisors, if any, evidence directly related to the allegations, in electronic format or hard copy, with at least ten (10) calendar days for the parties to inspect, review, and respond to the evidence.
- School shall send the parties and their advisors, if any, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least ten (10) calendar days for the parties to respond.
- After School has sent the investigative report to the parties and prior to reaching a Determination, the Decision-maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party, in the Decision-maker's discretion. Any decision to exclude questions as not relevant must be explained to the party proposing them.
  - Questions and evidence about a complainant's prior sexual behavior and conduct are *per se* irrelevant and inadmissible unless offered to prove consent or that someone other than the respondent committed the alleged misconduct.

**DETERMINATIONS.** Decision-makers shall apply the same **preponderance of the evidence** standard to the determination of all formal complaints whether the complaint is against a student or an employee. Preponderance of the evidence means that, based on the evidence and witness testimony, it is more likely than not or a greater than 50% chance, that the sexual harassment allegations are true. Decision-makers may not be the same person as the Title IX coordinator or the investigator.

- If indicated by the evidence, School must dismiss allegations of conduct that do not meet the definition of sexual harassment as stated in this policy. Any such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner School deems appropriate.

- School may, in its discretion, dismiss a formal complaint or allegations if the complainant informs the Title IX Coordinator in writing that they desire to withdraw the formal complaint or allegation(s), if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the School from gathering sufficient evidence to reach a Determination.
- School shall give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.
- All Determinations shall be written, sent simultaneously to all parties with information on how to appeal, and include:
  - Findings of Fact,
  - Conclusions (and findings of responsibility) about whether alleged conduct occurred,
  - Rationale for the result as to each allegation,
  - any Disciplinary Sanctions imposed, and
  - whether Remedies will be provided.

No disciplinary sanctions or other actions that are not supportive measures may be imposed against a respondent if this grievance process has not been followed.

APPEAL. Within ten (10) calendar days, either party may appeal a Determination made on a formal complaint on the following alleged grounds only:

- 1) procedural irregularity that affected the outcome of the Determination,
- 2) newly discovered evidence that was not previously available that could affect the outcome of the Determination, or
- 3) conflict of interest or bias of Title IX personnel (coordinator, investigator, or decision-maker) that affected the outcome of the Determination.

INFORMAL RESOLUTION. School may, in its discretion, choose to offer and facilitate informal resolution options, such as mediation or restorative justice. In order to attempt informal resolution, a formal complaint must have been filed and both parties must give consent that is 1) voluntary, 2) informed, and 3) written, and the person who facilitates the informal resolution must be well trained. Any party may withdraw and resume the grievance process at any time prior to resolution. In no case may School condition enrollment or continued enrollment,

employment or continued employment, or other right, on waiver of the right to a formal investigation and adjudication of a Complaint. Informal resolution is not available for claims alleging an employee sexually harassed a student.

RETALIATION. Retaliation is expressly prohibited and no person shall be retaliated against for making a report or for participating in an investigation. Retaliation includes charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX. Retaliation does not include charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding or exercising rights protected under the First Amendment. Complaints alleging retaliation for filing a sexual discrimination complaint may be filed and will be investigated under this Grievance Procedure.

QUESTIONS? Any questions concerning the application of this policy and procedure or Title IX generally should be directed to the Title IX Coordinator at 10015 28th Ave SW, Seattle, WA 98146, (206) 935-0495, [dawnf@explorer-west.org](mailto:dawnf@explorer-west.org) or to the Office for Civil Rights of the U.S. Department of Education, [OCR@ed.gov](mailto:OCR@ed.gov), or Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202.