

OPPORTUNITIES FOR LEARNING – SAN JUAN CAPISTRANO

TITLE IX SEX-BASED NONDISCRIMINATION POLICY AND GRIEVANCE PROCEDURES

Purpose and Overview

Opportunities for Learning, San Juan Capistrano (“School”) does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, including in admission and employment, as required by Title IX of the Education Amendments of 1972 (“Title IX”), a federal law. Discrimination on the basis of sex is also a violation of California state laws and a violation of this Policy. School considers sex-based discrimination to be a major offense which can result in discipline of students and employees, including and up to expulsion of students and/or termination of employees.

This Title IX Sex-Based Nondiscrimination Policy and Grievance Procedures (“Policy”) provides a grievance process for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating in or attempting to participate in the School’s education program or activity, or by the School’s Title IX Coordinator, alleging any action that would be prohibited by Title IX.

Discrimination on the basis of sex (also called sex-based discrimination or sex discrimination) under Title IX includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Sex-based harassment is a form of sex discrimination prohibited by Title IX and means sexual harassment and other harassment on the basis of sex as defined in 34 C.F.R. § 106.2 and Section I of the Grievance Procedures below.

California Legal Requirements

Under California law, Education Code section 230, harassment and other discrimination on the basis of sex include, but are not limited to, the following: exclusion of a person or persons from participation in, denial of the benefits of, or subjection to harassment or other discrimination in, any academic, extracurricular, research, occupational training, or other program or activity; and exclusion from participation in, or denial of equivalent opportunity in, athletic programs. The full definition of discrimination and harassment based on sex from Education Code section 230 can be found here:

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC§ionNum=230.

The definitions of discrimination on the basis of sex under California law (state law) and under Title IX (federal law) overlap in some areas. Complaints alleging unlawful discrimination, harassment, intimidation, or bullying based on gender, sex, gender identity or expression, or sexual orientation are eligible to be investigated pursuant to School's Uniform Complaint Procedures pursuant to state law. However, complaints alleging conduct that constitutes sex discrimination under Title IX, including a complaint of retaliation interfering with any right or privilege secured by Title IX, are investigated under the Title IX Grievance Procedures set forth herein. School prohibits retaliation, including peer retaliation, against anyone who files a discrimination complaint or any participant (or anyone who refuses to participate) in the complaint investigation process.

Sex Equity in Education Act Statement

Students have all the rights set forth in Education Code section 221.8 (as applicable to School's programs). This includes the right to fair and equitable treatment, the right to a school environment without discrimination on the basis of sex, and the right to be provided with an equitable opportunity to participate in all academic extracurricular activities. The description of all rights set forth in Education Code section 221.8 can be found here:

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC§ionNum=221.8.

For more information about Gender Equity/Title IX, please visit the following CDE website: <https://www.cde.ca.gov/re/di/eo/genequitytitleix.asp>.

Title IX Grievance Procedures for Sex Discrimination

I. Scope of Title IX

These Title IX grievance procedures apply only to *complaints* (defined in Section IV below) alleging *sex discrimination*, including *sex-based harassment*, in the School's education programs or activities.

Sex discrimination includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including:

1. *Quid pro quo harassment*, defined as an employee, agent, or other person authorized by School to provide an aid, benefit, or service under 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.
2. *Hostile environment harassment*, defined as 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 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:
 - a. The degree to which the conduct affected the complainant's ability to access School's education program or activity;
 - b. The type, frequency, and duration of the conduct;
 - c. The parties' ages, roles within 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;
 - d. The location of the conduct and the context in which the conduct occurred; and
 - e. Any other sex-based harassment in School's education program or activity.
3. *Specific offenses*, including sexual assault, dating violence, domestic violence, or stalking as those terms are defined in 34 C.F.R. § 106.2.

II. Title IX Roles

School has designated the following individuals as its Title IX Coordinators to coordinate School's compliance with Title IX, including coordination of the investigation and resolution of complaints of sex discrimination as outlined in this Policy:

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The Title IX Coordinator may designate other individual(s) to fulfill all or part of their duties, but the Title IX Coordinator identified above retains ultimate oversight to ensure School's consistent compliance with Title IX. The Title IX Coordinator is also responsible for monitoring School's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX, and taking steps reasonably calculated to address such barriers.

In addition to the Title IX Coordinator, the following Title IX roles are involved in the grievance process to address complaints:

- *Investigator*: The individual responsible for gathering all evidence related to the complaint.
- *Decisionmaker*: The individual responsible for evaluating evidence in order to determine whether sex discrimination occurred. The Decisionmaker may be the same person as the Title IX Coordinator and/or Investigator.
- *Title IX Appeals Officer*: If applicable, this individual is responsible for evaluating an appeal of a dismissal of a complaint or an appeal of the final determination. The Title IX Appeals Officer cannot be any individual involved in the dismissal of the complaint or the investigation of the complaint.

All Title IX roles (i.e., Title IX Coordinator(s) and any designee(s), Investigator(s), Decisionmaker(s), Appeals Officer(s), and any person who facilitates an informal resolution process), as well as all School employees, will receive annual training in accordance with Title IX requirements. Any person designated as a Title IX Coordinator, Investigator, Decisionmaker or Appeals Officer must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

III. Reporting Information About Conduct that May Constitute Sex Discrimination

School requires all employees to notify the Title IX Coordinator and Human Resources when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX. In addition, any other individual (e.g., a student, volunteer, or parent/guardian of a student) should report conduct that reasonably may constitute sex discrimination directly to the Title IX Coordinator, or to any other available School employee who shall immediately inform the Title IX Coordinator. Reports of information can be made in person, by mail, by telephone, by electronic mail, or by any other means that result in the Title IX Coordinator receiving the information.

IV. Complaints of Sex Discrimination

A *complaint* is an oral or written request that School investigate and make a determination about alleged discrimination under Title IX. School encourages the use of the enclosed Title IX Complaint Form.

The following persons have a right to make a complaint of sex discrimination, requesting that the School investigate and make a determination about alleged discrimination under Title IX:

- A *complainant*, meaning a student, employee, or other person who was participating or attempting to participate in the School's education program or activity, who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX;
- The Title IX Coordinator after making the determination described in 34 C.F.R. § 106.44(f)(1)(v); or
- With respect to complaints of sex discrimination other than sex-based harassment, any student, employee, or any other person who was participating or attempting to participate in the School's education program or activity at the time of the alleged sex discrimination.

When a complaint is initiated, the person who is alleged to have violated the School's prohibition on sex discrimination is referred to as the *respondent*.

V. School's Initial Response to Conduct that May Constitute Sex Discrimination

When the Title IX Coordinator is notified of conduct that reasonably may constitute sex discrimination under Title IX, the Title IX Coordinator (or designee(s)) will take the following actions. These actions are taken regardless of whether a complaint is initiated:

1. Treat the complainant and respondent equitably.
2. Contact complainant to offer and coordinate *supportive measures*.
 - a. *Supportive measures* means individualized measures to protect the complainant's safety, and/or to restore or preserve access to their School education program or activity. Supportive measures are offered as appropriate, as reasonably available, and without unreasonably burdening a complainant or respondent. Supportive measures are not punitive or disciplinary. The School will not disclose information about supportive measures to persons other than the person to whom they apply, unless necessary, subject to the exceptions in 34 C.F.R. § 106.44(j)(1)-(5).
 - b. Supportive 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; administrative leave or leaves of absence; changes in class, work, 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.¹

- c. If a complaint has been initiated, the Title IX Coordinator will offer, coordinate and maintain records of, supportive measures, as appropriate, for both complainant and respondent; and consult with HR when applicable.
3. Determine whether there is a need for *emergency removal*.
 - a. *Emergency removal* allows the Title IX Coordinator to determine, based on the facts, that the respondent needs to be removed from the educational program or activity to prevent any further sex discrimination and/or maintain the safety of students, staff, or other persons. Emergency removal requires the Title IX Coordinator to:
 - i. Perform an individualized safety and risk analysis; notify and consult with HR if applicable
 - ii. Make a determination that there is 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 that justifies the removal; and
 - iii. Provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.

If the respondent is a student, the School is subject to applicable laws and school policies regarding involuntary removals, suspensions, and expulsions, including laws regarding students with disabilities.²

4. Notify the complainant, or if the complainant is unknown, the individual who reported the conduct, of the School's grievance procedures and informal resolution process.
5. 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.

If a complaint is made, the Title IX Coordinator will initiate the grievance procedures (or informal resolution process if available and appropriate and requested by all parties) and notify the respondent of the School's grievance procedures and informal resolution process. If the complainant or respondent is a student with a disability, the Title IX Coordinator will consult with

¹ The Title IX Coordinator is responsible for implementing the supportive measures. If a party believes that the supportive measures provided are inconsistent with the requirements under Title IX, or if circumstances change materially, the party may seek review of the supportive measures from an appropriate and impartial School employee designated by the Title IX Coordinator. The impartial employee must be someone other than the employee who made the challenged decision. The impartial employee shall have the authority to modify or reverse the decision.

² If the respondent is an employee, respondent may be placed on administrative leave during the complaint investigation without following the emergency removal process described above.

one or more of the student’s IEP team members to ensure compliance with the requirements of the Individuals with Disabilities Education Act (“IDEA”).

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 will determine whether it is appropriate to initiate a complaint of sex discrimination themselves based on the factors in 34 C.F.R. § 106.44(f)(1)(v). If the Title IX Coordinator themselves initiates a complaint, they 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.

VI. Evaluation of Complaint; Informal Resolution Process

If a complaint is made, the Title IX Coordinator will determine whether it raises allegations that fall within the definition of sex discrimination under Title IX.

School may consolidate multiple complaints where the allegations of sex discrimination arise out of the same facts or circumstances.

At any time after a complaint has been filed, but before reaching a determination regarding the allegation, the School may offer an *informal resolution process* (such as restorative justice or mediation) to the complainant and respondent.³ Participation in informal resolution is voluntary. Before initiation of an informal resolution process, School will provide written notice to the parties as required under 34 C.F.R. § 106.44(k)(3). The facilitator for the informal resolution process must not be the same person as the Investigator or the Decisionmaker.

VII. Dismissal of Complaint

Under certain circumstances, a complaint may be dismissed by the Title IX Coordinator. The Title IX Coordinator will endeavor to make this determination no more than **ten (10) school days** from the date the complaint is made. A complaint may be dismissed for any of the following reasons:

1. School is unable to identify the respondent after taking reasonable steps to do so;
2. The respondent is not participating in School’s education program or activity and is not employed by School;
3. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint under 34 CFR section 106.44(f)(1)(v), and 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
4. School determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Prior to dismissing the complaint under

³ The informal resolution process is not available where the complainant alleges that an employee engaged in sex-based harassment of a student or when such process would conflict with federal, state, or local law.

this paragraph, School must make reasonable efforts to clarify the allegations with the complainant.

Written Notice of Dismissal: If the Title IX Coordinator dismisses the complaint, they must notify the complainant of the basis for the dismissal and that the dismissal may be appealed in accordance with the procedures described in the “Appeals” section below. If the respondent was already notified of the allegations, the Title IX Coordinator must also promptly notify the respondent of the dismissal, the basis for the dismissal, and that the dismissal may be appealed.

Alternative Resolution Procedure: If the Title IX Coordinator determines another School procedure (e.g., Uniform Complaint Procedures) is the appropriate grievance procedure for the complainant’s allegation(s), the written notice shall state School’s intent to investigate the complaint through that grievance procedure.

VIII. Investigation and Written Decision

If the Title IX Coordinator does not dismiss the complaint, School will follow the below investigation process and issue a Written Decision. School will endeavor to complete its investigation and issue a Written Decision within **sixty (60) school days of receipt of the complaint**. The timelines provided herein may be extended by School for good cause and with notice to the parties stating the reason for the delay.

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 process.

Throughout the below process, the School will take reasonable steps to protect the privacy of the parties and witnesses, so long as such steps do 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 process.

1. Send Written Notice of Complaint

The Title IX Coordinator must provide the parties (complainant and respondent) with a *Notice of Complaint*. The Title IX Coordinator will endeavor to provide this Notice within **ten (10) school days of receipt of the complaint**. The Notice shall include: (1) a copy of this Policy; (2) a description of the allegations potentially constituting sex discrimination with sufficient details known at the time, including, but not limited to, the identities of the parties, alleged conduct, and date(s) and location(s) of the alleged conduct; (3) a statement that retaliation is prohibited; (4) a statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of the evidence; and (5) a statement that if the parties are provided a description of the evidence, the parties are entitled to an equal opportunity to access to the relevant and not otherwise impermissible evidence upon request.

2. Investigator Conducts Investigation

The Investigator will gather and review evidence related to the allegations. This can include, but is not limited to, interviewing parties or witnesses and assessing their credibility, as well as reviewing relevant evidence. The Investigator will exclude (i.e., will not access, consider,

disclose, or otherwise use) impermissible evidence under 34 C.F.R. § 106.45(b)(7). The burden is on the School to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred. The Investigator will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible.

3. Investigator Provides Parties Equal Opportunity to Review Gathered Evidence

The Investigator will provide both the complainant and respondent with an equal opportunity to review the relevant (and not otherwise impermissible) evidence, either by providing the evidence itself or a description of the evidence as described in 34 C.F.R. § 106.45(f)(4). The parties will have a period of at least **ten (10) school days** to review and respond to the evidence. The Investigator will remind the parties that any information about another party, witness, or other individual obtained solely through the grievance process is confidential and any unauthorized disclosures are prohibited.

4. Decisionmaker Issues Written Decision

The Decisionmaker will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and will endeavor to issue the Written Decision within **sixty (60) school days from the receipt of the complaint**. If the Decisionmaker is not the same person as the Investigator, the Decisionmaker will, at this point in the process, be 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. Credibility determinations must not be based on a person's status as a complainant, respondent, or witness. The Decisionmaker will issue a Written Decision to both parties simultaneously. The Decisionmaker uses the "preponderance of evidence" standard (i.e., it is more likely than not that the respondent committed the alleged conduct). If the Decisionmaker is not persuaded under the applicable standard that sex discrimination occurred, whatever the quantity of the evidence is, the Decisionmaker must not determine that sex discrimination occurred. The Written Decision will include all of the following:

- a. The Decisionmaker's determination whether sex discrimination occurred under Title IX;
- b. The rationale for such determination; and
- c. The School's procedures and permissible bases for a party to appeal the decision.

5. Remedies

If School determines that sex discrimination occurred, School will provide remedies to the complainant and other persons whose equal access to School's education program or activity was limited or denied by the sex discrimination, as appropriate. This may include supportive measures. The Title IX Coordinator must also take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within School's education program or activity.

Remedies for sex-based harassment may also include, but are not limited to: transfer from a class; parent/student conference(s); positive behavior support; warnings; detention; and/or formal discipline, such as suspension and expulsion, including notification to complainant of any such disciplinary sanctions. When an employee is found to have committed sex-based harassment, School will take appropriate disciplinary action, up to and including termination, in accordance with School's policies and as permitted by law.

IX. Appeals

Either party may appeal School's Written Decision, or its dismissal of a complaint or any allegation in the complaint, within **five (5) school days of the decision**. An appeal may be made on any of the following grounds:

1. A procedural irregularity affected the outcome;
2. New evidence that would change the outcome and that was not reasonably available when the determination whether sex-based harassment occurred or dismissal was made; or
3. 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.

Upon receipt of an appeal, School will provide a written notification to the other party about the appeal that gives both parties a reasonable, equal opportunity to submit a written statement in support of/challenging the appeal.

The Title IX Appeals Officer (not Decisionmaker or Investigator) shall issue a written decision of appeal, including the rationale for the result, to both parties. The Title IX Appeals Officer will endeavor to issue their decision within **thirty (30) school days from the receipt of the appeal**.

X. Record Keeping

School will maintain the following records for a period of seven (7) years:

1. For each complaint of sex discrimination, records documenting the informal resolution process and/or investigation, and the resulting outcome;
2. 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 under Section V of this Policy; and
3. All Title IX training materials

OPPORTUNITIES FOR LEARNING – SAN JUAN CAPISTRANO
Title IX Complaint Form

Instructions: This form can be completed to request that Opportunities for Learning, San Juan Capistrano (“School”) investigate and make a determination about alleged discrimination under Title IX. Please complete the information below. Should you need additional space or would like to provide documentation to support the allegations in the complaint, you can attach those to this complaint form. If you have any questions, please contact School’s Title IX Coordinator listed below.

Contact Information and Complainant’s (Victim) Information

Full Name of Person Filing the Complaint: _____

Address: _____

Phone: _____

Email: _____

Complainant’s (Victim) Full Name (if different from above): _____

Respondent’s (Accused) Information

Respondent’s Full Name: _____

Is the accused a School student? No Yes

If yes, what is the student’s grade and relation to complainant: _____

Is the accused a School staff member? No Yes

If yes, what is the staff member’s relation to the complainant (e.g., teacher)? _____

If no, what is the accused’s affiliation to School? _____

Details of Complaint

Date of the Alleged Incident(s): _____

Location of Alleged Incident(s): _____

Please describe the facts underlying your complaint. Provide details such as the names of those involved, the dates of the incident(s), whether witnesses were present and the names of any witnesses, etc. Please provide any details which you feel might be helpful to a complaint investigator.

Did the sex discrimination occur at School or during a School activity? If so, please describe:

Did this incident interfere with your ability to access or participate in School programs or activities? If so, please describe:

List the individuals involved in the relevant incident(s):

List any witnesses to the incident(s):

Acknowledgements

By submitting this form to the School Title IX Coordinator, I wish to initiate School's Title IX Grievance Procedures.

Signature of Complainant

Date

Once you have completed this form, please submit it to the Title IX Coordinator:

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