



The Charter Institute at Erskine

Title IX Sexual Harassment and Non-Discrimination Policy

The SC Preparatory Academy

Title IX Sexual Harassment and Non-Discrimination Policy

Section 1: Introduction

- 1.1 Policy Statement:** The Charter Institute at Erskine (“District”) and all Schools sponsored by the District are committed to creating and maintaining a learning and working environment that is free from unlawful discrimination based on sex in accordance with Title IX, which prohibits discrimination on the basis of sex in education programs or activities and Title VII, which prohibits sex discrimination in employment. Sexual Harassment and Retaliation under this Policy will not be tolerated by the Institute, and are grounds for disciplinary action, up to and including, permanent dismissal from the District and/or termination of employment.
- 1.2 Purpose:** The Institute takes all reported sexual misconduct and Sexual Harassment seriously. The Institute will promptly discipline any individuals within its control who are found responsible for violating this Policy. Additionally, reported sexual misconduct, harassment, and retaliation that does not meet the definitions and jurisdiction of this policy will be referred for review under the student or employee Code of Conduct.
- 1.3 Applicability:** This Policy applies to students and employees as follows:
- a. To Students:** Where the Respondent is a student at the Institute at the time of the alleged conduct, the alleged conduct includes Sexual Harassment under this Policy, the alleged conduct occurs in the Institute’s Education Program and Activity, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in the District’s Education Program or Activity.
 - b. To Employees:** Where the Respondent is an employee at the District at the time of the alleged conduct, where the alleged conduct includes Sexual Harassment under this Policy, the alleged conduct occurs in District’s Education Program and Activity, the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in the District’s Education Program or Activity.
- 1.4 Title IX Coordinator and Key Title IX Officials:** The Title IX Coordinator is the District’s administrator who oversees the District’s compliance with Title IX. The Title IX School Coordinator is responsible for administrative response to reports and Formal Complaints of Sexual Harassment. The Title IX Coordinator is available to discuss the grievance process, coordinate supportive measures, explain the District’s policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to facilitate these responsibilities.

Any member of the District’s community may contact the Title IX Coordinator with questions. Title IX Coordinator and School Title IX Coordinator contact information is as follows:

District Title IX: Laura Merrick

TITLE IX COORDINATOR -SC Preparatory Academy: Dr. Kelly Griffis 864-280-9806
kgriffis@myscprep.org

In addition to the Title IX Coordinator, the SC Preparatory Academy investigators, decision makers and informal resolution facilitators who have roles in the formal grievance process more fully explained in Sections 6 and 8 of this policy.

The School's Title IX Coordinator, investigators, decision-makers, and informal resolution facilitators will receive annual training in compliance with Title IX. All administrators in these roles will not rely on sex stereotypes and will provide impartial investigations and adjudications of Formal Complaints of Sexual Harassment. All materials used to train these administrators will be publicly made available on the District's website in accordance with Title IX requirements.

The School's Title IX Coordinator, investigators, decision-makers, and informal resolution facilitators shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

- 1.5 Notification:** The District and its school will use electronic notification for purposes of communication and notification under this Policy.
- 1.7 Dissemination of Policy:** This Policy will be made available to all District administrators, faculty, staff, and students online at erskinecharters.org/title IX and at the school's individual www.myscprep.org in the School's employee handbook of operating procedures.
- 1.8 Effective Date:** The effective date of this Policy is July 1, 2022.
- 1.9 Retaliation and False Statements Prohibited:** Neither the District nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.
 - a. Alleged violations of Retaliation will be referred to the student or employee Code of Conduct,
 - b. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Policy.
 - c. Charging an individual with a Code of Conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute Retaliation prohibited under Policy. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

- 1.10 Amnesty:** The District strongly encourages students to report incidents violating the policy related to discrimination, harassment, sexual harassment, and related inappropriate conduct. The District’s primary concern is the safety of the members of the school district community, and it encourages behavior that demonstrates care and concern for members of the community. Accordingly, the District reserves the right to provide a reprieve from disciplinary actions for Complainants and other individuals who exhibit responsible and proactive behavior in reporting Sexual Harassment, sexual misconduct, sexual violence, or other prohibited conduct or for students acting as a witness during the formal grievance procedures. The District may provide referrals to counseling and may require educational options, rather than disciplinary sanctions, in such cases.
- 1.11 Other District Policies:** This Policy takes precedence over other District policies and procedures concerning Sexual Harassment under Title IX in the event of a conflict.
- 1.12 Modification and Review of this Policy:** The District reserves the right to modify this Policy to take into account applicable legal requirements. The District will regularly review this Policy to determine whether modifications should be made.
- 1.13 Additional Code of Conduct or District Policy Violations:** Alleged violations of the student or employee Code of Conduct that arise from the same events as alleged Sexual Harassment under this Policy will be investigated and resolved under the grievance process in this Policy unless the Sexual Harassment has been dismissed under Section 5.2 of this Policy.
- 1.14 Role of Parent or Guardian:** Nothing in this Policy may be read in derogation of any legal right of a parent or guardian to act on behalf of a “Complainant,” “Respondent,” “party,” or other individual, subject to this Policy including but not limited to filing a Formal Complaint.
- 1.15 Role of Advisor:** Either party may be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. However, neither party’s advisor will be permitted to question witnesses. Neither party’s advisor may participate in interviews or meetings in which the represented party is not a participant.

Section 2: Definitions

2.1 Definitions of Prohibited Conduct Under this Policy¹

- 2.1.1 Sexual Harassment** means conduct on the basis of sex that satisfies one or more of the following:

¹ See Section 13 of this Policy for South Carolina State Laws related to this Policy.

- (1) An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity²; or
- (3) Sexual Assault, Dating Violence, Domestic Violence or Stalking as defined in this Policy.

2.1.2 Sexual Assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including Rape, Fondling, Incest, and Statutory Rape as defined in this Policy.

2.1.3 Rape³ means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim.

2.1.4 Fondling⁴ means the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of his/her age or because of his/her temporary or permanent mental Incapacity.

2.1.5 Incest⁵ means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

² A severe, pervasive, and objectively offensive assessment includes, but is not limited to, a consideration of the frequency of the offensive conduct, the nature of the unwelcome sexual acts or words, such as whether the harassment was physical, verbal or both; whether the harassment was merely an offensive utterance; and the number of victims involved and the relationship between the parties including, but not limited to, the ages of the harasser and the victim. In evaluating whether conduct is severe, pervasive, and objectively offensive, the District will look at the totality of the circumstances, expectations and relationships.

³ Rape as defined in the Uniform Crime Reporting Program (UCR) includes:

Forcible Rape: The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault with and Object: —To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

⁴ Fondling is referred to as Forcible Fondling in the UCR.

⁵ Incest is a Nonforcible Offense in the UCR.

2.1.6 Statutory Rape⁶ means sexual intercourse with a person who is under the statutory age of Consent.

2.1.7 Dating Violence means violence committed by a person—
(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship,
- The type of relationship,
- The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

2.1.8 Domestic Violence includes felony or misdemeanor crimes of violence committed by:

- a current or former spouse or intimate partner of the victim,
- a person with whom the victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- a person similarly situated to a spouse of the victim under the domestic or family violence laws of New Jersey, or
- any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New Jersey.

2.1.9 Stalking means engaging in a Course of Conduct directed at a specific person that would cause a Reasonable Person to—

- fear for his or her safety or the safety of others; or
- suffer Substantial Emotional Distress.

2.2 Definitions Related to Sexual Harassment: Consent, Course of Conduct, Incapacitation, Reasonable Person, Substantial Emotional Distress

2.2.1 Consent is affirmative, conscious, voluntary, and revocable. Consent to sexual activity requires of each person an affirmative, conscious, and voluntary agreement to engage in sexual activity.

It is the responsibility of each person to ensure they have the affirmative Consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or

⁶ Statutory Rape is a Nonforcible Offense in the UCR.

silence do not, alone, constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity.

The existence of a dating relationship or past sexual relations between the Complainant and Respondent will never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of Consent to prior conduct).

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable. In making this determination, the decision-maker will consider all of the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent's belief is not a valid defense where:

- (1) The Respondent's belief arose from the Respondent's own intoxication or recklessness;
- (2) The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively Consented; or
- (3) The Respondent knew or a reasonable person should have known that the Complainant was unable to Consent because the Complainant was incapacitated, in that the Complainant was:
 - asleep or unconscious
 - unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication
 - unable to communicate due to a mental or physical condition.

2.2.2 Course of Conduct means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

2.2.3 Incapacitation means that a person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of alcohol or other drugs such that the person does not have control over their body, is unaware that sexual activity is occurring, or their mental, physical or developmental abilities render them incapable of making rational informed decisions. Incapacitated is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

A person violates this policy when they engage in sexual activity with another person who is Incapacitated and a Reasonable Person in the same situation would have known that the person is Incapacitated. Incapacitation can be voluntary or involuntary. Signs of Incapacitation may include, without limitation: sleep; total or

intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances.

2.2.4 Reasonable Person means a reasonable person under similar circumstances and with similar identities to the victim.

2.2.5 Substantial Emotional Distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

2.3 Other Defined Terms

2.3.1 Actual Knowledge means Notice of Sexual Harassment allegations to any employee of the District (Officials with Authority), except that Actual Knowledge is not met when the only individual with Actual Knowledge is the Respondent.

2.3.2 Business Day means any weekday not designated by the District as a holiday or administrative closure day. When calculating a time period of Business Days specified in this Policy, the Business Day of the event that triggers a time period is excluded.

2.3.3 Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Complainants and Respondents are referred to collectively as “parties” throughout this Policy.

2.3.4 Disciplinary Sanctions are imposed only after a finding of responsibility through the grievance process or an agreement through the informal resolution process.

2.3.5 Education Program or Activity includes locations, events, or circumstances over which the District exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs. This includes conduct that occurs on the District’s property, during any District activity.

2.3.6 Formal Complaint means a document filed by a Complainant (or parent or guardian of the parent) or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the District investigate the allegation of Sexual Harassment.

2.3.7 Official with Authority means any employee of the District.

- 2.3.8 Remedies** are designed to restore or preserve equal access to the District’s Education Program or Activity. Remedies may include, but are not limited to, the same individualized services as Supportive Measures; however, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
- 2.3.9 Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. Complainants and Respondents are referred to collectively as “parties” throughout this Policy.
- 2.3.10 Retaliation** means intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Policy.
- 2.3.11 Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

Such measures are designed to restore or preserve equal access to the District’s Education Programs or Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District’s educational environment, or deter sexual harassment.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the property, and other similar measures.

Section 3: Reporting Sexual Harassment and Preservation of Evidence

3.1 Reporting to the District

- 3.1.1 Reporting to Title IX Coordinator:** Reports of Sexual Harassment may be made to the Title IX Coordinator in any of the following ways, by anyone, at any time: email, phone, online form, mail. Reports may be made to the Title IX Coordinator in person at the Office of Student Care. After Title IX Sexual Harassment has been reported to the Title IX Coordinator, the Title IX Coordinator will promptly offer supportive measures to the Complainant, regardless of whether the Complainant was the reporter of the Sexual Harassment.

3.1.2 Reporting to Employees of the District: If employees of the District are notified of Sexual Harassment, they shall promptly report such Sexual Harassment to the Title IX Coordinator who will take immediate action under this Policy.

3.2 Reporting to Law Enforcement: Reports may be filed with local law enforcement agencies. The Title IX Coordinator can assist with contacting law enforcement agencies. Law enforcement investigations are separate and distinct from the District's investigations.

Anderson County Sheriff's Office
305 Camson Rd.
Anderson, SC 29625
864-260-4400

3.3 Reporting to Outside Agencies: Students and employees may report to external agencies:

- **Students**

Office for Civil Rights
U.S. Department of Education
<http://www.ed.gov/about/offices/list/ocr/complaintintro.html>
400 Maryland Avenue, SW Washington DC
Telephone: 202-435-6020
Email: OCR.DC@ed.gov

- **Employees**

Office for Civil Rights
U.S. Department of Education
<http://www.ed.gov/about/offices/list/ocr/complaintintro.html>
400 Maryland Avenue, SW Washington DC
Telephone: 202-435-6020
Email: OCR.DC@ed.gov

3.4 Time Limits on Reporting. There are no time limits on reporting Sexual Harassment to the Title IX Coordinator or the District. If the Respondent is no longer subject to the District's Education Program or Activity or significant time has passed, the District will have limited ability to investigate, respond and/or provide disciplinary Remedies and Sanctions.

Section 4: Initial Response to Reported Sexual Harassment: Upon receipt of a report of Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant, regardless of

whether the Complainant was the individual who initiated the report. During the initial contact with the Complainant, the Title IX Coordinator will:

- Provide the Complainant with notice of their option to have an advisor;
- Explain the process for filing a Formal Complaint;
- Explain the Grievance Process;
- Discuss the availability of Supportive Measures regardless of whether a Formal Complaint is filed;
- Consider the Complainant's wishes with respect to Supportive Measures.

Section 5: Formal Complaint: The District will investigate all allegations of Sexual Harassment in a Formal Complaint.

5.1 Filing a Formal Complaint: A Formal Complaint must:

- (1) Contain an allegation of Sexual Harassment against a Respondent;
- (2) Request that the District investigate the allegation; and
- (3) Be signed by the Complainant (or parent or guardian of the Complainant) or Title IX Coordinator.

In limited circumstances, if a Complainant does not sign a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint. In determining whether to sign a Formal Complaint, the Title IX Coordinator will consider factors that include but are not limited to:

- Whether there have been other reports of Sexual Harassment or other relevant misconduct concerning the same Respondent whether or not the incidents occurred while the Respondent was the District student or employee;
- Whether the Respondent threatened further Sexual Harassment or other misconduct against the Complainant or others;
- Whether the alleged Sexual Harassment was committed by multiple perpetrators;
- The nature and scope of the alleged Sexual Harassment including whether the Sexual Harassment was perpetrated with a weapon;
- The ages and roles of the Complainant and the Respondent;
- Whether the District can pursue the investigation without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the alleged Sexual Harassment such as security cameras or physical evidence);
- Whether the report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a particular group.

5.2 Dismissal of a Formal Complaint.

5.2.1 Required Dismissal: The Title IX Coordinator will dismiss a Formal Complaint for purposes of Sexual Harassment if:

- (1) The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in this Policy even if proved;
- (2) The conduct alleged did not occur in the District's Education Program or Activity; or
- (3) The Conduct alleged in the Formal Complaint did not occur against a person in the United States.

Dismissal of a Formal Complaint does not preclude action under other provisions of the District's policies and procedures. If a Formal Complaint is dismissed under the matter will be reviewed to determine whether the matter will be pursued under the District's student or employee Code of Conduct.

5.2.2 Permissive Dismissal: The Title IX Coordinator may dismiss a Formal Complaint or any allegations within the Formal Complaint, if at any time during the investigation or hearing:

- (1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within the Formal Complaint,
- (2) The Respondent is no longer enrolled or employed by the District, or
- (3) Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations within the Formal Complaint.

5.2.3 Appeal of Dismissal: Either party may appeal the dismissal of a Formal Complaint or any allegations therein. See Section 7 for bases and process for appeals.

5.3 Consolidation of Formal Complaints: The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent or by more than one Complainant against one or more Respondents where the allegations arise out of the same facts or circumstances.

Section 6: Grievance Process The grievance process within this Policy is designed to treat Complainants and Respondents equitably. Remedies are provided to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent and Disciplinary Sanctions are not imposed against a Respondent prior to the completion of the grievance process.

6.1: General Grievance Process Information:

6.1.1 Burden of Proof and Burden of Gathering Evidence: All investigations and proceedings, including hearings, relating to Sexual Harassment will be conducted using a "preponderance of the evidence" (more likely than not) standard. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the District, not the parties.

- 6.1.2 Presumption of Not Responsible:** The Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process.
- 6.1.3 Time Frames for Grievance Process:** The District strives to complete the grievance process within ninety (90) Business Days. Temporary delays and/or extensions of the time frames within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with explanation of the reasons for such action. Examples of good cause for delay/extensions include but are not limited to 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.
- 6.1.4 Medical Records:** The District will not access, consider, disclose, or otherwise use party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written permission to do so for the grievance process within the Policy.
- 6.1.5 Privileged Information:** The District will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.
- 6.1.6 Range of Disciplinary Sanctions:** Sanctions that may be required if an individual is found responsible for violating this policy are included in every school's individual employee handbook.
- 6.1.7 Notice of Meetings, Interviews, and Hearings:** Parties and witnesses will be provided notice of any meeting, interview, and/or hearing with sufficient time to prepare to participate. This notice will include the date, time, location, participants and purposes of the meeting, interview and/or hearing.
- 6.2 Notice of Allegations:** Upon receipt of a Formal Complaint, the investigator will provide Notice of Allegations to the parties who are known. The Notice of Allegations will include:
- (1) Notice of the party's rights and options
 - (2) Notice of the District's grievance process
 - (3) Notice of the District's informal resolution process and options
 - (4) Notice of the allegations of Sexual Harassment including:
 - The identities of the parties involved in the incident, if known,
 - The conduct allegedly constituting Sexual Harassment, and
 - The date and location of the incident, if known.
 - (5) Notice that the Respondent is presumed not responsible of the alleged conduct

and that a determination regarding responsibility is made at the conclusion of the grievance process.

- (6) Notice that the parties may have an advisor of their choice, who may be, but is not required to be an attorney, and that the advisor may inspect and review evidence.
- (7) Notice of the District's Code of Conduct provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The Notice of Allegations will be updated, and written notice provided to the parties if at any time during the investigation, the District decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Allegations.

6.3 Investigation of Formal Complaint. The District will conduct an investigation following a Formal Complaint and Notice of Allegations. During all meetings and interviews the parties may be accompanied by an advisor of their choice, which can be, but is not required to be an attorney.

6.3.1 Opportunity to Provide Information and Present Witnesses: Each party will be provided an equal opportunity to provide information to the investigator and present witnesses for the investigator to interview. The information provided by the parties can include inculpatory and exculpatory evidence. The witnesses can include both fact witnesses and expert witnesses.

6.3.2 Opportunity to Inspect and Review Evidence: Each party will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which the District does not intend to rely upon in reaching a determination regarding responsibility. This review includes inculpatory and exculpatory evidence that is obtained by a party, witness, or other source. Each party and their advisor (if any) will be provided an electronic copy of the evidence for inspection and review. The parties will have ten (10) business days to review submit a written response to the investigator. The investigator will consider the written responses prior to completing an investigative report. All evidence provided during the inspection and review phase will be available at any hearing for the parties to use during the hearing, including for purposes of cross examination.

6.3.3 Investigative Report: Following the opportunity to inspect and review evidence directly related to the allegations raised in the Formal Complaint, the investigator will create an investigative report that fairly summarizes relevant evidence obtained during the investigation.

6.3.4 Review of the Investigative Report: At least ten (10) Business Days prior to the determination of responsibility the investigator will provide each party and the

party's advisor (if any) an electronic copy of the investigative report for their review and written response.

6.3.5 Investigation Timeframe: The investigation of a Formal Complaint will be concluded within 60 Calendar Days of the filing of a Formal Complaint. The parties will be provided updates on the progress of the investigation, as needed.

Section 7: Question and Answer Period: After the investigation, the District will assign a panel of three (3) decision-makers, who are not the Title IX Coordinator of the District or staff member who conducted the investigation. The decision-makers shall consist of the School Leader appointed designee. The decision-makers will afford each party the opportunity to:

- 1) submit written, relevant questions that a party wants asked of any party or witness;
- 2) provide each party with the answers; and
- 3) allow for additional, limited follow-up questions from each party.

7.1 Evidence and Questions Excluded: The Chair will make determination regarding relevancy prior to sending questions to parties or witnesses. The following questions and evidence are considered not relevant:

- **Sexual Predisposition or Prior Sexual Behavior of the Complainant:** Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.
- **Privileged Information:** No person will be required to disclose information protected under a legally recognized privilege. The decision-maker must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
- **Medical Records:** Evidence or records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, are not permitted to be used during a hearing unless the party

provides voluntary, written permission to do so for the grievance process within this Policy.

Section 8: Determination Regarding Responsibility: After the question and answer period, the decision-makers will provide the Complainant and the Respondent with a written determination simultaneously. The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be considered timely. The written notice will include:

- Identification of the allegations potentially constituting Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of this Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions that the District imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the District's education program or activity will be provided by the District to the Complainant⁷; and
- The procedures and permissible bases for the Complainant and Respondent to appeal.

Section 8: Appeals: Either party may appeal the determination regarding responsibility, or the dismissal of a Formal Complaint or any allegations therein within three (3) Business Days of the receipt of the determination regarding responsibility or dismissal. The appeals must be made in writing and delivered to the School Title IX Coordinator.

8.1 Bases for Appeal: Appeals of the determination of responsibility or the dismissal of a Formal Complaint may be made on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

8.2 Appeal Procedures: If an appeal is submitted, the District will
(1) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.

⁷ The Title IX Coordinator is responsible for the implementation of any remedies.

(2) Ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator or the Title IX Coordinator.

(3) Provide the non-appealing party with five (5) Business Days from receipt of the notification of appeal to submit a written statement in support of the outcome of the determination or dismissal.

(4) Issue a written decision describing the result of the appeal and the rationale for the result which can be one of the following:

- Affirm the decision-maker's determination regarding the Respondent's responsibility and affirm the disciplinary sanctions and remedies, if applicable;
- Affirm the decision-maker's determination regarding the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable;
- Remand the process back to the question and answer stage for the decision-maker to remedy any procedural irregularity or consider any new evidence;
- Reverse the decision-maker's determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or
- Affirm or amend the sanctions and/or remedies outlined in the determination issued under this Policy.

(5) Provide the written decision simultaneously to both parties.

8.3 Appeal Timeframe: The appellate decision-maker will release the written decision within twenty (20) Business Days of receiving the appeal.

Section 9: Informal Resolution Process. At any time after a Formal Complaint has been signed and before a determination regarding responsibility has been reached, the parties may voluntarily agree to participate in an informal resolution facilitated by the District, that does not involve a full investigation and adjudication. Types of informal resolution include, but are not limited to, mediation, facilitated dialogue, conflict coaching, and restorative justice and resolution by agreement of the parties.

9.1 Informal Resolution Notice: Prior to entering the informal resolution process, the District will provide the parties a written notice disclosing:

- (1) The allegations;
- (2) The requirements of the informal resolution process, including the right of any party to withdraw from the informal resolution process and resume the grievance process and the circumstances which preclude parties from resuming a Formal Complaint arising from the same allegations;
- (3) Consequences resulting from the informal resolution process, including that the records will be maintained for a period of seven (7) years but will not be used by investigators or decision-makers if the formal grievance process resumes.

9.2 Informal Resolution Agreement: Prior to entering the informal resolution process,

the parties must voluntarily agree, in writing to the use of the informal resolution process.

9.3 Informal Resolution Availability: The informal resolution process is not permitted to resolve allegations that an employee committed Sexual Harassment against a student.

9.4 Informal Resolution Timeframe: Informal resolutions of a Formal Complaint will be concluded within 45 days of notice to the District that both parties wish to proceed with the informal resolution process. Such notice that the parties wish to proceed with an informal resolution process will “pause” the counting of the timeframe to conclude the Grievance Process of this Policy, should the informal resolution process fail and the parties continue with the Grievance Process.

9.5 Informal Resolution Documentation. Any final resolution pursuant to the Informal Resolution process will be documented and kept for seven (7) years. However, no recording of the informal resolution process will be made and all statements made during the informal resolution process will not be used for or against either party (and the decision-maker and/or appellate decision-maker may not consider any such statement made during informal resolution) should the parties resume the grievance process. Failure to comply with an informal resolution agreement may result in disciplinary action.

Section 10: Emergency Removal and Administrative Leave.

10.1 Emergency Removal At any time after the Title IX Coordinator is on notice of Sexual Harassment, the District may remove a Respondent on an emergency basis. The District will only conduct an emergency removal after:

- (1) Undertaking and individualized safety and risk analysis,
- (2) Determining that an immediate threat the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, and
- (3) Providing the Respondent with notice and an opportunity to challenge the decision to the Title IX Coordinator, within two (2) Business Days following the removal.

10.2 Administrative Leave: The District may place an employee Respondent on administrative leave during the pendency of the grievance process in this Policy.

Section 11: Recordkeeping: The District will maintain all of the documentation related to reports of Sexual Harassment, Formal Complaints, the grievance process, and information resolution process for seven years in accordance with state and federal records laws and requirements. The documentation of all records is private and confidential to the extent possible under law. Student records of the grievance process are disciplinary records under Family Education Rights and Privacy Act (FERPA). Employee records of the grievance process are subject to the Freedom of Information Act (FOIA) and applicable state laws and included in the employee’s official employment record.

Section 12: Additional Conduct Violations Related to This Policy: Alleged violations of the terms in this section will be sent to the Dr. Kelly Griffis (kgriffis@myscprep.org) for student Respondents or the Director of Human Resources , Alex Aponte (hr@reasonandpublic.com) for employee Respondents for investigation and adjudication under the District student or employee Code of Conduct.

- a. Retaliation:**
- b. False Information**
- c. Interference with Grievance Process**
- d. No Contact Directive Violations**

Section 13: Applicable South Carolina Laws

South Carolina Code of Laws

Chapter 25

Domestic Violence

SECTION 16-25-10. Definitions.

As used in this article, the term:

(1) "Deadly weapon" means any pistol, dirk, slingshot, metal knuckles, razor, or other instrument which can be used to inflict deadly force.

(2) "Great bodily injury" means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

For validity of (3), see Editors' Notes below.

(3) "Household member" means:

(a) a spouse;

(b) a former spouse;

(c) persons who have a child in common; or

(d) a male and female who are cohabiting or formerly have cohabited.

(4) "Moderate bodily injury" means physical injury that involves prolonged loss of consciousness or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ or injury that requires medical treatment when the

treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.

(5) "Prior conviction of domestic violence" includes conviction of any crime, in any state, containing among its elements those enumerated in, or substantially similar to those enumerated in, Section 16-25-20(A) that is committed against a household member as defined in item (3) within the ten years prior to the incident date of the current offense.

(6) "Protection order" means any order of protection, restraining order, condition of bond, or any other similar order issued in this State or another state or foreign jurisdiction for the purpose of protecting a household member.

(7) "Firearm" means a pistol, revolver, rifle, shotgun, machine gun, submachine gun, or an assault rifle which is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive but does not include an antique firearm as defined in 18 U.S.C. 921(a)(16).

SECTION 16-25-20. Acts prohibited; penalties.

(A) It is unlawful to:

(1) cause physical harm or injury to a person's own household member; or

(2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

Stalking 16-3-1700 (c) and (d)

(C) "Stalking" means a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person's position to fear:

(1) death of the person or a member of his family;

(2) assault upon the person or a member of his family;

(3) bodily injury to the person or a member of his family;

(4) criminal sexual contact on the person or a member of his family;

(5) kidnapping of the person or a member of his family; or

(6) damage to the property of the person or a member of his family.

(D) "Pattern" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose.

(E) "Family" means a spouse, child, parent, sibling, or a person who regularly resides in the same household as the targeted person.

(F) "Electronic contact" means any transfer of signs, signals, writings, images, sounds, data, intelligence, or information of any nature transmitted in whole or in part by any device, system, or mechanism including, but not limited to, a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

SECTION 16-3-615. Spousal sexual battery.

(A) Sexual battery, as defined in Section 16-3-651(h), when accomplished through use of aggravated force, defined as the use or the threat of use of a weapon or the use or threat of use of physical force or physical violence of a high and aggravated nature, by one spouse against the other spouse if they are living together, constitutes the felony of spousal sexual battery and, upon conviction, a person must be imprisoned not more than ten years.

(B) The offending spouse's conduct must be reported to appropriate law enforcement authorities within thirty days in order for that spouse to be prosecuted for this offense.

(C) The provisions of Section 16-3-659.1 apply to any trial brought under this section.

(D) This section is not applicable to a purported marriage entered into by a male under the age of sixteen or a female under the age of fourteen.

SECTION 16-3-651. Criminal sexual conduct; definitions.

For the purposes of Sections 16-3-651 to 16-3-659.1:

(a) "Actor" means a person accused of criminal sexual conduct.

(b) "Aggravated coercion" means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person.

(c) "Aggravated force" means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon.

(d) "Intimate parts" includes the primary genital area, anus, groin, inner thighs, or buttocks of a male or female human being and the breasts of a female human being.

(e) "Mentally defective" means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct.

(f) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause.

(g) "Physically helpless" means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(h) "Sexual battery" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

(i) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

SECTION 16-3-652. Criminal sexual conduct in the first degree.

(1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses aggravated force to accomplish sexual battery.

(b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act.

(c) The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance.

(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment for not more than thirty years, according to the discretion of the court.

SECTION 16-3-653. Criminal sexual conduct in the second degree.

(1) A person is guilty of criminal sexual conduct in the second degree if the actor uses

aggravated coercion to accomplish sexual battery.

(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than twenty years according to the discretion of the court.

HISTORY: 1977 Act No. 157 Section 3.

SECTION 16-3-654. Criminal sexual conduct in the third degree.

(1) A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances.

(b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery.

(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than ten years, according to the discretion of the court.

SECTION 16-3-655. Criminal sexual conduct with a minor; aggravating and mitigating circumstances; penalties; repeat offenders.

(A) A person is guilty of criminal sexual conduct with a minor in the first degree if:

(1) the actor engages in sexual battery with a victim who is less than eleven years of age; or

(2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(C) or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D).

(B) A person is guilty of criminal sexual conduct with a minor in the second degree if:

(1) the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; or

(2) the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. However, a person may not be convicted of a violation of the provisions of this item if he is eighteen years of age or less

when he engages in consensual sexual conduct with another person who is at least fourteen years of age.

B. Procedures for Resolution of Non-Harassment Title IX Discrimination Complaints

Section 1: Applicability

The procedures in this section shall be used to investigate and resolve reported Title IX matters that allege discrimination that falls outside of Section A of this Policy (“Non-Harassment Title IX Discrimination”). These procedures shall be used in conjunction with Section A of this Policy for purposes of identification of key Title IX officials (A. Section 1.0) definitions (A. Section 2.0) and reporting options (A. Section 3.0)

Discrimination prohibited under this policy includes the exclusion from participation in, denial of the benefits from, or subjection to unfavorable treatment in any District Education Program or Activity on the basis of sex, including sexual orientation or gender identity and pregnancy status.

Section 2: Advisors

Complainants and Respondents may be accompanied by an advisor of their choice throughout the investigation. An advisor’s role is limited to assisting, advising, and/ or supporting a Complainant or Respondent. An advisor is not permitted to speak for or on behalf of a Complainant or Respondent or appear in lieu of a Complainant or Respondent

Section 3: Investigation Procedures

If the allegations fall within the scope of this policy and the matter does not resolve using the informal resolution process, the District will conduct a prompt, thorough, and impartial investigation of the reported discrimination. The Title IX Coordinator or their designee will appoint one or more investigators who will conduct investigative meetings, gather information and evidence, and make an independent determination as to whether a violation of the policy occurred using a preponderance of the evidence standard.

The Respondent is presumed not responsible until a determination has been reached by the investigator.

Section 3.1: Notice of Allegations: A written Notice of Allegations will be sent to the Complainant and Respondent, constituting the initiation of the investigation. The Notice of Allegations will contain a summary of the allegation(s) or conduct at issue. This will include the identities of the parties involved, the date and location of the incident (if known), and a link to the appropriate policies. Once the Notice of Allegations has been sent to the parties, the investigation begins.

Section 3.2: Investigation Process: The Complainant and Respondent will have an equal opportunity to be heard, identify witnesses, and provide information and evidence. The investigator will gather additional information and evidence as appropriate, including, but

not limited to, social media information, text messages, email messages, videos, and other records. The investigator has the discretion to determine the relevance of information and witnesses and decide whether information or evidence should be excluded as irrelevant.

Section 3.3: Timing of the Investigation: The District strives to complete the investigation within sixty (60) business days from the issuance of the Notice of Allegations. All extensions of this time frame will be communicated with the parties in writing.

Section 3.4: Report: At the conclusion of the investigation, the investigator will draft a report with a finding regarding responsibility based on a preponderance of the evidence standard. The report will include the applicable sanctions if there is a finding of “responsible.” Sanction determinations will be made in collaboration with the Director of Human Resources if the Respondent is a faculty or staff member, or the School Leader if it is a student. A copy of the report will be provided simultaneously to the Complainant and Respondent.

Section 4: Appeals: The Complainant or Respondent may appeal the decision of the investigator based only on the following grounds:

- The existence of a procedural irregularity that materially affected the outcome;
- The existence of new evidence that was not reasonably available at the time the determination regarding responsibility that could have affected the outcome;
- The Title IX Coordinator and/or investigator(s) had a conflict of interest or bias that affected the outcome;

Appeals must be made in writing and submitted to (Decide Where) within (INSERT NUMBER OF DAYS) of the receipt of the final decision. The appellate decision maker will notify the other non-appealing party of the appeal and allow for written response from the non-appealing party. A determination regarding the appeal will be made by the appellate decision maker within (insert number of days).

Section 5: Acceptance of Responsibility: The Respondent may, at any time, request to resolve the investigation process or resolve specific allegation(s) by accepting responsibility for the alleged misconduct. The Title IX Coordinator will complete a summary report of the information gathered. The Title IX Coordinator will consider the request; if the request is granted, the Title IX Coordinator, in consultation with the Director of Human Resources if the Respondent is a faculty or staff member, or the Dean of Students if the Respondent is a student will determine the appropriate sanction.

Section 6: Informal Resolution: The Complainant and Respondent may agree to Informal Resolution at any time prior to a determination regarding responsibility if the Title IX Coordinator

deems the matter appropriate for Informal Resolution.⁸ The Title IX Coordinator will consider the following when determining whether to permit a matter to move to Informal Resolution:

- The nature of the allegations;
- The dynamics of power or control associated with the alleged offense or the parties involved;
- The Respondent's prior known conduct;
- Whether there would be a continuing safety threat to the University community after resolution of allegations;
- Whether multiple parties are involved;
- Any other factor deemed relevant by the Title IX Coordinator in the interest of overall University safety or safety of the parties involved.

Participation in Informal Resolution is a choice, and either party can request to end Informal Resolution process and pursue an investigation at any time, including if Informal Resolution is unsuccessful at resolving the matter. Similarly, either party can request to end an investigation and pursue Informal Resolution at any time, though entering Informal Resolution must be agreed to in writing by the parties.

If an agreement is reached through Informal Resolution, the parties will be provided simultaneously with a Notice of Outcome. An appeal of the Informal Resolution process or result is not permitted.

Section 8: Allegations Related to Culture

Allegations related to a culture of Sexual Harassment or Non-Harassment Title IX Discrimination by a group, organization, department, division, or the University as a whole will be investigated and resolved as closely as possible to this policy. Resolutions for a group, organization, division or the University will be communicated with the highest-ranking member of the group, organization, department, division or the District.

Section 7: Intersection of Policies

The procedures in this policy are the exclusive means of resolving complaints of alleged violations of Title IX involving complaints of Non-Harassment Title IX Discrimination brought against University faculty, staff, or students. To the extent there are any inconsistencies between these procedures and other District grievance, complaint, or discipline procedures, these complaint resolution procedures will control the resolution of complaints alleging Non-Harassment Title IX Discrimination.

⁸ The Title IX Coordinator may, at any time, withdraw approval for the Informal Resolution and return the matter to investigation.