



Policy Number: 1120

Dated: 01/26/2021

## POLICY SEXUAL HARASSMENT TITLE IX

### PURPOSE

American Leadership Academy is committed to maintaining an educational environment in which all students and employees are treated with respect and dignity and working to ensure that all students and employees are not subjected to sexual harassment.

Sexual harassment is prohibited by Title IX of the Education Amendments of 1972 which provides that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

This policy is intended to protect ALA students and employees against sexual harassment, whether by students, employees, volunteers, or others under the school’s control. This policy also subjects those who engage in sexual harassment to disciplinary action. Conduct that does not rise to the level of sexual harassment as defined in this policy, but constitutes inappropriate or offensive sexual behavior is still prohibited and will be investigated and addressed under ALA Policy 2020, Policy 3050, or Policy 3380.

### DEFINITIONS

1. **Actual Knowledge** means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any school official who has authority to institute corrective measures on behalf of the school.
2. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
3. **Consent** is knowing, voluntary, and clear permission by word or action to engage in sexual activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.
4. **Decision-maker** refers to those who have decision-making and sanctioning authority within the Formal Grievance process.

5. **Formal Complaint** means a document submitted by a Complainant or their parent/guardian or signed by the Title IX Coordinator alleging sexual harassment or retaliation under this Policy and requesting that the school investigates the allegation.
6. **Investigator** means the person or persons assigned by ALA to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report and file of directly related evidence.
7. **Respondent** means an individual who has been reported as having engaged in conduct that could constitute sexual harassment or retaliation under this Policy.
8. **Sexual Harassment** may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved that satisfies one or more of the following:
  - a. A school employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (quid pro quo);
  - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it denies a person equal access to the school's education program or activity;
    - i. Severe: Based on whether the described occurrence or conduct was severe from the perspective of a reasonable person in the complainant's position.
    - ii. Pervasive: A single instance of an offensive comment or joke typically does not meet the Title IX standard for sexual harassment requiring investigation, but there may be instances where a single unwelcome act may meet that standard. Factors to consider include, but are not limited to, whether there is a pattern of sexual harassment, the number of people involved, and whether the unwelcome sex-based conduct involves widespread dissemination of offensive material.
    - iii. Objectively Offensive: Based on whether the described occurrence or conduct was offensive from the perspective of a reasonable person in the complainant's position. Notably, the perspective for offensiveness is based on the reasonableness from the complainant's perspective, and the intent of the respondent is irrelevant in the analysis. "Just joking" is not an accepted excuse.
    - iv. Effectively Denies Equal Access: this does not require that a complainant be entirely or physically excluded from educational opportunities, but rather that the sexual harassment has so undermined and detracted from the complainant's educational experience that he or she is effectively denied equal access to the school's resources and opportunities. Thus, a student does not need to have dropped out of school, failed a class, had a panic attack, or otherwise reach a "breaking point." Although no concrete injury is required to show a deprivation of equal educational access, examples of the signs of unequal educational access may include, but are not limited to:
      1. An athlete who quits the team but carries on with other school activities following sexual harassment,
      2. Skipping class to avoid a harasser, or
      3. A decline in a student's grade point average.

## 9. Sexual Violence:

- a. Sexual assault as defined by the Title IX regulations, which is the unwelcome touching of a person's private body parts for the purpose of sexual gratification, and includes any sexual act directed against another person. Sexual acts include forcible rape, forcible sodomy, forcible fondling or any sexual assault with an object. In determining whether conduct meets this definition, administrators shall consider all the circumstances surrounding the incident, such as the age and maturity of the parties, the duration of the incident, the location and secretive nature of the actions, the intent of the parties, and the effects on the parties.
- b. Dating violence as defined by the Title IX regulations, which is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant, which may be determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- c. Domestic violence as defined by the Title IX regulations, which includes violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under Utah law, or by any other person against a complainant who is protected from that person's acts under Utah law.
- d. Stalking as defined by the Title IX regulations, which is 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.
- e. *Quid pro quo* harassment and offenses involving sexual assault, dating violence, domestic violence, or stalking are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such misconduct is sufficiently serious to deprive a person of equal access.

## PROHIBITED CONDUCT

School-related conduct that American Leadership Academy considers unacceptable and which may constitute sexual harassment is prohibited. Such conduct includes, but is not limited to, the following:

1. Rape, attempted rape, sexual assault, attempted sexual assault, forcible sexual abuse, hazing, and other sexual and gender-based activity of a criminal nature as defined under Title IX.
2. Unwelcome sexual invitations or requests for sexual activity in exchange for grades, promotions, preferences, favors, selection for extracurricular activities or job assignments, homework, etc.
3. Unwelcome and offensive public sexual display of affection, including kissing, making out, groping, fondling, petting, inappropriate touching of one's self or others, sexually suggestive dancing, and massages.

4. Any unwelcome communication that is sexually suggestive, sexually degrading or implies sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance or activities; sexual jokes; sexual gestures; public conversations about sexual activities or exploits; sexual rumors and "ratings lists;" howling, catcalls, and whistles; sexually graphic computer files, messages or games, etc.
5. Unwelcome and offensive name calling or profanity that is sexually suggestive, sexually degrading, implies sexual intentions, or that is based on sexual stereotypes or sexual preference.
6. Unwelcome physical contact or closeness that is sexually suggestive, sexually degrading, or sexually intimidating such as the unwelcome touching of another's body parts, cornering or blocking an individual, standing too close, spanking, pinching, following, staling, frontal body hugs, etc.
7. Unwelcome and sexually offensive physical pranks or touching of an individual's clothing such as hazing and initiation, skirt "flip-ups", "pantsing" (pulling down someone's pants), "streaking", "mooning", placing hands inside an individual's pants, shirt, blouse, or dress, etc.
8. Unwelcome leers, stares, gestures, or slang that are sexually suggestive, sexually degrading, or imply sexual motives or intentions.
9. Clothing with sexually obscene or sexually explicit slogans or messages.
10. Unwelcome written or pictorial display or distribution of pornographic or other sexually explicit materials such as magazines, videos, films, internet material, etc.,
11. Any other unwelcome gender-based behavior that is offensive, degrading, intimidating, demeaning, or that is based on sexual stereotypes and attitudes.

For purpose of this policy, action or conduct shall be considered "unwelcome" if the student, employee or non-employee did not request or invite it and regarded the conduct as undesirable or offensive.

#### **DETERMINING IF PROHIBITED CONDUCT IS SEXUAL HARASSMENT**

Complaints of sexual harassment will be thoroughly investigated to determine whether the totality of the behavior and circumstances meet any of the elements of the above definition of sexual harassment and should therefore be treated as sexual harassment. Not all unacceptable conduct with sexual connotations may constitute sexual harassment. In many cases (other than quid pro quo situations where the alleged harasser offers academic or employment rewards or threatens punishment as an inducement for sexual favors), unacceptable behavior must be sufficiently severe, pervasive and objectively offensive to be considered sexual harassment.

In evaluating the totality of the circumstances and making a determination of whether conduct constitutes sexual harassment, the Investigator should consider:

1. The degree to which the conduct affected the ability of the student to participate in or benefit from his or her education or altered the conditions of the student's learning environment or altered the conditions of the employee's working environment.
2. The type, frequency and duration of the conduct.

3. The identity of and relationship between the alleged harasser and the subject of the harassment.
4. The number of individuals involved.
5. The age and sex of the alleged harasser and the subject of the harassment.
6. The location of the incidents and context in which they occurred.
7. Incidents of gender-based, but non-sexual harassment.
8. Any other matters considered relevant.

## **REPORTING COMPLAINTS**

Because sexual harassment can occur staff to staff, student to student, staff to student, student to staff, male to female, female to male, male to male or female to female, it shall be a violation of this policy for any student, employee or third party (school visitor, vendor, etc.), to sexually harass any student, employee, or “non-employee”.

In order for American Leadership Academy to effectively enforce this policy and to take prompt corrective measures, it is essential that all victims of sexual harassment and persons with knowledge of sexual harassment report the harassment immediately. The school will promptly investigate all complaints of sexual harassment, either formal or informal, verbal or written. To the extent possible, all complaints will be treated in a confidential manner.

Pursuant to state law, when a complaint involves allegations of child abuse, the complaint must immediately be reported to either the Division of Child and Family Services (DCFS) or local law enforcement.

Any report clearly alleging criminal conduct, including sexual assault/violence, will be reported to local law enforcement.

Individuals who believe they have been subjected to sexual harassment should immediately notify a teacher, administrator, or the Title IX Coordinator and may file a formal complaint. A report or notice of alleged sexual harassment may be filed by someone other than a complainant, in which case the procedures for a response and supportive measures will be followed. However, an investigation is completed only upon receipt of a formal complaint by a complainant, or, if a minor, the complainant’s parent/guardian.

A formal complaint must be in writing and must be delivered to the Title IX Coordinator and include the elements described in its definition. It should also provide the following information if possible:

1. Name, home address, email address, and telephone number of the complainant;
2. Date(s) of incident(s) giving rise to the complaint;
3. Name(s) of respondent(s);
4. Description of the conduct or incident(s);
5. Description of the harm caused by the incident; and

6. Description of the remedy sought. Providing a description of the remedy sought does not confer authority on the complainant or the complainant's parent/guardian to determine the discipline imposed on the respondent.

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the school and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the school proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate the grievance process.

In cases in which the Complainant requests no formal action and the circumstances allow the school to honor that request, the school may offer informal resolution options, supportive measures, and remedies to the Complainant, but will not otherwise pursue formal action.

Individuals who make a good faith report of sexual harassment will not have their employment, grades, work assignments, or participation in school-sponsored programs or activities adversely affected. However, a student or employee who knowingly files a false report may be subject to civil and/or legal actions as well as school disciplinary action.

## **RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF SEXUAL HARASSMENT**

Upon receiving a complaint or notice, the Title IX Coordinator initiates a prompt initial assessment. The Title IX Coordinator will initiate at least one of three responses:

1. Offering and/or implementing supportive measures only because the Complainant does not want to file a formal complaint.
2. An informal resolution (upon submission of a formal complaint).
3. A Formal Grievance Process including an investigation and a determination of whether policy was violated (upon submission of a formal complaint).

## **INITIAL ASSESSMENT**

1. If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly.
2. If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, and which informal mechanism may serve the situation best or is available.
3. If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX. If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address an incident, and/or a pattern of alleged misconduct, and/or a culture/climate concern, based on the nature of the

complaint. If it does not, the Title IX Coordinator determines that Title IX does not apply and will dismiss the complaint.

4. The school must dismiss a formal complaint or any allegations therein if, at any time during the investigation or meeting with the Decision-maker, it is determined that:
  - i) The conduct alleged in the formal complaint would not constitute sexual harassment as defined, even if proved; and/or
  - ii) The conduct did not occur in an educational program or activity controlled by the school and/or the school does not have control of the Respondent; or
  - iii) The alleged conduct did not occur within the United States.
5. The school may dismiss a formal complaint or any allegations therein if, at any time during the investigation or meeting with the Decision-maker:
  - i) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint in whole or in part; or
  - ii) The Respondent is no longer enrolled in or employed by the school; or
  - iii) Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
  - iv) Upon any dismissal the school will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.
  - v) This dismissal decision is appealable by any party under the appeal process.
  - vi) Formal complaints that are dismissed with regard to sexual harassment under Title IX may still be investigated under a separate board policy and/or administrative procedures.

## **COUNTERCLAIMS**

The school is obligated to ensure that the grievance process is not abused for retaliatory purposes. The school permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counter claims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the school.

## **RIGHT TO AN ADVISOR**

The parties may each have one Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process. For a student the Advisor can be someone in addition to their parent/guardian who may also be present with them for all meetings, interviews, and hearings within the resolution process. They may select their Advisor, but they must be eligible and available.

This means the party cannot insist on an Advisor who doesn't have the time or availability or has conflicting roles, such as being the Title IX administrator, Investigator, or Decision-Maker.

The Advisor may be a friend, mentor, family member, attorney or any other individual a party chooses to have advise, support, and/or consult with them throughout the resolution process.

The parties are expected to ask and respond to questions on their own behalf throughout the resolution process. In cases where a party requires assistance in asking and/or responding to questions on their own behalf (e.g. due to age or disability), the Advisor will be allowed to ask and/or respond to questions on behalf of their advisee, at the discretion of the Investigator(s) or Decision-maker(s). Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

## **RESOLUTION PROCESS**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with school policy.

Informal Resolution can include three different approaches;

1. When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.
2. When the parties agree to resolve the matter through an alternative resolution mechanism.
3. When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process.

## **FORMAL GRIEVANCE PROCESS**

The Title IX Coordinator will provide written notice of the investigation and allegations to the Respondent that includes:

1. A summary of all allegations,
2. The identity of the involved parties,
3. The precise misconduct being alleged,
4. The date and location of the alleged incident,
5. The specific policies implicated,
6. A statement that the school presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
7. A statement that determinations of responsibility are made at the conclusion of the process.

## **EMERGENCY REMOVAL**

Depending upon the nature of the allegations in the formal complaint, the school may seek the emergency removal of a student Respondent from the education environment by undertaking an individualized safety/risk assessment related to the allegations of sexual harassment. Any conduct by the student Respondent that is unrelated to the sexual harassment allegations shall not be considered in the safety/risk assessment.

## **SUPPORTIVE MEASURES AND PROHIBITED RETALIATION**

At any point after a report of sexual harassment is made, a Complainant, Respondent, and/or witnesses may request and be granted supportive measures to ensure they feel safe in their learning/working environment.

Retaliation against individuals who file a complaint, are the subject of the complaint, and/or participate in the investigative process for the complaint is strictly prohibited.

## **RESOLUTION TIMELINE**

The school will make a good faith effort to complete the resolution process within thirty to sixty calendar days, including appeal. This time frame can be extended as necessary.

## **INVESTIGATION**

Once the school decides to begin a formal investigation, the Title IX Coordinator will appoint an impartial Investigator. The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. The Recipient presumes that the Respondent is not responsible for the reported misconduct unless and until a final determination is made that this Policy has been violated.

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

In the event that the Complainant and/or Respondent is a minor, the school will include the minor's parent/guardian in all communications with the minor which are required by these procedures.

Notice should be given to inform the parties of their right to have the assistance of an Advisor of their choosing, present for all meetings attended by the party.

At the conclusion of the investigation the Investigator will write a report that will incorporate any relevant feedback, and summarizes all relevant evidence. The final investigation report is then shared with all parties and with the Decision-maker.

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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, 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.

### **DECISION-MAKER(S)**

The Title IX Coordinator will select an appropriate Decision-maker(s). The Title IX Coordinator will give the Decision-maker a list of the names of all parties, and witnesses. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, and witnesses. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The Decision-maker will not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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, 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.

The Decision-maker may choose to meet with each party individually and any witnesses, as needed, prior to making a determination of responsibility, or meet with the parties jointly.

The Decision-maker(s) will review the statements and any pertinent conduct history provided by the Investigator and then prepare a written deliberation statement. Using the deliberation statement, the Decision-maker(s) will work in conjunction with the Title IX Coordinator as needed to prepare a Notice of Outcome. This will include the final determination, rationale, and any applicable sanction(s). The Notice of Outcome will be shared in writing with the parties within 7 days of receiving the Decision-maker(s) deliberation statement.

### **SANCTIONS**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

1. The nature, severity of, and circumstances surrounding the violation(s).
2. The Respondent's disciplinary history.
3. Previous allegations or allegations involving similar conduct.

4. The need for sanctions/responsive actions to bring an end to the sexual harassment and/or retaliation.
5. The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community.
6. The impact on the parties.
7. Termination
8. Any other responsive actions as deemed appropriate.

#### **WITHDRAWAL OR RESIGNATION WHILE CHARGES PENDING**

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the school, the resolution process ends, as the school no longer has disciplinary jurisdiction over the withdrawn student. Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the school no longer has disciplinary jurisdiction over the resigned employee.

#### **APPEALS**

Any party may file a request for appeal in writing to the Title IX Coordinator within 3 business days of the delivery of the Notice of Outcome. An Appeal Decision-maker will be chosen by the Title IX Coordinator, who has had not been previously involved in the decision.

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. 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; and
3. The Title IX Coordinator, Investigator, or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Decision-maker and the parties will be notified in writing of the denial and the rationale.

Any sanctions imposed by the Decision-maker take effect following the appeal process. Supportive measures may remain in effect during an appeal process.

In cases in which the appeal results in reinstatement to the school or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

#### **RECORD KEEPING**

The school will maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the school's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.