

## **Policy Title: Title IX Sexual Harassment**

*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 educational program or activity receiving Federal financial assistance. –Title IX of the Education Amendments Act of 1972.*

It is the right of all students, faculty, and staff to enjoy an environment free from all forms of discrimination and conduct that can be considered harassing, coercive or disruptive, including sexual harassment. Freeman Academy expects everyone in our school community to foster positive attitudes and behaviors toward members of each gender.

This policy applies to the behavior of all students, faculty and staff while in the “school environment”. The “school environment” includes actions occurring on all property owned by Freeman Academy and actions occurring during activities specifically controlled and directed by the school whether on Freeman Academy property or not.

Title IX prohibits Sexual Harassment in the provision of all educational programs and activities. Freeman Academy (“FA”) is committed to complying with Title IX. Conduct that does not constitute Sexual Harassment but may violate federal or state law, FA policies, or the student code of conduct will be investigated under those policies and rules.

Title IX prohibits Sexual Harassment by or against all individuals who participate in FA’s programs and activities, including students, employees, volunteers, and third parties. This policy applies to all FA academic, educational, extracurricular, athletic, and other programs, whether those activities occur at FA facilities or at another location when FA is providing activities or programs, such as during a school-sponsored fieldtrip. Sexual Harassment occurring off-school premises in a private setting is not covered by this policy. Additionally, this policy applies to all terms and conditions of employment including, but not limited to, hiring, placement, benefits, promotion, termination, layoff, recall, transfer, leaves-of-absence, compensation, and training.

### **Title IX Coordinator**

FA’s Title IX Coordinator is Jill Hofer. All complaints regarding Sexual Harassment should be directed to the Title IX Coordinator who oversees FA’s review, investigation, and resolution of reports of Sexual Harassment. The Title IX Coordinator is available to advise any individual about courses of action under this policy. The Title IX Coordinator’s contact information is provided below.

Jill Hofer  
Title IX Coordinator  
748 South Main St, PO Box 1000  
Freeman SD 57029

[jhofer@freemanacademy.org](mailto:jhofer@freemanacademy.org)  
605-925-4237 x223  
605-261-3411

If the Title IX Coordinator is unavailable or has a conflict of interest, the Head of School will ensure that another person with appropriate training and qualifications is appointed as acting Title IX Coordinator for that case.

FA's Head of School is Mr. Nathan Epp.  
748 S Main St, PO Box 10000  
Freeman SD 57029.

[nepp@freemanacademy.org](mailto:nepp@freemanacademy.org)  
605-925-4237  
605-929-4716

## **Mandatory Reporting**

All employees of Freeman Academy are considered mandatory reporters. This means that all district and school employees will receive training on how to recognize potential Title IX violations and how to report them to the Title IX Coordinator. This includes information obtained by FA employees by their own observations, from third parties, or from social media. Non-Title IX reporting will happen between employee and the Head of School and the appropriate agencies.

## **Retaliation**

FA expressly prohibits retaliation against any person for making a report or complaint alleging sexual harassment, for assisting in a complaint investigation, or for refusing to assist in a complaint investigation. Anyone who attempts to interfere with, restrain, coerce, discriminate against, or harass a person pursuing a complaint of sexual harassment or assisting in a complaint investigation will be subject to prompt and appropriate disciplinary action. Any retaliatory conduct should be immediately reported to the Title IX Coordinator.

## **Definitions**

- **Advisor:** An Advisor is a third party selected by the Complainant or the Respondent to advocate on that party's behalf. The Advisor can be an attorney, but an attorney is not required.
- **Complainant:** The Complainant is the alleged victim of conduct that could constitute sexual harassment.
- **Consent:** Consent means freely agreeing to engage in sexual activity. A person is not capable of giving consent in many circumstances, including when:
  - Asleep or unconscious
  - Physically helpless
  - Under the influence of drugs or alcohol
  - Unable to give consent due to an intellectual or other disability
  - Past consent to sexual activity does not imply future consent. Consent can be withdrawn at any time.
- **Educational Program or activity:** Education programs or activities are locations, events, or circumstances over which FA exercises substantial control over both the

Complainant and the Respondent and the context in which the alleged sexual harassment occurs.

- **Formal Complaint:** A Formal Complaint is a document filed by a complainant (or the complainant's parent or guardian) or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in a FA education program or activity.
- **Preponderance of the Evidence:** Preponderance of the evidence means that a proposition is more likely than not to be true.
- **Respondent:** The Respondent is the alleged perpetrator of conduct that could constitute Sexual Harassment.
- **Sexual Harassment:** Sexual Harassment includes conduct on the basis of sex that satisfies one or more of the following categories:
  - **Quid Pro Quo:** Quid Pro Quo Sexual Harassment occurs when a FA employee conditions educational benefits on participation in unwelcome sexual conduct.
  - **Hostile Environment:** A Hostile Environment involves unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to FA's education programs or activities.
  - **Sexual Assault.** Sexual Assault includes:
    - Any sexual act directed against another person, forcibly and/or against that person's will;
    - any sexual act directed against another person where the person is incapable of giving consent;
    - incest;
    - or statutory rape.
  - **Dating Violence.** Violence committed by a person who is or has been in a social or romantic relationship with the victim. The existence of such a relationship is determined based on
    - the length of the relationship;
    - the type of relationship;
    - and the frequency of interaction between the persons involved in the relationship.
  - **Domestic Violence.** Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of South Dakota; or by 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 South Dakota.
  - **Stalking.** Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or suffer substantial emotional distress.

## **Supportive Measures**

Supportive measures will be designed to restore or preserve access to FA's education programs and activities in a manner that does not cause an unreasonable burden to any party. Supportive measures may include counseling, course modifications, schedule changes, increased monitoring, or supervision among others. Supportive measures shall be non-disciplinary, non-punitive, personalized, and narrowly tailored. Supportive measures will be kept confidential to the extent that maintaining confidentiality does not impact FA's ability to provide them. No fee will be charged for providing Supportive measures. Upon notification of a potential incident of sexual harassment, the Title IX Coordinator will implement appropriate supportive measures or accommodations that are reasonably available to protect the safety and well-being of the Complainant, the Respondent, and others.

## **III. Reporting a Claim**

### **Notifying Title IX Coordinator**

FA employees who become aware of conduct that could constitute sexual harassment must notify the Title IX Coordinator immediately. FA also encourages students who become aware of conduct that could constitute sexual harassment to report that conduct to a teacher, Head of School, or the Title IX Coordinator. The person reporting does not need to be the alleged victim. The claim may be made at any time, including nonbusiness hours, by contacting the Title IX Coordinator using the telephone number, mailing address, or email address provided on the first page of this Policy. The Title IX Coordinator will address anonymous reports if there is an identifiable party.

### **Title IX Coordinator's Initial Response**

Upon receiving notice of alleged sexual harassment, the Title IX Coordinator will contact the Complainant (or the Complainant's parent or guardian, depending upon the circumstances) to discuss supportive measures, explain the formal complaint process, and provide a copy of this policy. The Title IX Coordinator will document any supportive measures offered and the Complainant's response. The Complainant is not required to accept supportive measures. The Title IX Coordinator may also offer supportive measures to Respondent if appropriate.

### **Threats of Physical Health or Safety**

Upon learning of conduct that may constitute sexual harassment, the Title IX Coordinator may ask the Head of School to conduct an individualized safety and risk analysis to determine if a Student Respondent is an immediate threat to the physical health or safety of any person. If the Head of School determines that the Student Respondent is an immediate threat to the physical health or safety of any person, FA may temporarily remove the Student Respondent from FA's education programs or activities. Any removal must be in compliance with other federal laws and cannot be for disciplinary purposes. FA will provide notice to the Student Respondent and offer alternative educational programs to the Student Respondent until a final determination is made under this policy. *The Student Respondent may challenge the decision immediately upon removal pursuant to SDCL 13-32-4.2.*

*In appropriate situations, the Head of School may place an Employee Respondent on nondisciplinary administrative leave pending resolution of a claim under this policy.*

### **Presumption Respondent is Not Responsible**

Respondents are presumed to be innocent until a final determination is made via the formal complaint process. No Respondent will be subject to disciplinary measures unless found to have committed sexual harassment by a preponderance of the evidence at the conclusion of the formal complaint process.

### **Filing a Formal Complaint**

If a Complainant files a formal complaint, the Title IX Coordinator will initiate the investigation process. However, even if the Complainant decides not to file a formal complaint, the Title IX Coordinator may file a formal complaint if the Title IX Coordinator reasonably determines that the law requires FA to initiate an investigation. In that event, the Title IX Coordinator will sign a written complaint to initiate the process. The Complainant need not participate in the process initiated by the Title IX Coordinator but retains all rights of a Complainant.

### **Dismissal of Complaint or Allegation**

The Title IX Coordinator may dismiss a formal complaint under the following circumstances:

- **Mandatory Dismissal.** The Title IX Coordinator must dismiss a formal complaint when the allegation does not meet the definition of sexual harassment under this policy; the action did not occur in the United States; or the activity did not occur in FA's education program or activity.
- **Discretionary Dismissal.** The Title IX Coordinator may dismiss a formal complaint if:
  - the Complainant notifies the Title IX Coordinator in writing of their desire to withdraw the complaint;
  - the Respondent is no longer enrolled or employed at FA;
  - circumstances prevent FA from gathering sufficient evidence to reach a determination on an allegation or complaint; or
  - the Complainant is no longer a student or otherwise involved with FA.

Within 10 days of the dismissal, the Complainant may appeal the dismissal in writing to the Title IX Coordinator but only on the grounds of:

- procedural irregularities affected the outcome;
- new evidence that was not reasonably available when the determination regarding dismissal was made and this evidence could affect the outcome; or
- the Title IX Coordinator, Investigator, or Decision Maker had a conflict of interest or bias that affected the outcome.

The Title IX Coordinator will make a determination on the appeal within 10 days of receiving it.

## **IV. Investigation of a Formal Complaint**

### **Notice of Allegations**

Upon receipt of a formal complaint and in the absence of grounds for dismissal, the Title IX Coordinator will provide written notice to the Complainant and the Respondent of the allegations and provide them with sufficient time to respond before an assigned Investigator conducts any interviews. A copy of this policy will be included with the notice. The notice will include:

- The allegations of sexual harassment in sufficient detail as known at that time including the parties, the alleged conduct, and date(s) and location(s) of the alleged incident;
- A statement that the Respondent is presumed innocent and that a determination regarding responsibility will not be made until the end of the formal complaint process;
- A statement that each party may choose an Advisor who may be, but is not required to be, an attorney;
- A statement that each party has a right to inspect and review evidence;
- A statement that allegations need to be proved by a Preponderance of the Evidence;
- Notification of FA's formal complaint process

### **Timeframe for Formal Complaint Process**

The formal complaint process begins with filing or signing the formal complaint and ends with a determination of responsibility. The Title IX Coordinator will coordinate the process and establish timelines as needed which will apply equally to the Complainant and Respondent. The Title IX Coordinator may adjust the timelines as necessary for good cause. If the parties elect to pursue informal resolution (discussed below), the timelines will be suspended during that process. If the Title IX Coordinator grants an extension of time for one party, the same extension will be granted to the other party. The Title IX Coordinator shall provide a written explanation to the parties of the good cause basis for any delay or extension. Reasons for extending time frames include, but are not limited to:

- absences of a party, Advisor, or witness;
- school holidays or breaks;
- concurrent law enforcement investigation or activity;
- or accommodating students with disabilities.

Meetings will be scheduled at times that are convenient for both parties to the extent possible.

### **Investigation of Formal Complaint**

The Title IX Coordinator will appoint an investigator (who may or may not be the Title IX Coordinator) to investigate the allegations in the formal complaint. Generally, the investigation shall be conducted in 30 calendar days or less. The burden of proof and gathering evidence sufficient to make a determination regarding responsibility rests with FA and not the parties. All allegations in the formal complaint will be investigated.

*Gathering Evidence.* The Investigator will meet with both the Complainant and Respondent separately to conduct initial interviews, gather information, and collect evidence. The parties may also submit evidence, testimony, witnesses, and other information to the Investigator. The Investigator shall establish deadlines for the submission of these materials that apply equally to both Complainant and Respondent. Any party who is invited or expected to participate in a meeting or interview will be provided written notice by the investigator of the date, time, location, participants, and purpose of the investigative interview or meetings to provide the party with time to prepare. If a party wishes to use or does use information protected under a legally recognized privilege, the party must provide written proof showing that the person holding the privilege consents to use of the information for purposes of the formal complaint process.

*Advisors.* The Complainant and the Respondent may be accompanied by an Advisor during the initial interview or other meetings during the formal complaint process. FA may require a minor student's parents to consent to the release of information related to allegations to the chosen Advisor to preserve confidentiality of student information under the Family Educational Rights and Privacy Act (FERPA). Designated Advisors will be informed that any confidential information received may only be used for purposes of the FA Title IX formal complaint process.

*Inspection of Evidence.* Prior to issuing a report, the Investigator will make any evidence submitted by the parties or obtained through the investigation available to both parties for inspection and review to give them the opportunity to respond meaningfully to it prior to the investigation's conclusion. This includes information the Investigator has chosen not to rely on when reaching a determination regarding responsibility. The Title IX Coordinator will set a deadline for the parties to review the evidence and submit a written response to the Investigator. The Investigator will consider the parties' written responses prior to finalizing the investigation.

*Investigation Report.* Within 10 days after receiving the final responses from the parties, the Investigator will complete a report and submit it to the Title IX Coordinator. The Title IX Coordinator will provide the report to the Complainant and Respondent at the same time. The report will summarize and analyze the relevant facts and evidence.

After providing the final investigation report to the Complainant and Respondent, the Title IX Coordinator will provide a copy of the report to the Decision Maker who will determine whether the allegations in the formal complaint constitute Sexual Harassment by a preponderance of the evidence. If the allegations are against the Decision Maker or if the Decision Maker has a conflict or is otherwise unable to serve as the Decision Maker, the Title IX Coordinator will appoint an alternative Decision Maker who is properly trained pursuant to the Title IX regulations.

## **Determination Regarding Responsibility**

Upon receipt of the investigation report, the Decision Maker (or designated alternative Decision Maker) will determine if the preponderance of the evidence establishes that the Respondent committed sexual harassment. The Decision Maker will remain objective in

evaluating all evidence and will not make credibility determinations based on a person's status (e.g. Complainant, Respondent, or witness).

The Decision Maker will give both Complainant and Respondent at least 10 calendar days after receiving the final Investigator's report to submit written questions to be asked of the other party or witnesses identified in the report. Questions must be relevant and respectful. The Decision Maker will give each party and any witness the opportunity to respond to the questions. The Decision Maker may also permit additional, limited follow-up questions. If the Decision Maker determines that a question is irrelevant or inappropriate, an explanation will be provided to the party asking the question. The Decision Maker may impose reasonable deadlines to ask and respond to questions which will apply equally to both Complainant and Respondent.

Notwithstanding the rights of the parties to ask questions, the Decision Maker will not consider questions or evidence about the Complainant's sexual predisposition or prior sexual behavior, unless the question is meant to prove someone other than Respondent committed the alleged conduct, or if the questions or evidence concern specific incidents in the Complainant's prior sexual behavior with respect to Respondent and are offered to prove consent to sexual contact.

Within 20 calendar days after the deadline for both the Complainant and Respondent to ask and answer questions and submit any documentation, the Decision Maker will determine whether the conduct alleged constitutes sexual harassment by a preponderance of the evidence. The written determination of responsibility will:

- Identify the allegations potentially constituting sexual harassment;
- Describe the procedural steps taken during the formal complaint process, including notifications to parties, interviews with parties and witnesses, site visits, and methods used to gather evidence;
- Provide findings of fact supporting the determination;
- Identify if FA's code of conduct or other policies apply;
- State the rationale for the determination relative to each allegation.
- If the Respondent is found to have committed Sexual Harassment, determine the appropriate remedy(ies). The remedies will be designed to restore or preserve the Complainant's equal access to FA's education program and activities and will be implemented by the Title IX Coordinator. Remedies may include suspension, expulsion, or ineligibility to play sports among others. Remedies do not need to be non-disciplinary, non-punitive, or avoid burdening the Respondent if the Respondent is found to have violated this policy. If the remedy includes long-term suspension of a Student Respondent, the Student Respondent will be advised of the right to appeal the suspension pursuant to SDCL 13-32-4.2 at the conclusion of the Title IX process (i.e., after any appeal is resolved or the deadline for appeal has passed).
- Provide notice of the procedures and permissible bases to appeal the determination.

The written determination will be provided to the Complainant and Respondent simultaneously.



## **Appeal**

Either party may appeal the Decision Maker's determination to the Freeman Academy School Board, but only on the grounds of:

- procedural irregularities which impacted the decision;
- the discovery of new evidence that was not reasonably available when the determination was made and could affect the outcome; or
- the Title IX Coordinator, Investigator, or Decision Maker had a conflict of interest or bias that affected the outcome.

If the party wishes to appeal, the party must file a written request for appeal setting forth all grounds to support the appeal with the Title IX Coordinator within 10 calendar days of the final determination. The Title IX Coordinator will submit the appeal, the Investigator's report, and the Decision Maker's written determination to the School Board who will review the appeal. The Title IX Coordinator will notify the non-appealing party of the appeal and the appeal process. The non-appealing party will be provided 10 calendar days to respond to the appeal.

No action on the sanctions or remedies issued by the Decision Maker will be taken until the appeal process has concluded. Supportive measures will be maintained until a final determination of the appeal.

The School Board will review the appeal record, including the Investigator's report, the written determination by the Decision Maker, and the written arguments of the Complainant and Respondent. No hearing will be conducted. The School Board decision will be made by majority vote. The School Board may affirm the decision, reverse the decision, or remand the decision for further proceedings. The School Board will issue its written decision within 45 days of receipt of all relevant appeal documents (e.g., Investigator's report, Decision Maker's determination, and arguments of the parties). The School Board's decision is final.

## **Informal Resolution**

Except in the case of a Formal Complaint alleging Sexual Harassment of a student by an employee, the Title IX Coordinator may offer the Complainant and Respondent the option of participating in a voluntary informal resolution process, such as mediation, prior to any final determination. Additionally, either party may request informal resolution by submitting a written request to the Title IX Coordinator. The Title IX Coordinator will notify the other party of the request. If the other party denies the request or either party withdraws from the informal resolution process, the Title IX Coordinator will notify the parties that the informal resolution process is terminated and resume the Formal Complaint process.

Prior to facilitating the informal resolution process, the Title IX Coordinator will provide all parties written notice disclosing the allegations, the requirements of the informal resolution process, right to withdraw and resume formal grievance process, and any consequences resulting from participating in the informal resolution process. The Title IX Coordinator will also obtain the parties' voluntary, written consent to the informal resolution process.

## **IV. Additional Information**

### **Training**

All FA employees will receive regular training relative to mandatory reporting obligations, and any other responsibilities they may have relative to this policy.

Title IX Coordinators, Investigators, Decision Makers, and any person who facilitates an informal resolution process will receive training on the definition of Sexual Harassment, this policy, the scope of FA's education programs and activities, and how to conduct an investigation. The training will also include avoiding prejudice of the facts, conflicts of interest, and bias. Decision Makers will also receive training on issues of relevance of questions and evidence, including when questions about the Complainant's sexual predisposition or prior sexual behavior are allowed. Investigators will receive training on issues of relevance to create an investigation report that fairly summarizes relevant evidence.

### **No Bias or Conflict of Interest**

All persons involved in handling Title IX complaints must be impartial and not have an actual or perceived conflict of interest or bias against the Complainant or Respondent involved in a Formal Complaint or against Complainants and Respondents generally.

### **Other Reporting Options**

FA encourages people who believe they have been subject to or witnessed Sexual Harassment to use this policy. Individuals also have the right to file a complaint with outside enforcement agencies, such as the United States Department of Education Office of Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), the South Dakota Department of Labor, and state or local law enforcement authorities. FA reserves the right to conduct its investigation and take appropriate actions independently of any ongoing legal proceedings and regardless of the outcome or disposition of any legal proceeding.

### **Required Reporting**

If at any point during FA's investigation evidence is uncovered that requires reporting to law enforcement, Child Protective Services, or other entity, FA employees must take the necessary actions to do so in accordance with the law.

### **Misuse of Policy**

A person who brings a reasonable charge of Sexual Harassment in good faith, even if it may be erroneous, will not be subject to discipline. However, the use of this policy for false, malicious, or frivolous purposes is strictly prohibited. Any student, faculty, or staff member who brings a false, malicious, or frivolous charge of Sexual Harassment may be subject to disciplinary action.

## **Record Retention**

The Title IX Coordinator will maintain records related to FA's process and response related to allegations of Sexual Harassment for seven years. This includes records of any actions taken in response to allegations of Sexual Harassment, including Supportive Measures that do not result in a Formal Complaint.

## **Community Resources and Support**

There are community resources available to victims of Sexual Harassment. Victims are encouraged to report crimes to the Freeman Police Department by dialing 911 or (605) 925-7025.

Victims may also seek assistance from any of the following agencies:

- Avera Sacred Heart Emergency Room – (605) 668-8100;
- Lewis and Clark Behavioral Health Service Crisis Line – (605) 665-4606;
- Yankton 24 Hour Domestic Violence Crisis Line – (605) 665-1488

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