

TONI&GUY HAIRDRESSING ACADEMY TITLE IX POLICY WORCESTER

Purpose of Policy

The purpose of the TONI&GUY Hairdressing Academy's (the "Academy's") Title IX policy is to define Title IX prohibited conduct and to describe the processes for reporting Title IX prohibited conduct, receiving supportive measures, filing a formal complaint, pursuing formal and informal grievance procedures, and filing appeals.

Notice of Nondiscrimination

It is the policy of the Academy not to discriminate on the basis of an individual's race, color, creed, national or ethnic origin, sex, gender, gender identity or expression, religion, disability, age, sexual orientation, genetic information, marital status, citizenship status, veteran status, and any other legally protected characteristic. This prohibition applies to all educational programs and activities, including admissions, as well as all employment actions.

The Academy does not discriminate on the basis of sex in the education program or activity that it operates, and is required by Title IX of the Education Amendments of 1972 not to discriminate in such a manner. The requirement not to discriminate in the education program or activity extends to admission and employment. Inquiries about the application of Title IX may be referred to the Title IX Coordinator or to the Office for Civil Rights, or both.

Scope and Applicability of Policy

This policy applies to all Academy community members, including employees and students, who participate in the Academy's education programs and activities. In certain situations, this policy may also apply to other individuals, such as contractors, visitors, volunteers, and/or other third parties.

The policy and procedures described herein only apply to allegations of sexual harassment that meet the Title IX regulatory definition of sexual harassment and which have occurred within the Academy's education programs or activities in the United States. For purposes of this policy, an education program or activity includes locations, events, or circumstances over which the Academy exercised substantial control over both the Respondent and the context in which the Title IX Sexual Harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the Academy.

Title IX Coordinator

Dana Bray, Academy Director of the Worcester Academy, serves as the Title IX Coordinator. The Title IX Coordinator can be contacted by mail. Office address: 6 Park Ave, Worcester, MA 01605. Phone: 508.756.6060, or email: dbray@tg-ne.com.

Prohibited Conduct Defined

- **Title IX Sexual Harassment:** Title IX Sexual Harassment is conduct *on the basis of sex* that satisfies one or more of the following three categories: (1) Quid Pro Quo Sexual Harassment; (2) Hostile Environment Sexual Harassment; and/or (3) Sex-Based Crimes.

1. **Quid Pro Quo Sexual Harassment** occurs when an employee of the Academy conditions the provision of an aid, benefit, or service of the Academy on an individual's participation in unwelcome sexual conduct.
 2. **Hostile Environment Sexual Harassment** occurs when unwelcome conduct is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Academy's education program or activity.
 3. **Sex-Based Crimes** occur when conduct constitutes "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).
- **Sexual Assault** includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.
 - **Rape** is the carnal knowledge of a person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
 - **Sodomy** is oral or anal sexual intercourse with another person, without the consent of that person, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
 - **Sexual Assault With An Object** is the use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
 - **Fondling** is the touching of the private body parts of another person for the purpose of sexual gratification without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
 - **Incest** is nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - **Statutory Rape** is nonforcible sexual intercourse with a person who is under the statutory age of consent.
 - **Dating Violence** means violence committed by a person—who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on consideration of the following factors:

(1) The length of the relationship;

(2) The type of relationship;

(3) The frequency of interaction between the persons involved in the relationship.

- **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 the jurisdiction receiving grant monies, 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 the jurisdiction.
- **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(1) fear for his or her safety or the safety of others; or

(2) suffer substantial emotional distress.

- **Title IX Retaliation:** Neither the Academy 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 the Title IX regulations, 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.

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, constitutes retaliation.

The Academy must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by federal or state law, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Complaints alleging retaliation may be filed according to the policy described herein.

Relevant Definitions

- **Clear and Convincing** is the evidentiary standard that asks whether sufficient evidence has been presented to make it highly probable to be true that the Respondent engaged in the alleged Title IX prohibited conduct.
- **Consent** is an affirmative and willing agreement to engage in specific forms of sexual contact with another person. Consent requires an outward demonstration, through mutually understandable words, conduct, or action, indicating that an individual has freely chosen to engage in sexual

activity or contact. Consent cannot be obtained through: (1) the use of coercion, intimidation, or force; or (2) by taking advantage of the incapacitation of another individual. Silence, passivity, or the absence of resistance does not imply consent. Consent can be withdrawn at any time. When consent is withdrawn, sexual activity must immediately stop. Prior consent does not imply current or future consent; even in the context of an ongoing relationship, consent must be sought and freely given for each instance of sexual activity or contact.

- **Coercion** is unreasonable or sustained pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes it clear that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- **Complainant** is any individual who is alleged to be the victim of sexual harassment that is prohibited under this policy.
- **Force** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force can include intimidation or implied threats to overcome an individual's resistance or produce consent. There is no requirement that a party resist the sexual advance or request, but resistance is a clear demonstration of non-consent.
- **Incapacitation** means the person is incapable of giving consent. A person is incapacitated if that person is in a physical or mental state that causes the person to be unable to make a knowing and voluntary choice to engage in the sexual activity or sexual contact. A person may also become incapacitated due to many factors, including the use of alcohol and/or drugs, or when the person is asleep or unconscious. When alcohol and/or drugs are involved, incapacitation requires more than impairment or intoxication. When determining incapacitation, the inquiry is whether the Respondent knew, or whether a sober, reasonable person in the Respondent's position should have known, that the Complainant was incapacitated and could not provide consent.
- **Intimidation** is defined as overt or implied threats or acts that would cause reasonable fear of harm in another.
- **Respondent** is any individual who has been reported to be the perpetrator of sexual harassment that is prohibited under this policy.

Confidentiality

The Academy will make all reasonable efforts to protect the confidentiality of the individuals connected to a report or formal process under this policy (i.e. individuals such as Complainants, Respondents, reporting parties, and witnesses). The Academy will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the Academy to provide the supportive measures.

If the Complainant requests anonymity and that the Academy not proceed with the formal grievance process, the Academy will strongly consider the Complainant's request. However, in certain circumstances, the Academy may not be able to grant the Complainant's request due to various factors, including when there is a risk of imminent harm to an individual or others or a threat to the health and safety of the Academy community. The Academy may reveal confidential information as permitted or

required by law, to carry out the purposes of this policy, including conducting any investigation, live hearing, or proceeding arising thereunder.

While the Academy will make all reasonable efforts to maintain privacy and confidentiality, the Academy will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. However, the prohibition of Title IX retaliation described herein continues to apply.

Amnesty for Students

The health and safety of every student at the Academy is of utmost importance. The Academy recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that an incident of violence occurs—including, but not limited to, domestic violence, dating violence, stalking, or sexual assault—may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The Academy strongly encourages students to report incidents of violence to Academy officials. A bystander acting in good faith, or a reporting individual acting in good faith, who discloses any incident of violence to the Academy's officials or law enforcement will not be subject to the Academy's code of conduct action for violations of alcohol and/or drug-use policies occurring at or near the time of the commission of the incident of violence.

Reporting Sexual Harassment to Title IX Coordinator

Any person may report prohibited conduct under this policy to the Title IX Coordinator, regardless of whether the person reporting is the person alleged to be impacted by the conduct. Such a report may be made at any time (including during non-business hours) by telephone, electronic mail, or mail, using the contact information listed for the Title IX Coordinator above.

There is no time limit on reporting violations of this Policy, although the Academy's ability to respond fully may be limited with the passage of time.

A reporting party may request that the Academy not investigate and/or adjudicate the report under the formal complaint procedures described herein. The Academy will make all reasonable efforts to honor the Complainant's request. However, in certain circumstances, the Academy may have to pursue a formal complaint. These circumstances include, but are not limited to, instances when the Academy has received multiple reports of misconduct by the same individual or when the conduct reported poses a compelling risk to the health and safety of the Academy community.

Upon receiving a report of sexual harassment, if the Title IX Coordinator is made aware of the identity of a Complainant, the Title IX Coordinator will make all reasonable efforts to promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Complainant the process for filing a formal complaint.

Upon receiving a report of sexual harassment, if the Respondent is unknown or is not a faculty, staff, or student member of the Academy, the Title IX Coordinator will make all reasonable efforts to provide the Complainant with supportive measures, as well as information and options regarding potential criminal processes. The Title IX Coordinator may also take appropriate actions to protect the Complainant, such as providing assistance or referring someone to provide assistance in obtaining no-trespass and restraining orders. If requested, the Academy will refer impacted individuals to someone who can assist in

filing/applying for orders of protection, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

Reporting Sexual Harassment to Law Enforcement

Individuals who have experienced criminal violations are encouraged to report the incident to local law enforcement and have the option to do so. Formal reporting options include contacting the police department in the jurisdiction in which the incident occurred. If a Complainant chooses to report to law enforcement or pursue a criminal process, the Complainant may simultaneously pursue a formal complaint under this policy. Individuals are advised that if there is concurrent law enforcement activity, the Academy may temporarily delay its investigative or adjudicative process.

The Academy can provide Complainants with information and refer Complainants to someone who can support them in the process of reporting criminal conduct to law enforcement. The Academy will comply with the Complainant's request for assistance in notifying law enforcement to the extent it is consistent with law. The Complainant's choice to report to law enforcement will not impact the provision of supportive measures.

Interim Actions

- **Emergency Removal and Administrative Leave**

Upon receiving a report that a Respondent engaged in prohibited conduct described in this policy, the Academy reserves the right to remove the Respondent on an emergency basis, provided that it conducts an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any individual arising from the allegations justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal. When the Respondent is a non-student employee, the Academy reserves the right to place the non-student employee on an emergency paid or unpaid administrative leave.

- **Supportive Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or 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 Academy's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Academy's educational environment, or deter sexual harassment.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

The Academy will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the Academy to provide the supportive measures.

Both the Complainant and the Respondent involved in either an informal or a formal resolution process have a right to receive supportive measures from the Academy.

Supportive measures include, but are not limited to:

- Extensions of deadlines or course-related adjustments;
- Modification of class schedule;
- Leave of absence; and
- Other similar measures.

Title IX Personnel

- **Trainings:**

The Title IX Coordinator, Investigator(s), Decision-Maker(s) (including Appeal Officer(s)), and Facilitator(s) of Informal Resolution Processes receive training on:

- Prohibited behaviors as defined in this policy, including Title IX Sexual Harassment;
- The scope of the Academy's education program or activity as it relates to Title IX complaints;
- How to conduct the informal resolution process and formal grievance processes under this policy, including investigations, live hearings, appeals, and informal resolution processes as applicable;
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

The Decision-Maker(s) will receive additional training on:

- Any technology to be used at a live hearing; and
- Issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

The Investigator(s) will receive additional training on:

- Issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train will not rely on sex or other stereotypes and will promote impartial investigations and adjudications of formal complaints.

All Title IX training materials will be posted on the Academy's website as a part of its recordkeeping in accordance with law.

- **Conflicts of Interest, Bias, and Impartiality:**

The Title IX Coordinator, Investigator(s), Decision-Maker(s), and Facilitator(s) of Informal Resolution Processes will make all reasonable efforts to ensure that the formal grievance process is facilitated in an impartial manner.

The Title IX Coordinator, Investigator(s), Decision-Maker(s), and Facilitator(s) of informal resolution processes may not have a conflict of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent.

The parties are expected to promptly report concern(s) regarding conflict of interest or bias regarding the above listed personnel to the Title IX Coordinator as soon as reasonably possible once they become aware of the conflict of interest or bias. Upon receiving a report of conflict of interest or bias, the Academy will evaluate the report, and if it is determined that a conflict of interest or bias exists, the Academy will appoint another individual to serve in the role.

Informal Resolution Process

- **Overview of Process**

Informal resolution does not involve a full investigation and adjudication like the formal grievance process. Rather, the informal resolution process uses mediation or other forms of dispute resolution with the goal that the parties will arrive at a mutually agreed-upon outcome. The informal resolution process cannot be used for cases involving allegations that an employee sexually harassed a student.

In order to engage in an informal resolution process, the Complainant must first file a formal complaint with the Title IX Coordinator (*see* Filing a Formal Complaint described in the “Formal Complaint Overview” section below), the process must be deemed appropriate for informal resolution by the Title IX Coordinator, and the Complainant and the Respondent must voluntarily consent in writing to participate in the process.

To complete the informal resolution process, both parties must voluntarily agree to the outcome with the understanding that the outcome is final and will not be subject to further procedures under this policy, unless there is material evidence to show that a party engaged in misrepresentation or fraudulent conduct that impacted the resolution.

Both parties reserve the right to terminate the informal resolution process and may move forward with the formal grievance process any time prior to resolution. Such termination must be provided to the Title IX Coordinator in writing.

- **Written Notice to the Parties**

Prior to initiating an informal resolution process, the Title IX Coordinator will provide written notice to the parties that includes:

- The allegations alleged by the Complainant;
- The requirements of the informal resolution process, including the circumstances under which the parties are precluded from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and move forward with a formal grievance process; and
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Formal Complaint Overview

- **Filing a Formal Complaint**

A formal complaint is a document signed by a Complainant or signed by the Title IX Coordinator, alleging sexual harassment against a Respondent and requesting that the Academy investigate (unless the parties have met the requirements described in the “Informal Resolution Process” section and elected to proceed with an informal resolution process as described therein). At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the Academy. For purposes of this policy, employment by the Academy constitutes participation in the education program or activity.

A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail (See above for contact information). For purposes of this definition, “document signed by a Complainant” means a document or electronic submission that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

- **Consolidation of a Formal Complaint**

The Academy may consolidate formal complaints under this policy when allegations arise out of the same facts or circumstances. In addition, a formal complaint of retaliation described herein may be consolidated with a formal complaint of sexual harassment under Title IX. Where the formal resolution process involves more than one Complainant or more than one Respondent, references made to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.

- **Initial Assessment of a Formal Complaint**

Upon receipt of a formal complaint, the Title IX Coordinator will evaluate whether the alleged conduct, if proven, would constitute a Title IX violation because it meets or could meet the definition of Title IX Sexual Harassment and occurred or could have occurred within the jurisdiction and scope required by Title IX as described herein. If the Title IX Coordinator determines that the conduct alleged in the formal complaint, if proven, would meet the aforementioned requirements, then the complaint will be investigated and adjudicated in accordance with the procedures outlined in this policy. If the Title IX Coordinator determines that the conduct alleged in the formal complaint, if proven, would not meet the aforementioned requirements, then the complaint will follow the dismissal process described below and may, if appropriate, refer the matter to another Academy office.

- **Dismissal of a Formal Complaint and Acknowledgment of Responsibility**

- The Academy must terminate a formal complaint if:
 - The alleged harassment would not constitute a Title IX violation because it does not meet or could not meet the definition of Title IX Sexual Harassment as described herein (see the “Prohibited Conduct” section above); or

- The alleged harassment did not occur within the jurisdiction and scope required by Title IX as described herein (see the “Applicability and Scope” section above).
 - The Academy may terminate a formal complaint if:
 - At any time during the investigation or live hearing a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
 - The Respondent is no longer enrolled in or employed by the Academy; or
 - There are specific circumstances that prevent the Academy from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
 - Upon the decision to dismiss a formal complaint, both parties will be notified in writing and will be given the opportunity to appeal the dismissal.
 - At any point during the grievance process, a Respondent may choose to voluntarily admit responsibility for the alleged violation(s) and execute a written waiver, at which point the Respondent will be assigned a sanction(s) and the grievance process will be terminated.

Formal Grievance Process Overview

- Once a formal complaint (as defined above) is filed, and the Title IX Coordinator has conducted the initial assessment and determined that the alleged conduct may proceed under this Title IX policy, the formal grievance process will commence (unless the parties have met the requirements to proceed with an informal resolution process as described herein). The formal grievance process will include written notice of allegations, an investigation with interviews of all parties and relevant witnesses, a live hearing that includes all parties and relevant witnesses led by a Decision-Maker(s), a written determination of responsibility, and the option for appeal.

The Academy will make all reasonable efforts to provide a prompt, equitable, fair and impartial resolution of student and employee complaints (as defined under Title IX), including providing a grievance process that treats Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility has been made against the Respondent, and by following its grievance process before imposition of any disciplinary sanctions or other actions that are not supportive measures. Remedies will be designed to restore or preserve equal access to the Academy’s education program or activity. Such remedies may include the same individualized services offered as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

- **Advisors**

The Complainant and the Respondent are entitled to the same opportunity to 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; and the Academy may not limit the choice or presence of an advisor for either the Complainant or Respondent in any meeting or grievance proceeding. Notwithstanding, the advisor must comply with the restrictions established by the Academy regarding the extent to which the advisor may participate in the proceedings. The restrictions are set forth below.

- *Meetings and Investigation Interviews:* Advisors may not speak for or on behalf of any Complainant or Respondent during any meetings and/or investigation interviews. While an advisor cannot speak for or on behalf of the Complainant or Respondent during any meetings and/or investigation interviews, time will be granted for the advisor and the party to confer, if deemed appropriate, by the Investigator or Academy personnel facilitating any meeting. The Investigator and Academy personnel reserve the right to exclude an advisor from any meeting or investigation interview for failure to abide by these restrictions.
- *Live Hearings:* Each party must have an advisor present at the Title IX live hearing. If a Complainant or Respondent does not have an advisor present at the live hearing, the Academy will provide one. The Academy reserves sole discretion to select the advisor provided. The advisor selected will be provided without cost to the Complainant or Respondent. The role of the advisor during the live hearing is solely to conduct questioning on the Complainant's or Respondent's behalf. At the live hearing, the Decision-Maker(s) will permit each party's advisor to ask the other party and any witnesses relevant questions and follow-up questions, including those challenging credibility. It is the expectation of the Academy that the advisor will at all times act in a respectful and non-aggressive manner. The Decision-Maker(s) reserves the right to exclude an advisor from the live hearing for failure to abide by these restrictions. Should an advisor be excluded from the live hearing, the party will be able to choose a new advisor, or one will be provided by the Academy.

Advisors are required to follow all procedures described in this policy. In a situation where an advisor engages in a material violation of this policy or does not abide by reasonable instruction from the Title IX Coordinator(s), Investigator(s), Decision-Maker(s), or other Academy personnel, the Academy reserves the right to either limit or preclude the advisor from participation in the formal grievance process. In the circumstance that an advisor is precluded from future participation, the party may select a new advisor of their choice or the Academy will provide an advisor for them.

- **Privileged Information**

The Academy will not require, allow, rely upon, or otherwise permit questions or use of evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege. Notwithstanding the foregoing, if a person holding such a privilege has waived the privilege, then the information may be used during an investigation or live hearing.

In gathering evidence, the Academy will not access, consider, disclose, or otherwise use a 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 Academy obtains that party's voluntary, written consent to do so.

- **Evidence Pertaining to Sexual History**

Questions about or evidence of a Complainant's sexual predisposition is never considered relevant for the purposes of an investigative report or questioning in a live hearing.

Questions about or evidence of a Complainant's sexual history is only considered relevant for the purposes of an investigative report or questioning in a live hearing if:

- Such questions and evidence about the Complainant's prior sexual history are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
- Such questions and evidence concern specific incidents of the Complainant's prior sexual history with respect to the Respondent and are offered to prove consent.

Questions or evidence about a Complainant's sexual history that do not meet the two exceptions described above are excluded from investigative reports and live hearings and are to be deemed irrelevant.

- **Written Notice of Allegations**

Upon receiving a formal complaint, the Title IX Coordinator will provide written notice to all known parties that includes:

- The Academy's grievance process, including any informal resolution process;
- The allegations alleged by the Complainant, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. "Sufficient details" include the identities of the parties involved, if known; the conduct allegedly constituting the sexual harassment, if known; and the date and location of the alleged incident(s), if known.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- Information regarding the parties' right to have an advisor of their choice, who may be, but is not required to be an attorney.
- A statement that the parties may inspect and review evidence as described in the "Investigation" section of this policy; and
- A statement that the Academy prohibits knowingly making false statements or knowingly submitting false information in bad faith at any point in the grievance process. Individuals who engage in this misconduct may be subject to disciplinary actions. Disciplinary action pursued against a party for knowingly making false statements or submitting false information in bad faith does not constitute retaliation prohibited under this policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement or provided materially false information in bad faith.

If in the course of an investigation, the Academy decides to investigate allegations about the Complainant or Respondent that are not included in the written notice of allegations described

above, the Title IX Coordinator will provide written notice of the additional allegations to the parties whose identities are known.

Formal Grievance Process: Investigation

- **Overview of the Investigative Process**

Once a formal complaint is filed, and the Title IX Coordinator has conducted the initial assessment and determined that the alleged conduct may proceed under this Title IX policy, the Title IX Coordinator will appoint an Investigator to conduct a formal investigation into the allegations. The appointed Investigator will meet standards set out in the “Title IX Personnel” section above.

The Investigator will contact the parties whose participation is invited or expected for an investigative interview and will provide written notice of the date, time, location, participants, and purpose of the meeting. Parties will be given reasonably sufficient time to prepare to participate.

The Investigator will make all reasonable efforts to complete the investigative report within 60 business days. This timeline may vary depending on the size of the formal complaint, the amount of evidence to be considered, the number of persons to be interviewed, and additional factors. If the investigative report is going to take longer than 60 business days to complete, the parties and their advisors will be given notice.

The parties and their advisors are not authorized to disseminate any portion of the investigative report sent to them through electronic or hardcopy means. Unauthorized video or audio recordings of investigative interviews are not permitted by the parties or their advisors.

- **Equal Opportunity Given to the Parties**

All parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

Both the Complainant and the Respondent have the right to meet separately with the Investigator.

Both the Complainant and the Respondent are permitted to provide names of potential witnesses to the Investigator. The Investigator will determine which of those potential witnesses, or other persons, may have relevant information about the alleged conduct; and the Investigator may request statements, either orally or in writing.

Both the Complainant and the Respondent are permitted to provide other relevant evidence to the Investigator. For instance, evidence may include any facts or information presented in support of or opposition to an allegation, including, but not limited to, text messages, email exchanges, timelines, receipts, photographs, etc. The Investigator may also consider additional documents, items, or other relevant information.

All parties will be given an equal opportunity to inspect and review any evidence obtained as a part of the investigation that is directly related to the allegations raised in the formal complaint. This includes evidence that the Academy does not intend to rely on in reaching a determination regarding responsibility; and inculpatory or exculpatory evidence, whether obtained from a party

or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

- **Review of Evidence**

All parties must submit to the Investigator any evidence that they would like the Investigator to consider prior to the completion of the investigative report.

Prior to the completion of the investigative report, the Academy will send to each party and the party's advisor, if any, the evidence subject to the parties' inspection and review in an electronic or hardcopy format. (Note: All evidence that was subject to the parties' inspection and review will be made available at the live hearing to give each party equal opportunity to refer to such evidence during the live hearing, including for purposes of questioning).

Each party will be given 10 days to submit a written response, which the Investigator will consider prior to completion of the investigative report.

- **Completion of the Investigative Report**

Either after the Investigator receives the parties' written responses or after the 10-day time limit has expired, the Investigator will create an investigative report that fairly summarizes the relevant evidence.

At least 10 days prior to the live hearing, the Investigator will send a copy of the investigative report in an electronic or hardcopy format to each party; their advisors, if applicable; and the Title IX Coordinator. The parties will be given the opportunity to review the investigative report and provide a written response.

Formal Grievance Process: Live Hearing

- **Role of the Decision-Maker(s)**

Shortly after receiving the final investigative report, the Title IX Coordinator will appoint one or more Decision-Maker(s) to conduct the live hearing. The Complainant and the Respondent will be notified of the identity of the Decision-Maker(s) in advance of the live hearing. If any party has concern(s) of potential bias or conflict of interest in regard to the Decision-Maker(s), the party must alert the Title IX Coordinator of said concern(s) no later than two days prior to the live hearing. Upon receiving a report of bias or conflict of interest, the Academy will evaluate the report, and if it is determined that a conflict of interest or bias exists, the Academy will appoint another individual to serve in the role

Prior to the live hearing, at the discretion of the Academy, the Decision-Maker(s) may schedule a preliminary conference with each of the parties and their advisors to provide an overview of the live hearing procedures.

- **Written Response to the Final Investigative Report**

Prior to scheduling the live hearing, the Decision-Maker(s) will contact each party to provide a deadline for which they can submit their written responses to the final investigative report.

- **Live Hearing Schedule**

Promptly after receiving the parties' written responses, the Decision-Maker(s) will provide the parties, their advisors, and witnesses with written notice of the live hearing date, time, and location. In this notice, the parties will be asked to inform the Decision-Maker(s) right away if there is a scheduling conflict that would make it impossible to attend the live hearing.

- **Live Hearing Location and Attendance**

At the request of either party, the Academy will provide for the live hearing to occur with the parties located in separate rooms. Live hearings may be conducted with all parties physically present in the same geographic location, or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. In either of the aforementioned situations, the Academy will provide technology that enables the participants to simultaneously see and hear each other.

The only persons permitted to attend the live hearing are the parties, their advisors, the witnesses, and designated Academy personnel. The witnesses are only to be in attendance at the live hearing during the time in which they are offering information or answering questions. Otherwise, the witnesses are to be waiting in a designated room (or virtual room) until called upon.

- **Recording of Live Hearing**

The Academy will create an audio or audiovisual recording, or transcript of any live hearing. The choice of whether it is an audio or audiovisual recording, or transcript is made in the sole discretion of the Academy. The audio or audiovisual recording, or transcript will be made available to both parties for inspection and review. In compliance with disability laws, the Academy will ensure that all parties are properly accommodated with respect to use of technology and reliance on visual, audio, or written communication.

- **Standard of Evidence**

Clear and Convincing is the standard of evidence to be used to determine whether a Respondent is responsible for the prohibited conduct alleged in the formal complaint (see the "Relevant Definitions" section above). This is the standard of evidence that will be applied to all formal complaints of prohibited conduct described in this policy, regardless of whether the Respondent is a student or employee of the Academy.

- **Questioning During Title IX Live Hearings**

At the Title IX live hearing, the Decision-Maker(s) will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

Before a party or witness answers a question, the Decision-Maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Decision-Maker(s) has complete discretion to make relevancy determinations.

Advisors are required to engage with parties, witnesses, and the Decision-Maker(s) in a respectful and non-aggressive manner.

Questions will be asked directly, orally, and in real-time from the advisors of the parties, not from the parties themselves. Advisors are permitted to ask the other party and witnesses relevant questions and follow-up questions, including those challenging credibility.

The advisor may only ask relevant questions to each party and witness. Repetitive questions asked at the Title IX live hearing may be deemed irrelevant.

If a party or witness does not submit to questions at the Title IX live hearing, the Decision-Maker will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Decision-Maker is prohibited from drawing an inference regarding the determination of responsibility based solely on a party's or witness' absence from the live hearing or refusal to answer questions.

Written Determination of Responsibility

At the conclusion of the live hearing, the Decision-Maker(s) will undertake an objective evaluation of all relevant evidence (including both inculpatory and exculpatory evidence). In addition, the Decision-Maker(s) will not make any credibility determinations based on a person's status as a Complainant, Respondent, or witness. Upon a determination of responsibility using the Clear and Convincing Evidence standard described herein, the Decision-Maker(s) will make their best effort to simultaneously issue a written determination regarding responsibility to both parties.

The written determination regarding responsibility will include:

- Identification of the allegations potentially constituting prohibited conduct;
- 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 live hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of relevant policies to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the Academy's education program or activity will be provided by the Academy to the Complainant; and
- The Academy's procedures and permissible bases for the Complainant or Respondent to appeal.

The determination of responsibility will be deemed final on either of the following dates:

- If an appeal is filed, the date that the Appeal Officer(s) provides the parties with the written determination of the result of the appeal; or
- If an appeal is not filed, the date on which an appeal would no longer be considered timely.

Remedies and Disciplinary Sanctions

Remedies will be designed to restore or preserve the Complainant's equal access to the Academy's education program or activity. Disciplinary sanctions may range from warnings to dismissal or termination, depending on the magnitude and specifics of the violation.

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

Appeals for a Dismissal of a Formal Complaint and/or Determination of Responsibility

Both parties have the option to appeal a dismissal of a formal complaint and/or the determination regarding responsibility on the following bases:

- A 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; and
- The Title IX Coordinator, Investigator(s), or Decision-Maker(s) 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. If it is found that a party was aware of a potential bias or conflict of interest prior to the determination regarding responsibility and the party knowingly withheld that information from the Academy, the party will not be permitted to raise that allegation of bias or conflict of interest on appeal.

All appeals must be submitted in writing to the Appeal Officer(s) within 5 days of receiving the written determination of responsibility.

Within 7 business days of receiving the written appeal, the Appeal Officer(s) will review the appeal to determine whether it falls within one of the three bases for appeal as described above. If it does, the Academy will promptly notify the other party when a valid appeal is filed and will implement appeal procedures equally for both parties. If it does not, the appealing party will be notified in writing.

The other party will be given 5 business days from the date of notification of the appeal to submit to the Appeal Officer(s) a written response to the appeal.

Either after receiving the other party's written response to the appeal, or after the time for the other party to submit a written response has expired, the Appeal Officer(s) will make a determination regarding the outcome of the appeal within 7 business days.

Upon a determination of the outcome of the appeal, the Appeal Officer(s) will provide written notice of the decision to both parties and will make all reasonable efforts to simultaneously notify said parties. This written notice will describe the rationale for the result of the appeal.

The Academy will ensure that the Appeal Officer(s) is not the Investigator, Title IX Coordinator, or the Decision-Maker(s) who made the decision regarding responsibility and/or sanctioning. The Appeal Officer(s) will abide by the procedures described in the "Title IX Personnel" section above.

Potential Delays in the Informal Resolution Process or Formal Grievance Process

The Academy will make all reasonable efforts to abide by the timelines described throughout this policy. If the timeline for any stage of the informal resolution process or the formal grievance process must be changed, the Complainant and Respondent will receive written notice of the temporary delay or limited extension of timelines and the reasons for the change. Possible reasons for temporary delays or extensions of timelines include, but are not limited to, the absence of a party or a party's advisor, concurrent law enforcement activity, the need for language assistance or accommodation of disabilities, etc.

Request for Extension of Timelines

If a party has good cause and needs an extension during the formal grievance process, they can contact the Title IX Coordinator to request such extension. It is within the Title IX Coordinator's discretion to grant such a request. In the case that an extension is granted, the same extension will be given to the other party.

Recordkeeping

The Academy will document and maintain in Academy records for a period of seven years the following:

- All materials used to train Title IX Coordinator(s), Investigator(s), Decision-Maker(s), and Facilitator(s) of Informal Resolution Processes. The Academy will make these training materials publicly available on its website;
- Any informal resolution and the results therefrom;
- Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance of actions taken in response to Title IX reports or formal complaints, the Academy will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the Academy's education program or activity. If the Academy does not provide a Complainant in a Title IX case with supportive measures, then the Academy must document the reasons why such a response was not clearly unreasonable in light of the known circumstances;
- Each formal investigation, including any determination regarding responsibility and any audio or audiovisual recording, or transcript of the live hearing;
- Any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the Academy's education program or activity; and
- Any appeal and the result therefrom.