

## 3203 Title IX: Responding to Allegations of Sexual Harassment

### 1. Purpose

- a. This document sets forth the policies and procedures to be applied by Karl G. Maeser Preparatory Academy (“Maeser”) in connection with Title IX of the Education Amendments of 1972 (“Title IX”). Title IX is a federal law that prohibits discrimination on the basis of sex in educational programs and activities that receive federal funding. Title IX protects students, employees, and applicants from all forms of sex discrimination in all aspects of Maeser’s educational programs and activities. The purpose of this policy is to provide guidance in responding lawfully to allegations and cases of discrimination on the basis of sex in the form of sexual harassment. The policy ensures that Maeser responds appropriately to students victimized by sexual harassment that might otherwise jeopardize a person's equal access to Maeser’s educational program.

### 2. Definitions

- a. Sexual Harassment: conduct on the basis of sex that satisfies one or more of the following criteria:
  - i. A school employee conditionally providing education aids, benefits, or services based on participation in sexual conduct, welcome or unwelcome (quid pro quo); or
  - ii. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s educational programs or activities; or
  - iii. Sexual assault which is an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation; or
  - iv. Dating violence which is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; or
  - v. Domestic violence which is a felony or misdemeanor crime of violence under Utah state law committed by a current or former spouse or intimate partner of the victim, a person with whom the victim shares a child in common, or by a person who is or has cohabitated with the victim; or
  - vi. Stalking which is the act of 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 to suffer substantial emotional distress
- b. Actual Knowledge: The school is considered to have actual knowledge of sexual harassment or allegations of sexual harassment when notice has been given to the school’s Title IX Coordinator or to *any employee* of the school.
- c. Complainant: an individual who is alleged to have been the victim of conduct that could constitute sexual harassment. Maeser recognizes the legal right of parents and guardians to act in Title IX matters on behalf of the student if the complainant is their child.
- d. Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. Maeser recognizes the legal

right of parents and guardians to act in Title IX matters on behalf of the student if the respondent is their child.

- e. Formal Complaint: a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. A formal complaint should include:
    - i. name and telephone number of the individual making the report
    - ii. factual allegations that would constitute sexual harassment
    - iii. the name of the person against whom the complaint is made
    - iv. the name(s) of any witness(es)
  - f. Supportive Measures: non-disciplinary, non-punitive individualized services offered without fee or charge to the complainant or the respondent, designed to restore or preserve equal access to the School's educational program or activity without reasonably burdening the other party, including measures designed to protect the safety of all parties or the school's educational environment, or to deter sexual harassment. These may include, but not be limited to, counseling, extensions of deadlines, course-related adjustments, modifications of work, leaves of absence, increased monitoring of certain areas, or modifications to the class schedule.
3. Title IX Coordinator
- a. Any person may report sex discrimination, including sexual harassment, to the Title IX Coordinator. Any school employee who has actual knowledge of sexual discrimination or harassment must report it to the Title IX Coordinator. Reports can be made in person, by mail, phone, or by email. The Title IX Coordinator can be reached at:
    - i. Stefanie Slade (801-235-9000; [stefanie.slade@maeserprep.org](mailto:stefanie.slade@maeserprep.org))
4. Personnel & Training Requirements
- a. As part of Maeser's due process and grievance process, the school will designate a Title IX coordinator, an investigator(s), and a decision-maker.
  - b. Maeser will ensure that any individual designated by the School as a Title IX Coordinator, investigator, decision-maker, or the facilitator of an informal resolution process will receive training on the applicable definition of sexual harassment, the scope of the School's educational program and activities, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable; and how to serve impartially including the avoidance of prejudgment of the facts at issue, conflicts of interest, and bias.
  - c. All individuals designated by the School as the Title IX Coordinators, investigators, decision-maker, or a facilitator of an informal resolution process will be free of any conflict of interest and bias for or against complainants or respondents generally or a specific complainant or respondent.
  - d. Maeser will further ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
5. Response to Sexual Harassment

- a. Jurisdiction
  - i. Maeser's obligations under Title IX are limited to circumstances involving allegations of sexual harassment occurring where the School exercised substantial control over both the respondent and the context in which the reported sexual harassment occurs. Maeser will investigate and address all such allegations pursuant to the terms of this policy. Maeser will also address allegations of conduct that originated off-campus but that (a) have a clear relationship to the School and (b) are likely to have a significant impact on the complainant's ability to effectively access and continue in their educational program. Maeser will cooperate with law enforcement or other authorized public agencies that have jurisdiction to investigate allegations of sexual harassment that occur off-campus.
  - ii. If an allegation of sexual harassment is not addressed under this policy, it may, when appropriate, be addressed under Maeser's Discipline Policy.
- b. Formal Complaint Procedure
  - i. Maeser will respond promptly in a manner that is not deliberately indifferent to any actual knowledge of sexual harassment in its educational program.
  - ii. In the event of any actual knowledge of sexual harassment, administration will 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 filing a formal complaint, and explain to the complainant the process for filing a formal complaint. The School will treat complainants and respondents equitably by offering supportive measures to a complainant and by following the grievance process.
  - iii. Upon receipt of a formal complaint, the Title IX Coordinator shall provide both complainant and respondent with the following:
    - 1. written notice of the grievance process set forth in this policy
    - 2. written notice of the allegations of sexual harassment, including the identities of the parties involved in the alleged incident(s), the conduct allegedly constituting sexual harassment, and the date(s) and location(s) of the alleged incident(s), if known
    - 3. 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
    - 4. notice to the parties that they may have an advisor of their choice for the grievance process, who may be, but is not required to be, an attorney
    - 5. notice to the parties that they are prohibited from knowingly making false statements or willingly submitting false information
    - 6. notice to the parties of their right to inspect and review the evidence
  - iv. Informal Resolution

1. Informal resolutions, mediated by a neutral party, are available provided the complainant and respondent voluntarily agree to participate and the respondent is not a teacher or school employee. Either party may choose to withdraw from an informal resolution at any time and resume the formal grievance process.
2. Whenever possible, an informal resolution should take place within 10 school days of the receipt of the formal complaint or the agreement of both parties to participate in an informal resolution.
3. If an informal resolution proves impossible or inappropriate, the Title IX Coordinator will initiate the grievance process for the investigation and resolution of formal complaints.

v. Interim Measures

1. The School may offer supportive measures for both the complainant and respondent during the investigation period. If warranted, the respondent may be temporarily removed from the school pending an investigation if the respondent poses an immediate threat to anyone's physical health or safety. If this occurs, the respondent will be notified and provided an opportunity to challenge the decision immediately following the removal.

6. Grievance Process

- a. Maeser will promptly carry out the grievance process for formal complaints of sexual harassment. Unless reasonable cause exists, Maeser will conclude the grievance process of a formal complaint of sexual harassment within forty-five (45) calendar days of receipt of a formal complaint.
- b. The grievance process for formal complaints of sexual harassment may be temporarily delayed and time frames extended by the School for good cause with written notice to the complainant and respondent that describes the reasons for the delay or extension.

7. Investigation

- a. The Title IX Coordinator will appoint an unbiased investigator who will investigate the complaint. The investigation should be completed within twenty (20) calendar days whenever possible.
- b. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility for the alleged sexual harassment rest on the School and not on the parties. The investigation shall carry a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The investigator will apply a clear and convincing standard of evidence involving allegations of discrimination.
- c. Investigations may include, but are not limited to, interviews with the reporting party, complainant, respondent, and witnesses. Both the complainant and respondent have equal right to present witnesses and evidence to the investigator. Both parties are entitled to have an advisor of their choice present for all investigative interviews or meetings.

- d. The investigator will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
  - e. If allegations have also been reported to the local law enforcement agency, the investigator will make every attempt to gather information from the agency to aid in the School's investigation.
  - f. If, during the course of an investigation, the School determines it is necessary to investigate allegations about the complainant or respondent that are not included in the formal complaint, the School will provide notice of the additional allegations to the parties whose identities are known.
  - g. At the conclusion of the investigation, the investigator shall provide to both parties an investigative report that fairly summarizes relevant evidence. Parties can inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint. Each party will be provided at least 10 and no more than 20 days to review and respond in writing to the evidence.
8. Responsibility Determination
- a. Provided there is no conflict of interest, the school's director assumes the role of decision-maker. If there is a conflict of interest, the Title IX Coordinator will appoint another neutral, qualified individual, who is not the investigator or Title IX Coordinator.
  - b. Following receipt of the investigative report, the decision-maker will provide each party the opportunity to submit written, relevant questions that a party wants asked of any witness, provide each party with answers, and allow for additional, limited follow-up questions. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered as evidence of likely consent. At Maeser's sole option, the decision-maker may choose to conduct a live hearing or to resolve the complaint on the basis of written submissions alone.
  - c. The decision-maker will apply a clear and convincing standard of evidence when determining whether the respondent is responsible for sexual harassment. The decision-maker will also assess consequences against the respondent when he or she determines this to be necessary. Consequences may include, but are not limited to, suspension or expulsion from school or suspension or termination of employment where the respondent is a faculty or staff member. The decision-maker's determination will be presented to both the complainant and respondent in writing within 15 calendar days. The written determination shall include:
    - i. identification of the allegations potentially constituting sexual harassment
    - ii. a description of the procedural steps taken from the receipt of the formal complaint through the determination
    - iii. findings of facts supporting the determination

- iv. conclusions regarding the application of the School's policies to the facts
- v. a statement of, and rationale for, the results as to each allegation, including determination regarding responsibility, any disciplinary sanctions the School imposes on the respondent, and whether remedies designed to restore or preserve equal access to the School's educational program will be provided by the School to the complainant
- vi. the school's procedures and permissible bases for the complainant and respondent to appeal

#### 9. Appeal

- a. Both the complainant and respondent have the right to appeal the decision to the school's Board of Directors on the following grounds:
  - i. procedural irregularity that affected the outcome of the matter
  - ii. 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
  - iii. 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 complainant or respondent specifically that affected the outcome of the matter
- b. Appeals on any other basis are not permitted.
- c. Appeals must be submitted in writing to the Board Chair within 10 business days of receipt of the written determination. In no event shall the investigator, Title IX Coordinator, or decision-maker participate in deciding the appeal. Upon receipt of an appeal, the Board Chair shall notify the other party and provide both sides a reasonable, equal opportunity to submit written statements in support of, or challenging, the outcome. Upon review of both side's written submissions, the Board shall promptly issue a written determination.
- d. This decision is final and may not be appealed again.

#### 10. Abandonment or Dismissal of Complaint

- a. The following constitutes abandonment of a complaint by the complainant:
  - i. failure to respond or take action within the specified time limit
  - ii. failure to appear for a scheduled meeting during an investigation
  - iii. failure to provide any requested documentation to aid in the investigation
  - iv. otherwise failing to advance the complaint in a timely manner
- b. The following will result in a mandatory dismissal of a formal complaint:
  - i. The complainant does not describe conduct that meets the definition of sexual harassment
  - ii. The alleged incident did not occur in the School's educational program or activity
  - iii. The alleged incident did not occur in the United States, and the respondent does not live in the United States
- c. The following *may* be used as a basis for dismissal of the complaint:
  - i. Complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein
  - ii. Respondent is no longer enrolled or employed by the recipient,

- iii. Specific circumstances prevent the School from gathering evidence sufficient to reach a determination as to the allegations contained in the formal complaint.
- iv. Clear and convincing evidence early on that the complainant gave false testimony regarding the substance of the allegation.
- d. No further appeal will be allowed if the complaint is found to be abandoned or dismissed by any of the reasons above.

#### 11. Retaliation

- a. The School and its personnel will not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right secured by Title IX, or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.
- b. 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, constitutes retaliation.
- c. The exercise of rights protected under the First Amendment does not constitute retaliation.
- d. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation; provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.
- e. Complaints alleging retaliation may be filed according to the School's grievance procedure for sex discrimination.

#### 12. Recordkeeping

- a. For seven years, the School will maintain a record of:
  - i. any supportive measures provided in response to a report or formal complaint of sexual harassment.
  - ii. each sexual harassment investigation, including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the School's educational program
  - iii. any appeal and the result
  - iv. any informal resolution and the result
  - v. all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The School will make these training materials publicly available on its website.