



<b>Compliance</b>	<b>Title IX Policy</b>	<b>Updated 7.11.20</b>
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**TITLE IX**

**Title IX** of the Education Amendments Act of 1972 is a federal law that states: "No person in the United States shall, based on sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Penrose Academy adheres to the specifications of Title IX. The Title IX Coordinator for Penrose Academy is the Sr. Director of Education and Student Services. The Title IX Deputy is Missy Conti, Assistant Director of Education.

**VAWA**

Congress passed the **Violence Against Women Act** of 1994 (VAWA 1994) as part of the Violent Crime Control and Law Enforcement Act of 1994 In recognition of the severity of the crimes associated with domestic violence, sexual assault and stalking.

**PENROSE ACADEMY TITLE IX AND VAWA POLICY**

Penrose Academy is committed to providing a work and school environment free of unlawful harassment or discrimination. Students and employees are required to take our mandatory Sexual Harassment, Sexual Violence, Sexual Assault, Sexual Abuse Awareness and Prevention Training. This training will occur during New Hire Orientation or New Student Orientation. The academy's policy prohibits harassment or discrimination based on race, religion, creed, color, national origin, ancestry, sex (including pregnancy, childbirth or related medical conditions), military or veteran status, physical or mental disability, medical condition, marital status, age, sexual orientation, gender, gender identity or expression, genetic information or any other basis protected by the federal, state or local law. Additionally, in accordance with Title IX of the Education Amendments of 1972 and The Violence Against Women Act of 1994 (VAWA) the academy prohibits discrimination based on sex, which includes sexual harassment and sexual violence, and the academy has jurisdiction over Title IX complaints.

- Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
- (1) An employee of the academy conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.
  - (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the academy's education program or activity; or "Sexual assault," "dating violence," "domestic violence," or "stalking" as defined for VAWA purposes

Penrose Academy's Title IX policy applies to all persons involved in the operation of the academy and prohibits unlawful harassment by any employee of the academy, students, customers, vendors or anyone who does business with the academy. Any employee, student or contract worker who violates this policy will be subject to disciplinary action. To the extent, a customer, vendor, or other person with whom Penrose Academy does business engages in unlawful harassment or discrimination, Penrose Academy will take appropriate corrective action.

This policy shall be disseminated to the school community through publications, the Penrose Academy website, new employee orientations, student orientations and other appropriate channels of communication. The academy will respond quickly to all reports and will take appropriate action to prevent, to correct and if necessary, to discipline behavior that violates this policy. Additional information can be found on the Office of Civil Rights website at [www.HHS.gov](http://www.HHS.gov) or call Toll Free: (800)368.1019.

**DEFINITIONS**

**Sexual Harassment** is defined as unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature. Sexual harassment is conduct that explicitly or implicitly affects a person's employment or education, interferes with a person's work or educational performance or creates an environment such that a reasonable person would find the conduct intimidating, hostile or offensive.

**Sexual Violence** is defined as physical sexual acts engaged in without the consent of the other person or when the other person is unable to consent to the activity. Sexual violence includes sexual assault, rape, battery and sexual coercion; domestic violence; dating violence; and stalking.

**Domestic Violence** is defined as abuse committed against an adult or a minor who is a spouse or former spouse, cohabitant or former cohabitant or someone with whom the abuser has a child, has an existing dating or engagement relationship or has had a former dating or engagement relationship.

**Dating Violence** is defined as abuse committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

**Sexual Assault** occurs when a physical sexual activity is engaged in without the consent of the other person or when the other person is unable to consent to the activity. The activity or conduct may include physical force, violence, threat or intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through the use of drugs or alcohol and taking advantage of the other person's incapacitation (including voluntary intoxication).

**Stalking** is behavior in which a person repeatedly engages in conduct directed at a specific person that places that person in reasonable fear of his or her safety or the safety of others.

**Consent** is informed, voluntary and revocable. Consent is an affirmative, unambiguous and conscious decision by each participant to engage in mutually agreed-upon sexual activity. It must be given without coercion, force, threats or intimidation. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

### **NON-DISCRIMINATION STATEMENT**

The school in its admission, instruction and graduation policies does not discriminate based on age, sex, race, ethnic origin, color, religion, financial status, country or area of origin or residence, sexual orientation or on the basis of disability. Penrose Academy has designated Nikki Parcels, the Senior Director of Education as the Compliance Coordinator, to ensure the school's compliance. If a student believes that Penrose Academy has failed to provide these services or if a student believes they have been discriminated against on the basis age, assault and stalking, sex, race, ethnic origin, color, religion, financial status, country or area of origin or residence, sexual orientation or on the basis of disability, a student can file a grievance with the Compliance coordinator, Penrose Academy President or the Office of Civil Rights at HHS.gov, by email: [OCRCComplaint@hhs.gov](mailto:OCRCComplaint@hhs.gov) or Toll Free at (800)368.1019.

### **PROHIBITED CONDUCT**

This policy strictly prohibits sexual or other unlawful harassment or discrimination as well as sexual violence, as defined above. Sexual or other unlawful harassment or discrimination includes any verbal, physical or visual conduct based on sex, race, age, national origin, disability or any other legally protected basis if: submission to such conduct is made either explicitly or implicitly; a term or condition of an individual's education or employment; submission to or rejection of such conduct by an individual is used as a basis for decisions concerning that individual's education or employment; or it creates a hostile or offensive work environment, which means the alleged conduct is sufficiently serious to limit or deny a student's ability to participate or benefit from the student's education program. Unlawful harassment or discrimination may include racial epithets, slurs and derogatory remarks, stereotypes, jokes, posters or cartoons based on race, national origin, age, disability, marital status or other legally protected categories. Sexual harassment is conduct based on sex, whether directed towards a person of the opposite or same sex and may include explicit sexual propositions, sexual innuendo, suggestive comments, sexually oriented "kidding" or "teasing", practical jokes, jokes about or displays of obscene printed or visual material, questions about sexual fantasies, preferences or history and physical contact such as patting, pinching or intentionally brushing against another person's body. Gender-based harassment, including acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex or sex-stereotyping are strictly prohibited, even if those acts do not involve conduct of a sexual nature.

### **COMPLAINT PROCEDURE**

Notify the Title IX Coordinator as soon as possible after the incident.

**Penrose Academy Title IX Coordinator**  
**Nikki Parcels, Sr. Director of Education and Student Services**  
**13402 North Scottsdale Road, Suite B-160**  
**Scottsdale, AZ 85254**  
**480.222.9450 Ext 208**  
[compliance@penrose.edu](mailto:compliance@penrose.edu)

**Penrose Academy Title IX Deputy**  
**Missy Conti, Assistant Director of Education**  
**13402 North Scottsdale Road, Suite B-160**  
**Scottsdale, AZ 85254**  
**480.222.9540 Ext. 204**  
[compliance@penrose.edu](mailto:compliance@penrose.edu)

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the academy investigates the allegation of sexual

harassment. 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 with which the formal complaint is filed. Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment and do not allow an inappropriate situation to continue by not reporting it, regardless of who is creating the situation. No employee, contract worker, student, vendor or other person who does business with Penrose Academy is exempt from the prohibitions in this policy. Faculty/Staff will refer all harassment complaints to the Title IX Coordinator for student-related complaints and complaints involving an employee. To facilitate the investigation, a student complaint should include details of the incident or incidents, names of the individuals involved and names of any witnesses. Please contact the appropriate Title IX Coordinator for an Incident Report. The Title IX Coordinator can assist students in completion of this report and/or notifying the appropriate authorities, if necessary and requested by the alleged victim. Penrose Academy ensures that the employee designated to serve as Title IX Coordinator has adequate training on what constitutes sexual harassment, including sexual violence and that students understand how Penrose Academy's complaint procedures operate.

### **TITLE IX COORDINATOR AND DEPUTY TRAINING**

Penrose Academy's Title IX Coordinator and Deputy are trained in the Title IX policies and regulation through Thompson Coburn. A module-based program, the Title IX Training is an online, asynchronous training consisting of an introduction, formal complaints, investigations, informal resolutions, hearings, determinations and appeals. The 10-hour training is current as of July 2020. [youtube/thompsoncoburn](https://www.youtube.com/watch?v=thompsoncoburn)

### **INVESTIGATION OF COMPLAINTS**

In response to all complaints, Penrose Academy ensures prompt and equitable resolution through a reliable and impartial investigation of complaints, including the opportunity for both parties to present witnesses or other evidence. The time necessary to investigate will vary based on complexity but will generally be completed within sixty (60) days of receipt of the complaint. Penrose Academy shall maintain confidentiality for all parties to the extent possible, but absolute confidentiality cannot be guaranteed. In cases where a student/staff member does not give consent for an investigation, Penrose Academy will weigh the student/staff member's request for confidentiality against the impact on the academy safety to determine whether an investigation must proceed. Complainants should be aware that in a formal investigation due process generally requires that the identity of the charging party and the substance of the complaint be revealed to the person charged with the alleged harassment.

The preponderance of the evidence standard will apply to investigations, meaning Penrose Academy will evaluate whether it is more likely than not that the alleged conduct occurred. Both parties will receive written notice of the outcome of the complaint.

During the investigation, the academy will provide interim measures, as necessary, to protect the safety and wellbeing of employees/students involved. Reasonable academic accommodations will be provided during and after the alleged Title IX or VAWA offense.

If the academy determines that unlawful harassment or sexual violence has occurred, immediate appropriate corrective action will be taken in accordance with the circumstances involved and the academy will take steps to prevent the recurrence of any harassment or discrimination. Any employee or student determined by the academy to be responsible for unlawful harassment or discrimination will be subject to appropriate disciplinary action, up to and including termination.

To initiate a criminal investigation, reports of sexual violence should be made to "911" or local law enforcement. The criminal process is separate from the academy's disciplinary process. To the extent that an employee or contract worker is not satisfied with the school's handling of a harassment or discrimination complaint, he or she may also contact the appropriate state or federal enforcement agency for legal relief.

When investigating a formal complaint and throughout the grievance process, the academy will:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the academy and not on the parties
2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present
4. Provide the parties with the same opportunities to have others present during any grievance proceeding, including an advisor of their choice, relevant evidence.

5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint; and Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report, for their review and written response.

## **HEARINGS**

Penrose Academy's grievance process provides a live hearing. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. At the request of either party, the academy will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decisionmaker(s) and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the academy will provide without fee or charge to that party, an advisor of the academy's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility. Live hearings may be conducted with all parties physically present in the same geographic location or, at the academy's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. The academy will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

## **DETERMINATION REGARDING RESPONSIBILITY**

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility.

The written determination will include:

1. Identification of the allegations potentially constituting sexual harassment.
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination.
3. Findings of fact supporting the determination.
4. Conclusions regarding the application of the academy's code of conduct to the facts.
5. A statement of, and rationale for, the result as to each allegation and the academy's procedures and permissible bases for the complainant and respondent to appeal.
6. The academy will provide the written determination to the parties simultaneously.
7. The Title IX Coordinator is responsible for effective implementation of any remedies.

## **APPEALS**

Penrose Academy will offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter.
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias that affected the outcome.

## **INFORMAL RESOLUTION**

At any time prior to reaching a determination regarding responsibility the academy may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the academy:

1. Provides to the parties a written notice disclosing the allegations and the requirements of the informal resolution process.
2. Notifies parties that any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
3. Obtains the parties' voluntary, written consent to the informal resolution process; and does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

## **RECORDKEEPING**

Penrose Academy will maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required, any disciplinary sanctions imposed on the respondent, and any remedies provided.
2. Any appeal and the result therefrom.
3. Any informal resolution and the result therefrom; and all materials used to train Title IX Coordinators. These training materials must be publicly available on the website.

In response to receipt of actual knowledge of sexual harassment, the academy will create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.

## **RETALIATION PROHIBITED**

Penrose Academy or other person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Except as otherwise noted in the regulations, Penrose Academy will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness. 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 does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## **RESPONSE TO SEXUAL HARASSMENT**

A recipient with actual knowledge of sexual harassment in an education program or activity of the academy against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

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 sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. The academy will treat complainants and respondents equitably. The Title IX Coordinator must 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.

## **REPORTING REQUIREMENTS**

Victims of sexual misconduct should be aware that school administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to other members of the campus community. Penrose Academy will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. Penrose Academy reserves the right to notify parents/guardians of dependent students regarding any health or safety risk or a change in student status.

## **RESPONSE TO A FORMAL COMPLAINT**

In response to a formal complaint, Penrose Academy will follow a grievance process that complies with § 106.45. With or without a formal complaint.

Emergency removal. The academy may remove a respondent from the education program or activity on an emergency basis, provided that the academy undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

Administrative leave. A non-student employee respondent may be placed on administrative leave during the pendency of a grievance process.

## **ADDITIONAL INFORMATION**

The U.S. Department of Education Office for Civil Rights ("OCR") investigates complaints of unlawful harassment of students in educational programs or activities. This agency may serve as a neutral fact finder and will attempt to facilitate the voluntary resolution of disputes with the parties. For more information, visit the OCR website at: <http://www.HHS.gov/ocr/>

## **GRIEVANCE POLICY AND PROCEDURE**

In the event a student has a concern or grievance that cannot be resolved with the student's immediate Educator, Senior Director of Education or Student Services Department, the student may file the concern in written form as a grievance. The written grievance will then be referred to the Board of Grievances. If a student is suspended, terminated for Student Catalog Policy Violation or failure to achieve Satisfactory Academic Progress and wishes to appeal the decision, the student will also provide a written appeal to the Board of Grievances as described below.

Procedural Items:

- Notify the President of Penrose Academy that a grievance has been filed.
- Provide notice to all parties involved in the incident.
- Title IX Coordinator will conduct an investigation of the grievance.
- If the problem is not clearly defined, a request to clarify the grievance shall be made upon the student who files the written grievance.
- Set a date for the hearing which shall not be later than ten (10) days from the date all parties are sent a notice of the written grievance.

**Composition:** The Board of Grievances shall be comprised of three or more people from Penrose Academy's Administration and Educators. If for any reason the written grievance is filed against or regarding actions of an educator or administrative member that serves on the Board of Grievances, then that member shall be replaced by another educator or administrative member chosen by the President and/or Co- Founder.

Hearings Conducted by the Board of Grievances:

The Board of Grievances shall conduct a hearing on the documents submitted and testimony of any relevant party. The student who filed the written grievance shall present his/her case first. Thereafter, the Board of Grievances shall permit the opposing party an opportunity to be heard. If a grievance is filed against the administration or an educator, a member of the administration or an educator appointed by the President may present the case on behalf of Penrose Academy. Both student and opposing party shall only be permitted one (1) hour to present his/her case, including all testimony. Thereafter, the Board of Grievances shall discuss the matter without the presence of the student or any opposing party until each member of the Board has made an independent decision. The Board of Grievances' decision shall be by majority rule and shall be the final decision made by Penrose Academy regarding the matter.

**Arbitration:** In the event any grievance is pursued beyond the Board of Grievances decision, student agrees and acknowledges that any matter concerning the Enrollment Agreement or Student Catalog must be submitted to a single arbitrator assigned by the American Arbitration Act ("AAA").

Any matter to be submitted to the AAA must be filed within five (5) days of the Board of Grievances decision. However, prior to pursuing binding arbitration, student must exhaust all means available through the Board of Grievances. The cost of any such arbitration shall be paid by the party pursuing such arbitration. The results of the arbitration shall be binding on the parties and shall preclude parties from seeking further litigation. The parties

agree to make all reasonable efforts to ensure that any dispute going to arbitration shall be resolved within sixty (60) days of filing arbitration documents.

#### **REQUIREMENTS FOR A GRIEVANCE PROCESS**

1. Treat complainants and respondents equitably.
2. Require an objective evaluation of all relevant evidence.
3. Require that any individual designated by Penrose Academy as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process, not have a conflict of interest or bias. Title IX Coordinators, et. al. must receive proper training.
4. Include 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.
5. Include reasonably prompt time frames for conclusion of the grievance process.
6. Describe the range of possible disciplinary sanctions and remedies that the academy may implement following any determination of responsibility.
7. State the standard of evidence to be used to determine responsibility (preponderance of the evidence or clear and convincing evidence).
8. Include the procedures and permissible bases for the complainant and respondent to appeal.
9. Describe the range of supportive measures available to complainants and respondents; and 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.

#### **NOTICE OF ALLEGATIONS UPON RECEIPT OF FORMAL COMPLAINT**

1. Notice of the grievance process
2. Notice of the allegations of sexual harassment, including:
  - a. Sufficient details with sufficient time to prepare a response before any initial interview
  - b. A statement that the respondent is presumed not responsible and that a determination regarding responsibility is made at the conclusion of the grievance process
  - c. Notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence
  - d. Notice must inform the parties of any provision in the academy's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

#### **DIMISSAL OF FORMAL COMPLAINT**

1. The academy may dismiss the formal complaint if:
  - a. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint.
  - b. The respondent is no longer enrolled or employed by the academy; or specific circumstances prevent the academy from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

In the event that a grievance may not be resolved at the institutional level, a formal grievance may be filed with the Council on Occupational Education, Arizona State Board of Cosmetology and/or Arizona Department of Health Services.

#### **Council on Occupational Education**

7840 Roswell Rd. Bldg. 300, Ste. 325  
Atlanta, GA 30350  
770) 396-3898 or (800) 917-2081  
[www.council.org](http://www.council.org)

#### **Arizona State Board of Cosmetology**

1740 W. Adams St. Suite 4400  
Phoenix, AZ 85007  
(480) 784-4539  
[www.azboc.gov](http://www.azboc.gov)

#### **Arizona Department of Health Services**

150 North 18<sup>th</sup> Avenue  
Phoenix, AZ 85007  
(602) 542-1025  
<https://www.azdhs.gov/>