

# penrose academy

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## **Title IX Sexual Harassment, Discrimination, and Misconduct Policy**

### **POLICY PURPOSE**

Penrose Academy does not tolerate sexual misconduct, including sexual harassment. Such conduct is harmful to the well-being of our community members, our learning environments, working environments, and the collegial relationships among students, faculty, and staff that characterize the culture of Penrose Academy. All forms of prohibited conduct under this policy are regarded as serious academy offenses, and violations may result in discipline, including the possibility of separation from the academy.

Penrose Academy does not discriminate based on sex in the education programs or activities that it operates, and Penrose Academy is required by Title IX of the Education Amendments of 1972 (Title IX) and 34 C.F.R. Part 106 not to discriminate in such a manner. The requirement not to discriminate in the education program or activity extends to admissions and employment. Inquiries about the application of Title IX and 34 C.F.R. Part 106 may be referred to Penrose Academy's Title IX coordinators, the United States Department of Education, Office for Civil Rights, Assistant Secretary for Civil Rights, or both. Further, Penrose Academy is committed to providing a safe and non-discriminatory learning and working environments for all members of the academy's community. Penrose Academy does not discriminate based on sex or gender in any of its education or employment programs or activities as outlined in the policy 'Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence.'

This policy prohibits specific forms of behavior that may violate Title IX of the Education Amendments of 1972 (Title IX), relevant provisions of the Violence Against Women Act (VAWA), Title VII of the Civil Rights Act of 1964 (Title VII), the Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (Clery Act), and Penrose Academy's code of conduct, values, and standards. Penrose Academy adopts this policy with a commitment to eliminating, preventing, and addressing the effects of prohibited conduct, fostering a community of trust and mutual respect in which prohibited conduct is not tolerated; cultivating a climate where all individuals are well-informed and supported in reporting prohibited conduct, providing a fair and impartial process for all parties, and identifying the standards by which violations of this policy will be evaluated and disciplinary action may be imposed.

### **TITLE IX DESCRIPTION**

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.

### **CLERY ACT DESCRIPTION**

The Clery Act or The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 USC § 1092(f)) is the federal law that requires colleges and universities across the United States to disclose information about crime on and around their campuses. Penrose Academy discloses and publishes an Annual Safety and Security Report to current and prospective students and employees by October 1 of each year. This report provides crime statistics for the prior three years, policy statements regarding various safety and security measures, campus crime prevention descriptions, and procedures to be followed in the investigation and prosecution of alleged sex offenses. Under the Clery Act, any student or employee who becomes a victim of dating violence, domestic violence, sexual assault, and stalking (whether on or off campus) has the right to receive written explanation of their rights and options.

## VAWA DESCRIPTION

Congress passed the **Violence Against Women Act (VAWA)** 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.

## TITLE IX COORDINATOR

Penrose Academy Title IX coordinators, Missy Conti, Stephanie Toth, and Andria Young, play an integral role in ensuring that all students have access to the variety of resources that Penrose Academy has to offer.

### Responsibilities of the Title IX Coordinator:

- Oversee the academy's compliance with Title IX.
- Respond to any report of sexual harassment or any other violations of Title IX and/or code of conduct against any employee or student at Penrose Academy.
- Oversee and/or participate in the resolution of any formal complaint of sexual harassment or any other violations of Title IX and/or code of conduct.

### Contact Information:

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## TITLE IX COORDINATOR TRAINING

Penrose Academy's Title IX coordinator and Deputy Title IX coordinators, investigators, and other identified members of the administration, have gone through extensive training in the Title IX policies and regulations through Thompson Coburn Title IX a module-based training series.

- **Module 1 – An Introduction to Managing Title IX Sexual Harassment on Campus:** [Module 1 - Fundamentals of the Law](#)
- **Module 2 – Formal Complaints of Title IX Sexual Harassment:** [Module 2 - Formal Complaints](#)
- **Module 3 – Title IX Investigations & Informal Resolutions:** [Module 3 - Investigations & Informal Resolutions](#)
- **Module 4 – Title IX Hearings:** [Module 4 - Hearings](#)
- **Module 5 – Title IX Determinations:** [Module 5 - Determinations](#)
- **Module 6 – Title IX Appeals:** [Module 6 - Appeals](#)

Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process under these procedures, also receive training on prohibited conduct not constituting sexual harassment as defined in this policy and on the policy and procedures contained herein. All materials used to train Title IX coordinators, investigators, decision-makers, and any person that facilitates an informal resolution process under these procedures, does not rely on sex stereotypes and promotes impartial investigations and adjudications of formal complaints of prohibited conduct. Training is provided annually to Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

## **STUDENT AND EMPLOYEE PREVENTION**

Students and employees are required to take the 'Title IX Harassment, Discrimination, Sexual Misconduct, Sexual Harassment, Sexual Violence, Sexual Assault, Sexual Abuse Awareness and Prevention Training.' This training occurs during new hire orientations and new student orientations.

## **PROHIBITED CONDUCT**

Penrose Academy is committed to providing a safe and non-discriminatory learning and working environments for all members of the academy's community. Penrose Academy does not discriminate based on sex or gender in any of its education or employment programs and activities. Penrose Academy strictly prohibits harassment of any kind including sexual harassment, sexual or gender-based misconduct, sexual exploitation, retaliation, and involvement (prohibited conduct).

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, 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.

These forms of prohibited conduct undermine the character and purpose of the academy and will not be tolerated. Penrose Academy will take prompt and equitable action to eliminate prohibited conduct, prevent its recurrence, and remedy its effects.

### **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. 'Quid Pro Quo'.
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.
3. Sexual assault, dating violence, domestic violence, or stalking as defined by federal statutes known as the Clery Act and the Violence Against Women Act (VAWA).
4. Sexual harassment under Title IX includes harassment based on sexual orientation and gender identity.

Penrose Academy's Title IX policy applies to all persons involved in the operation of the academy and prohibits unlawful harassment by any employees 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: (877)969.6775.

## **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 considering the known circumstances. Educational 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 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.

## **DEFINITIONS**

**Quid Pro Quo Harassment** is defined as instances where a school employee conditions educational benefits on participation in unwelcome sexual conduct.

**Sexual Misconduct** is defined as sexual assault, sexual harassment, sexual intimidation, dating violence/domestic violence, sexual exploitation, and stalking.

**Sexual Harassment** is defined as unwelcome conduct of a sexual nature. It includes quid pro quo, unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal, or physical conduct of a sexual nature. Other unwelcome conduct so severe or pervasive that interferes or creates a hostile environment. 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. Such behavior only has to happen once to violate the policy. Less severe behaviors violate the policy when they are pervasive or happen repeatedly, such as sexual comments or request for dates after the person has already said no.

**Sexual Intimidation** is defined as threatening or coercive behavior of a sexual nature such as exposing oneself and/or sexual extortion.

**Sexual Exploitation** is defined as taking sexual advantage of someone without their consent, such as prostituting someone and/or sharing images.

**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, 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 a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress. Such conduct

includes physical contact, verbal contact, electronic contact, following someone, and/or sending unwanted social-media posts.

**Consent** is a mutual agreement to engage in an activity. Mutual engagements are 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.

**Incapacitation** is when a person is incapable of giving consent, such as sleep, unconsciousness, intoxication, disabilities, or injuries.

## **GRIEVANCE POLICY AND PROCESS**

Notify a Title IX coordinator as soon as possible after the incident. Reports of sexual harassment may be verbal or written and may be received at any time.

### **FORMAL COMPLAINT**

**Formal Complaint** means a document filed by a complainant and/or signed by the Title IX coordinator alleging sexual harassment or other violations of the academy's Title IX policy, against a respondent and requesting that the academy investigate the allegation of sexual harassment and do not allow an inappropriate situation to continue, 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 Student Services Department and/or the 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.

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment or other violations of the academy's Title IX policy. 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 or other violations of the academy's Title IX policy. Respondents are always presumed innocent; or, more technically, not responsible for sexual harassment. Respondents may not be sanctioned unless and until an investigation is completed and a final decision rendered.

### **Advisors**

Complainants and respondents may have an advisor. Title IX advisors may be a Penrose Academy faculty or staff member, another Penrose Academy student, a friend, a parent, an attorney, or any other person of the student's choosing. The student must notify The Title IX coordinator two working days in advance of conduct meetings or hearings if being accompanied by an advisor.

Advisors may:

- Accompany you in any conduct proceedings.
- Advise you in the preparation and presentation of sharing of information.
- Advise you in the preparation of any appeals or sanction reviews.

During any conduct proceedings, complainants and/or respondents are expected to ask and respond to questions on their own. Advisors may advise but may not make a presentation or represent you. Advisors may consult with you but may not speak on your behalf. Delays in conduct process will not

normally be allowed due to scheduling conflicts with advisors. Advisors may not be disruptive to the process.

**Upon receiving a complainant, the Title IX coordinator will:**

- Contact the complainant as soon as practicable.
- Notify complainant of his/her/their right to file a formal complaint and the grievance process.
- Discuss and implement supportive measures. Title IX coordinator will consider supportive measures but is not bound by complainant's wishes.

**DISMISSAL OF FORMAL COMPLAINT**

The Title IX coordinator will dismiss a formal complaint if:

- The allegations do not establish sexual harassment even if they are true.
- The allegations did not occur in connection with Penrose Academy's programs or services.
- The allegations did not occur in the United States.

The Title IX coordinator may dismiss a formal complaint if:

- The respondent's employment with or enrollment at Penrose Academy ends.
- Specific circumstances prevent the academy from gathering sufficient relevant evidence to reach a final decision (e.g., passage of time, unavailability of witnesses or other information).

The Title IX coordinator will document basis for the dismissal of any formal complaint.

**DISABLED STUDENTS**

A disabled student's status as a respondent does not waive or otherwise affect his/her/their protections under the IDEA, the ADA, or Section 504. Generally subject to statutory exceptions, an IDEA or Section 504-eligible student may not be disciplined for misconduct that is a manifestation of his/her/their disability.

**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 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 during 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.

**TEMPORARY 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 temporary administrative leave during the pendency of a grievance process.

**SUPPORTIVE MEASURES**

Title IX was enacted to prevent sex discrimination and harassment from adversely affecting access to educational opportunities.

- Supportive measures to restore or ensure continued access to educational opportunities are provided to the complainant.

- Supportive measures provided to the complainant will not be punitive or unreasonably burdening to the respondent.
- Non-exclusive examples of supportive measures include no-contact orders, counseling, course modifications, schedule changes, transfers, increased security, and monitoring.

The Title IX coordinator will consider, but is not bound by, complainant's wishes.

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

The Title IX coordinator will notify complainant and respondent, in writing, when a formal complaint is filed. Supplemental notice will be provided if new allegations arise during the investigation.

#### **Notice to the respondent include:**

- A statement of the allegations in sufficient detail to permit respondent to prepare a response.
- A statement respondent is presumed not responsible until a final decision is rendered.
- The parties right to inspect the formal complaint and all relevant evidence.
- The parties right to be represented by an advisor, who may be an attorney.
- Declaration of Student Code of Conduct prohibiting false statements or representations.
- Sufficient details with sufficient time to prepare a response before any initial interview.
- A statement that the respondent is presumed not responsible and that a determination regarding responsibility is made at the conclusion of the grievance process.
- 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.
- 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.

### **PROCEDURE FOR THE INVESTIGATION OF COMPLAINTS**

The Title IX coordinator or designee may serve as the investigator. Investigators will maintain the presumption of innocence, until the investigation is completed.

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, written responses, and 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.

#### **Investigation procedural steps:**

- Appoint an investigator
- Pre-Investigation gathering of evidence
- Witness interviews
- Delivery of relevant evidence and written responses
- Investigation report
- Questions and answers period
- Findings of facts and credibility determinations

### **INVESTIGATION OF COMPLAINTS**

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 academy's handling of a harassment or discrimination complaint, he/she/they may also contact the appropriate state or federal enforcement agency for legal relief.

## **CONFIDENTIALITY**

Penrose Academy shall maintain confidentiality for all parties to the extent possible; 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 to safely determine whether an investigation must proceed. Complainants should be aware that, in a formal investigation, due process requires that the identity of the charging party and the substance of the complaint be revealed to the person charged with the alleged harassment.

## **INTERVIEWS AND INFORMATION GATHERING**

### **Interviewing complainant and respondent**

- Complainant and respondent will be interviewed in every case.
- The interview will be preceded by written notice that gives the parties adequate time to prepare for the interview, and identifies the date, time, and place of the interview.
- Both parties and their advisors may attend the interview.
- Direct exchanges between the parties and advisors are prohibited.
- The investigator will create a written summary of the interviews as soon as practicable.

### **Interviewing witnesses**

All identified eyewitnesses will be interviewed. Questioning will cover the allegations, relationship to parties, and the identification of other witnesses and information of which the parties may not be aware. Investigators will create a summary of the interview as soon as practicable.

## **GATHERING OF INFORMATION**

### **Relevant Evidence**

Title IX does not assume investigators will apply the rules of evidence like lawyers in a trial. Investigators will consider information relevant, if it makes the existence of an allegation, or a response to an allegation, more or less likely.

### **Rape-Shield**

A rape shield law is a law that limits the ability to introduce evidence or cross-examine rape complainants about their past sexual behaviors. Information about the sexual behavior of proclivities of complainants is not relevant, by definition, unless it is about complainant's sexual behavior with the respondent to prove consent.

### **Privileged Information**

The investigator will not seek, access, or rely on privileged information without a party's written consent.

### **When investigating a formal complaint, the academy will:**

- 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.
- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present evidence.
- Provide the parties with the same opportunities to have others present during any grievance proceeding, including an advisor of their choice, relevant evidence.
- 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.
- 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.



## **INVESTIGATIVE REPORT**

The investigative report is completed by the investigator within a sixty (60) day timeline. The Title IX coordinator may grant extension for good cause. The investigative report does not resolve credibility issues, but fairly summarizes the relevant evidence, and information that may bear on the decision-maker's resolution of credibility issues. Credibility determination may be based on a variety of factors, such as, ability and capability to observe, consistency with other known facts, consistency over time, relationship to parties, and other.

### **The investigative report contains the following documents:**

- Cover letter
- Investigative report
- Witness summaries
- Respondent summaries
- Complainant summaries
- Other relevant Information

## **DELIVERY OF INVESTIGATIVE REPORT**

The investigator will deliver the investigative report to the Title IX coordinator and to the parties simultaneously.

## **PARTIES QUESTIONS AND RESPONSES**

The parties, after receiving the investigative report, may submit written questions to the opposite party or witnesses and may, within the time frame permitted by the investigator, file a response. The investigator will submit written questions and provide responses to each party. If the investigator declines to submit a question, they must notify the party who submitted it with an explanation.

## **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 decision-maker reviews all the information collected during the investigation and issues a decision concluding the respondent is or is not responsible for violation of Title IX. The decision-maker may not make credibility determinations based on a person's status as a complainant or respondent.

The decision-maker's report will be delivered to the parties and the Title IX coordinator.

The Determination Report will be given to both parties simultaneously and will contain the following components:

- Complainant's allegations.
- A description of the procedural steps taken from the receipt of the formal complaint through the determination.
- Site visit, or other methods used to gather evidence.
- Findings of fact supporting the determination.
- Penrose Academy's Title IX and Student Code of Conduct Policies.
- A statement of and rationale for the result as to each allegation; including determinations of responsibility, disciplinary sanctions, whether complainant will be provided remedies to restore or preserve his/her/their equal access to the academy's education programs and activities.
- The procedure and basis for appeal.

## **STANDARD OF PROOF**

The standard of evidence may be the preponderance of the evidence or clear and convincing evidence. Proof by a preponderance of the evidence means the evidence on one side of a question is more convincing than the evidence on the other side. This concept is distinguished from the quantity of the evidence. Clear and convincing evidence is a higher standard of proof. Evidence is clear and convincing if the evidence on one side of a question is highly and substantially more provable than the evidence on the other side.

### **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.

The academy will provide the written determination to the parties simultaneously. 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.
3. Bias or conflict of interest on the part of the investigator or decision-maker.

Both the complainant and the respondent have thirty (30) days from a determination to file an appeal.

### **Resolving Appeals**

Penrose Academy will assign an appellate officer to review the appeal and determine whether the appeal implicates one or more of the bases for appeal. If not, the appeal will be denied. If so, the appellate officer will review the entire record and decide whether to grant the appeal in whole or in part. The appellate officer can affirm or reverse the decision, in whole or in part, and if necessary, remand the decision to the investigator or decision-maker for further action. Appeal decisions are not final until the appeal process is over or the thirty-day time period for taking an appeal has passed with no appeal.

## **HEARINGS PROCEDURES FOR THE TITLE IX SEXUAL HARASSMENT AND RELATED CONDUCT POLICY**

These hearing procedures shall govern the hearing process for formal resolution of formal complaints of sexual harassment, as set forth in the academy's Title IX Sexual Harassment and Related Conduct Policy. The parties to each formal complaint have the right to a hearing at the conclusion of the academy's investigation in cases where the parties do not elect an alternative resolution and the formal complaint is not dismissed.

### **1. Pre-Hearing Steps**

#### **A. Selection of Hearing Officer**

The hearing will be presided over by a hearing officer selected by the academy.

- The hearing officer will receive annual training regarding the academy's policies and procedures; the handling of Title IX cases; how to conduct a hearing; issues of relevance, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant and how to serve impartially by, among other things, avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and other relevant issues. The hearing officer will also be trained on any technology that might be used during a hearing.
- The hearing officer will be impartial and free from actual bias or conflict of interest. The Title IX coordinator will provide the parties the name of the hearing officer no later than five business days in advance of the hearing. Objections to the hearing officer must be raised in writing, detailing the rationale for the objections, and must be submitted to the Title IX coordinator as soon as possible and no later than two business days prior to the hearing. The Title IX coordinator will give the hearing officer a list of the names of all parties, witnesses, and advisors in advance of the hearing. The hearing officer will notify the Title IX coordinator of potential bias or conflict of interest.

#### **B. Notice of Hearing**

The complainant and respondent will be notified in writing of the date, time, and location of the hearing; the charges to be reviewed by the hearing officer, including the date, time, location, and essential factual allegations concerning the violation; and the provisions of the policy alleged to

have been violated. In general, the respondent and complainant will be provided the notice of hearing at least ten (10) business days prior to the date of the hearing.

### **C. Witnesses**

The hearing officer will identify any witnesses that they wish to hear from at the hearing based on a review of the final investigative report. The complainant and respondent may each request the presence of any additional witnesses at the hearing, which will be determined based on relevance by the hearing officer. The academy cannot compel the attendance of any witness. Typically, only witnesses who were identified and interviewed as part of the investigation may be called at the hearing. Under very limited circumstances, the complainant, respondent, or hearing officer may identify a witness with relevant information who has not previously been interviewed. In such a case, the hearing officer will determine whether the new witness' participation at the hearing is relevant and appropriate under the circumstances, and if so, may allow the witness to participate in the hearing or refer the matter to the investigator for additional investigation.

### **D. Identification of Hearing Advisor**

Parties may have one advisor for all matters leading up to a hearing and a different advisor for the hearing, but no more than one advisor per party may attend the hearing. Irrespective of whether a party plans to change advisors for the hearing or retain the same advisor, all parties must inform the Title IX coordinator at least two business days before the hearing who the party's advisor at the hearing will be, and whether that person is an attorney. If a party does not have an advisor for the hearing, the Title IX coordinator will appoint an advisor for the hearing, at no cost to the party, to ask cross-examination questions on behalf of the party.

### **E. Pre-Hearing Procedures**

The hearing officer and/or Title IX coordinator may establish additional pre-hearing procedures relating to issues such as scheduling, hearing procedures, structure, advance determination of the relevance of certain topics, and other procedural matters. The hearing officer will communicate with the parties prior to the hearing with respect to these issues and establish reasonable, equitable deadlines for party participation/input.

- The hearing officer may invite the parties to submit the questions or topics the parties wish to ask or discuss at the hearing, so that the hearing officer can rule on their relevance ahead of time. This advance review opportunity does not preclude advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing.
- In advance of the hearing, the hearing officer will consider any argument by a party that evidence identified as relevant in the final investigative report is not, in the party's view, relevant. Similarly, evidence identified as directly related but not relevant by the investigator(s) may be argued to be relevant.
- The hearing officer may rule on these arguments pre-hearing and will share those rulings with the parties prior to the hearing to assist in preparation for the hearing. The hearing officer may consult with the Title IX coordinator in making these determinations prior to the hearing.
- **Request to Postpone Hearing**  
Permission to postpone a hearing may be granted provided that the request to do so is based on a compelling emergency and, where possible, such request is provided to the hearing officer and Title IX coordinator at least 48 hours prior to the time of the hearing.

## **2. Hearing**

### **A. Timing**

A hearing will be scheduled for a date at least 10 business days after the final investigative report is provided to the parties; typically, a hearing will be held within 15 business days from the date that the final investigative report was provided. This timeframe may be extended for good cause as provided for in the policy; if granted, the reason for the extension will be shared with the parties in writing.

### **B. Hearing Guidelines**

- **Decorum**

The hearing officer has wide discretion over matters of decorum at the hearing, including the authority to excuse from the hearing process participants who are unwilling to observe rules of decorum. If a party's advisor does not abide by the academy's rules of decorum (including, but not limited to, those listed below), the advisor may be subject to removal and the academy will appoint a new advisor for a party for the remainder of the hearing.

- The parties and their advisors will always remain seated during the hearing, including during cross examination.
- The following behaviors will not be tolerated during the hearing: yelling, verbal abuse, disruptive behavior, interrupting or talking over one another, name calling, or using profane or vulgar language (except where such language is relevant).
- Any participant in the hearing who is not currently involved in questioning should refrain from disrupting the hearing, making gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during any testimony.
- When cross-examining a party or witness, advisors shall not repeat, characterize, express an opinion about, editorialize, or otherwise state any response to the answer given by the party or witness except to ask a follow-up question to elicit relevant evidence.

### **3. Advisors**

While the advisor may be present, the advisor may not speak or otherwise participate in the hearing except for purposes of conducting cross-examination, when directed to do so by the hearing officer. Other than cross-examination, the advisor may not address the hearing officer and must conduct themselves in a manner that is not disruptive to the hearing or meetings.

### **4. Presence and Participation at Hearing**

- A.** Complainant or respondent is not required to participate in person at the hearing for the hearing to proceed.
- A complainant or respondent may request alternative testimony options that would not require physical proximity to the other party, including testifying via a remote electronic method. This request should be made no fewer than five business days prior to the hearing.
  - If despite being notified of the date, time, and location of the hearing, the respondent or complainant is not in attendance, the hearing will proceed. In doing so, the hearing officer will consider the available testimony and evidence. In the absence of clear evidence that emergency circumstances beyond the control of the complainant or respondent prevented such person from being present, the final determination of the hearing officer will stand.
  - If a party or witness elects not to participate in the live hearing or participates in the hearing but refuses to answer questions posed by a party through their advisor, the hearing officer will not rely on any statement of the non-participating party or witness in reaching a determination regarding responsibility. If a party or witness participates in the hearing and answers questions posed by a party through their advisor but refuses to answer questions posed by the hearing officer, the hearing officer can still rely on that party's or witness's statements when making their determination.
  - "Statements" or purposes of this section means factual assertions made by a party or witness that do not themselves constitute the alleged harassment. Statements might include factual assertions made during an interview or conversation, written by the individual making the assertions (including those found in a Formal Complaint), and memorialized in the writing of another (e.g., in an investigative report, police report, or medical record). Where evidence involves intertwined statements of both parties (e.g., a text message exchange or an email thread) and one-party refuses to participate in the hearing or submit to questioning about the evidence while the other does participate and answer questions, the statements of only the participating party may be relied on by the hearing officer.
  - If a party does not appear for the hearing, their advisor may still appear for the purpose of cross-examination of the other party and witnesses. If the non-participating party's selected advisor also does not appear for the hearing, the academy will appoint an advisor to

participate in the hearing for the purpose of cross-examination of the other party on behalf of the non-participating party.

- **Hearing Format**

The hearing officer has wide discretion to designate the hearing format. Subject to the discretion of the hearing officer, hearings will ordinarily begin with introductory remarks by the hearing officer, followed by the hearing officer asking relevant initial questions of the parties as deemed appropriate by the hearing officer. During this portion of the hearing, an advisor may confer privately and in a non-disruptive manner with their advisee, but they are not allowed to make opening statements or otherwise address the hearing officer or anyone else present at the hearing. After the hearing officer has asked their initial questions of the parties, the hearing officer will permit each party's advisor to ask the other party relevant questions and follow-up questions. The hearing officer may ask follow-up questions as necessary. Subject to the discretion of the hearing officer, questioning of witnesses will generally follow a similar process. Such cross-examination of the parties and witnesses by advisors will be conducted directly, orally, and in real time by the party's advisor of choice and never by the party personally.

- **Questioning at the Hearing**

The parties' advisors, and not the parties themselves, will be permitted to ask the other party and any witnesses relevant questions and follow-up questions. The questioning will be conducted directly, orally, and in real time by the advisor. If a party does not have an advisor present at the hearing, the academy will provide, without fee or charge, an advisor of the academy's choice to conduct the cross-examination on behalf of that party.

- **Relevance**

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 hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Advisors are not permitted to object to the hearing officer's decisions regarding relevance during a hearing. In general, the hearing officer will not consider statements of personal opinion or statements as to any party's general reputation for any character trait as relevant.

- **Prior Sexual History or Disposition**

Questions about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions are intended to elicit evidence that someone other than the respondent committed the conduct alleged by the complainant or concern specific instances of prior sexual behavior with the respondent and may be relevant to establish consent.

#### **A. Hearing Record**

The hearing is closed to the public. The complainant and the respondent are each allowed to have one advisor of their choice present throughout the hearing process. The academy shall keep a transcript or audio recording of the hearing. Any other recording is prohibited. No camera, TV, or other equipment, including cellphones, will be permitted in the hearing room except as arranged by the academy. The parties may inspect and review the transcript or audio recording after it is completed.

### **5. Post-Hearing Process**

#### **A. Determination Regarding Responsibility**

After the hearing, the hearing officer will make a finding by the preponderance of the evidence as to whether the respondent(s) violated the Policy and create the written notice of outcome as outlined below.

#### **B. Disciplinary Authority**

If the hearing officer determines that the respondent is responsible for violating the policy, the hearing officer will refer the matter to the appropriate disciplinary authority who will determine the appropriate remedies and/or sanction(s) to be imposed.

- The disciplinary authority is typically the academy administrator with appointing or other authority over the respondent as follows:

- For student respondents, the disciplinary authority is the President or designee.
  - For staff respondents, the disciplinary authority is the President or designee, who may consult with the respondent's direct supervisor.
  - For a respondent who is both a student and employee, the disciplinary authority is the President, Owner and/or Chair, or a designee if the respondent's primary status is an enrolled student. Such a respondent may be subject to any of the sanctions applicable to students and employees.
  - For faculty respondents, the disciplinary authority is the Director of Education or the President, who may consult with the Owner and/or Chair.
- C.** In determining the appropriate sanction(s) and/or remedies, the disciplinary authority considers a number of factors, including:
- The nature of the conduct at issue.
  - The impact of the conduct on the complainant.
  - The impact on, or implications of the conduct for, the academy's community.
  - Prior misconduct by the respondent, including the respondent's relevant prior discipline history, both at the academy or elsewhere, and any criminal convictions, if such information is available and known.
  - Any expression of remorse or acceptance of responsibility by a respondent.
  - Maintenance of a safe and respectful environment conducive to learning.
  - Protection of the academy's community.
  - The necessity of any specific action to eliminate the Sexual Harassment, prevent its recurrence and remedy its effects on the complainant or other academy community members, and, any mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.
- The disciplinary authority will also consider restorative outcomes that, consider the safety of the academy's community, allow a respondent to develop insight about their responsibility for the behavior, learn about the impact of the behavior on the complainant and the community, and identify how to prevent or change the behavior. A combination of sanctions may be issued.
  - The disciplinary authority will provide the hearing officer with a description of any disciplinary sanctions the academy imposes on the respondent, and whether remedies designed to restore or preserve equal access to the academy's education programs or activities will be provided by the academy to the complainant, as applicable.

**A. Written Notice of Outcome**

After the hearing, the hearing officer will create a written notice of outcome that will include the following:

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, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
  3. Findings of facts supporting the determination.
  4. Conclusions regarding the application of this Policy to the facts.
  5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility.
  6. Description of any sanctions imposed on the respondent and whether remedies designed to restore or preserve equal access to the academy's education Programs or Activities will be provided to the complainant; and
  7. Information about the appeal process.
- B.** Regardless of their participation in the Formal Resolution process, the Title IX coordinator will provide the complainant and respondent the written notice of outcome issued by the hearing officer simultaneously.
- C.** Remedial measures and sanctions will not be imposed until any appeal process in the Policy is final.

## **INFORMAL RESOLUTION (IR)**

As an option to resolve a complaint of discrimination or harassment under Title IX, the parties may request to attempt Informal Resolution ("IR"). IR is a voluntary resolution process that may be pursued after the filing of a formal complaint that uses alternative dispute resolution mechanisms, such as mediation, facilitated dialogue, alternative resolution, or administrative resolution.

- Both complainant and respondent must agree to pursue IR, and this agreement must be voluntary, informed, and in writing.
- Neither complainant and respondent are required to engage in IR as a condition of enrollment or continuing enrollment or enjoyment of any other right.
- At any time prior to the completion of the IR process, the complainant and/or respondent may choose to withdraw from IR, and the complaint will/may be addressed through investigation and the formal resolution process per the applicable policy.
- IR is never available to resolve allegations that an employee sexually harassed a student.
- The complainant and/or respondent may have an advisor of their choice attend any meetings as part of the IR as a support person. The parties, however, are responsible for presenting their own information, and advisors are not permitted to cross-examine or question any party or to participate directly in the IR process.
- The content of discussions held as part of the IR process will be kept as confidential and cannot be introduced as evidence in any formal resolution process should IR be unsuccessful.

The decision by the complainant or respondent to participate, refuse to participate, or request to end IR and return to the investigation or resolve the complaint using the formal resolution process will not be a factor in any determination made by the decision-maker(s) as to whether a policy violation occurred. The complainant and/or respondent can obtain a request for IR application via PA app and/or receive a hard copy with the Title IX coordinator. Once a request has been received, the request will be shared to the other party, who may choose to move forward with IR or decline to do so. Both parties must consent to IR by submitting the online form prior to any attempts at IR.

Parties may attempt more than one form of IR. For example, if an attempt is made to participate in facilitated dialogue but the results are not satisfactory to both parties, the complainant or respondent may request a transition to formal mediation. If both parties agree, an attempt at formal mediation will be made.

Once IR has been finalized, the terms of the agreement are binding on both parties, and failure to abide by the terms of the resolution may be referred to the appropriate academy process for review and possible corrective action or sanction(s).

### **TYPES OF INFORMAL RESOLUTION**

#### **Facilitated Dialogue**

This form of IR is most appropriate when both parties are comfortable with direct interaction and management of the discussion but prefer the presence of a neutral third party. The process typically begins with a brief conversation between the facilitator and each party to allow for an assessment of the situation. Once these conversations have occurred, the facilitator then schedules a meeting with the parties together. During this meeting, the complainant and respondent participate in a facilitated discussion with the purpose being to develop a shared agreement regarding how to correct the harm perceived or realized by the complainant. The complainant and respondent work together to develop an agreement that resolves the issue and repair relationships that were damaged by the conduct. The neutral facilitator acts as a buffer should emotions run high, or the parties need assistance in maintaining focus on the primary issue(s). The facilitator may suggest breaks or interject comments/questions designed to redirect dialogue in a productive manner.

#### **Formal Mediation**

This form of IR is most appropriate when the parties are unlikely to reach a solution without support. Mediation involves a neutral mediator who seeks to improve the parties' relationship through assisting them in understanding one another, introducing possible solutions to the problem, and making suggestions for improved communication.

- Step 1: Mediator schedules private meetings with each party individually; guidelines for mediation will be presented to both parties.
- Step 2: Mediator assesses appropriateness of mediation as a conflict resolution technique, and if appropriate schedules a joint meeting with all parties.
- Step 3: Meeting is held to allow parties to share their views with one another without interruption, followed by an interactive mediator-guided discussion to determine a resolution, if possible.
- Step 4: If resolution is reached between the parties, each party will review and sign a binding resolution agreement, which will outline terms of the resolution and expectations of the parties moving forward.

## **ALTERNATIVE RESOLUTION**

Alternative options to facilitated dialogue and formal mediation include the following:

- **Shuttle Diplomacy**

The crafting of an agreement that does not require the complainant and respondent to participate in an in-person meeting with one another. A member of the Title IX team will work with the parties individually to create an agreement that satisfies both parties.

- **Acceptance of Responsibility**

The respondent can choose to take responsibility for the alleged policy violation(s). When this path is chosen, the Title IX coordinator and President work directly with the respondent to determine corrective action(s) and/or sanctions. Both complainant and respondent must agree to this form of IR, and the parties must also agree to the planned corrective action/sanctions prior to the conclusion of IR.

- **Voluntary Permanent Separation**

The respondent can choose to voluntarily separate from the academy. If this IR is accepted by the Title IX team, the respondent must sign a Voluntary Permanent Separation and General Release Agreement to terminate the complaint resolution process.

## **ADMINISTRATIVE RESOLUTION**

In an administrative resolution, the decision-maker will meet separately with the complainant and respondent to discuss the allegations, both parties may have an advisor present for these meetings. The respondent and complainant may provide a list of questions for the decision-maker to ask the other party. If those questions are considered appropriate and relevant by the decision-maker, they may be asked on behalf of the requesting party; answers to such questions will be shared with the requesting party. The decision-maker will also consider the evidence provided by the investigator, including the investigative report and exhibits. Once the decision-maker has deliberated, they will make a determination as to whether the respondent has violated the academy's policy. Once issued, this determination is binding on both parties. Prior to this option being chosen by the complainant and respondent, both parties must acknowledge that by choosing to pursue an administrative resolution, they are waiving their rights to a formal resolution by a hearing panel unless they choose to end the IR process prior to the determination being issued by the decision-maker.

The decision maker's determination will be based on "preponderance" standard of evidence. Ultimately, a decision-maker is balancing probabilities, or determining whether it was more likely than not that the alleged conduct occurred. This standard of evidence is known as a "preponderance" and only requires that one party is able to support their position with evidence credible testimony "a feather" more than the other. A way to think about the preponderance standard is to picture two people are holding shopping bags that equal in weight, and this would be like each party's supporting evidence and testimony being contained separately in one of the bags. At this point, the parties are balanced at a 50/50 probability. Then, as part of the meeting with the decision-maker, questions are asked that were submitted by the other party. The information provided in the response is relevant but only slightly important to the determination, contributing no more weight to one party's bag than a feather. However, once the information is added, the balance shifts and the bags are no longer equal. The decision-maker bases his/her/their determination on this shift, which was caused by one piece of evidence or testimony that weighed just a feather but tipped the finding to



“more likely than not” in favor of one party over the other.

The decision-maker has the discretion to determine the relevance of any witness or documentary evidence and may exclude information that is irrelevant, immaterial, cumulative, or more prejudicial than informative.

### **Possible Sanctions**

The sanction of expulsion is not available under an administrative resolution.

### **RECORDKEEPING**

Penrose Academy will maintain records related to sexual harassment and other violations of Title IX for seven years. Records will include investigation records, disciplinary sanctions, remedies, appeals, supportive measures, documentation for why a response was not deliberately indifferent, and measures taken to restore or preserve equal access to educational programs or activities.

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.

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.

### **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 considering the danger.

### **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: [www.HHS.gov](http://www.HHS.gov)