

The Vanguard School

POLICY: Vanguard AC-R-2 – Non-discrimination / Equal Opportunity

POLICY ADOPTED: 8-19-2020

Sexual Harassment Investigation Procedures

(Title IX)

The Vanguard School is committed to maintaining a learning environment that is free from sex-based discrimination, including sexual harassment. It is a violation of policy for any staff member to harass students or for students to harass other students through conduct or communications of a sexual nature, or to retaliate against anyone that reports sex-based discrimination or harassment or participates in a harassment investigation.

Definitions

For purposes of this regulation, these terms have the following meanings:

- **"Appeal Decision Maker"** means an individual, free of bias, trained to review and decide appeals of decisions of the Decision Maker. The Appeal Decision Maker may not be the Title IX Coordinator, the Investigator, or the Decision Maker. The School's Appeal Decision Maker is Colin Mullaney, Executive Director.
- **"Complainant"** means an individual who is alleged to be the target of conduct that could constitute sex-based discrimination or sexual harassment.
- **"Decision Maker"** means an individual, free of bias, who assess the relevant evidence, including party and witness credibility, to decide if the School has met the burden of proof showing the Respondent to be responsible for the alleged sexual harassment. The Decision Maker may not be the Title IX Coordinator or the Investigator. The School's Decision Maker is Renee Henslee, Head of School.
- **"Education Program or Activity"** means locations, events, or circumstances over which the School exercises substantial control over both the Complainant and Respondent and the context in which the sexual harassment occurs.
- **"Investigator"** means an individual, free of bias, trained to objectively evaluate the credibility of parties and witnesses, synthesize all available evidence - including both inculpatory and exculpatory evidence - and take into account the unique and complex circumstances of each situation. The investigator may be the Title IX Coordinator but cannot be the Decision Maker.
- **"Respondent"** means an individual who has been reported to be the perpetrator of conduct that could constitute sex-based discrimination or sexual harassment.

- **"Sexual Harassment"** means conduct on the basis of sex that satisfies one or more of the following:
 1. A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
 2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
 3. Sexual assault, dating violence, domestic violence, or stalking.
- **"Supportive Measures"** mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge, to the Complainant or Respondent, before or after the filing of a formal complaint or where no formal complaint has been filed.
- **"Title IX Coordinator"** means the employee designated by a recipient to coordinate its efforts to comply with Title IX responsibilities. The School's Title IX Coordinator is Jeff Yocum, Operations Director.

Notice of sexual harassment

Whenever any School employee has notice of sexual harassment, including allegations of sexual harassment, the information must be communicated to the Title IX Coordinator. The Title IX Coordinator must promptly contact the Complainant confidentially 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.

Filing a complaint

A Complainant, or a parent or guardian with the legal right to act on the Complainant's behalf, may file a complaint. Complaints must be filed in writing and signed by the Complainant. Forms for this purpose are available at the School's website and in the main office. Completed forms must be filed with the Title IX Coordinator. If a complaint form is given to a School employee, the School employee will promptly forward the complaint to the Title IX Coordinator. An alternate will be designated in the event it is claimed that the Title IX Coordinator is the one who committed the alleged discrimination, or some other conflict of interest exists. Complaints must be filed within 180 days of the event giving rise to the complaint or from the date the Complainant could reasonably become aware of such occurrence.

Retaliation against the Complainant, Respondent, or any person who filed a complaint or participated in an investigation, is prohibited. Individuals found to have engaged in retaliatory behavior will be subject to disciplinary measures.

Investigation

Once a complaint is received, the Title IX Coordinator or Investigator will first determine if the alleged conduct occurred in the School's education program or activity. If the alleged conduct is not part of the education program or activity, the complaint must be dismissed under these procedures. A dismissal does not prohibit the Complainant from pursuing other remedies under state or federal law or local board policy, nor does it prohibit the School from addressing the allegations in any manner the School deems appropriate.

Following this determination, the Investigator will begin the investigation in a reasonably prompt manner and adhere to the following:

- The Investigator must apply the "presumption of innocence" standard during the course of the investigation.
- The Investigator must adhere to all timeframes. If a timeframe cannot be met, the investigator will notify the Complainant, Respondent, and Decision Maker.
- The Investigator will protect the Complainant from inappropriate questions and evidence about the Complainant's prior sexual history.
- The Investigator must provide written notice of the allegations to the parties involved.
- The investigation may also include, but is not limited to, the following:
 - Implementation of Supportive Measures for both the Complainant and the Respondent;
 - A request for the Complainant to provide a written statement regarding the nature of the complaint;
 - A request for Respondent to provide a written statement;
 - A request for witnesses identified during the course of the investigation to provide a written statement;
 - Interviews of the Complainant, Respondent, or witnesses; and
 - Review and collection of documentation or information deemed relevant to the investigation.
- Within a reasonably prompt timeframe, but in no case longer than 60 days, the Investigator must issue a report to the Decision Maker. After finalizing the report, the Investigator will provide a copy to the Complainant and Respondent and will wait ten days prior to providing the report to the Decision Maker. The Investigator's report must be advisory and must not bind the Decision Maker to any particular course of action or remedial measure.

Decision

Prior to issuing a decision, the Decision Maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

The Decision Maker will apply the preponderance of the evidence standard when making a decision and must notify the Complainant and Respondent of the decision. The decision must include a written determination regarding responsibility, explain how and why the Decision Maker reached the conclusions outlined in the report, and detail any disciplinary measures taken in response to the conduct. The decision of the Decision Maker in no way prejudices either the Complainant or the Respondent from seeking redress through state or federal agencies, as provided in law.

Appeal

The investigation is closed after the Decision Maker issues a decision, unless either party appeals the decision within 10 days by making a written request to the Title IX Coordinator detailing why the decision should be reconsidered. Appeals will only be accepted on one of the following grounds:

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. The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent, that affected the outcome of the matter

When the Title IX Coordinator receives a request for an appeal, he/she must notify each party in writing and give the parties a reasonable equal opportunity to submit a written statement in support of, or challenging the outcome, but in no case more than 5 days. All appeals and responses will be shared with each party. If the appeal is a challenge to the fairness of the investigation, the Investigator or Decision Maker will be permitted to submit a response to the appeal or to the appeal response within 5 days.

Upon receiving the appropriate responses, the Title IX Coordinator will send the appeal to the Appeal Decision Maker. The Appeal Decision Maker will determine if the appeal is proper based on one of the allowable grounds for appeal and within the applicable timeframe. If the appeal does not meet one of the allowable grounds for appeal or is not submitted within the applicable timeframe, the Appeal Decision Maker will dismiss the appeal. In either case, the Appeal Decision Maker will document the reasons for accepting or dismissing the appeal.

The Appeal Decision Maker will be guided by the following principles:

- Show deference to the original decision, making changes to the findings only when there is a clear error, and/or make changes to the sanctions/remedies only if there is a compelling reason to do so. Remand, rather than changing an outcome directly, is the best practice.
- Appeals are not a “do-over” of the original decision. Appeals are properly confined to a review of the written record of the original documents submitted by the parties, Investigator, and/or Decision Maker.

- Do not substitute the Appeal Decision Maker's judgment for the judgment of the original Decision Maker, especially on matters of credibility where the Appeal Decision Maker did not have the opportunity to assess credibility in person.
- When appeals uncover material procedural errors or new evidence, the preference is to remand the matter to the original Investigator or Decision Maker for reconsideration.

Upon review, the Appeal Decision Maker will issue a written decision describing the result of the appeal and the rationale supporting it. The decision will be sent to all parties simultaneously. The decision of the Appeal Decision Maker in no way prejudices either the Complainant or the Respondent from seeking redress through state or federal agencies, as provided in law.

Notice and training

To reduce unlawful discrimination and harassment and ensure a respectful school environment, the administration is responsible for providing notice of these procedures to all departments and employees. The policy and complaint procedures must be prominently posted on the School's website, referenced in student and employee handbooks and otherwise be made available to all students, staff, and members of the public through electronic or hard-copy distribution.

All students and School employees will receive periodic training related to recognizing and preventing sexual harassment. School employees must receive additional periodic training related to handling reports of sexual harassment.