FREIRE CHARTER SCHOOL

POLICY NUMBER	122
TITLE	Nondiscrimination (Employees)
ADOPTED	June 9, 2022

I. PURPOSE AND DECLARATION OF POLICY

Freire Charter School (Charter School) is committed to maintaining an education and workplace environment for all school community members that is free from all forms of discrimination, in service of the policy goal to provide all persons equal access to all categories of employment regardless of a person's actual or perceived race, color, sex, sexual orientation, gender (including gender identity and expression), age, creed, religion, ancestry, national origin, ethnic background, marital status, pregnancy, disability, veteran/military status, or any other category protected by state or federal law. The Charter School shall make reasonable accommodations for identified physical and mental impairments that constitute disabilities, consistent with the requirements of state and federal law.

The Board also declares it to be the policy of this Charter School to comply with federal law and regulations under Title IX prohibiting sexual harassment, which is a form of unlawful discrimination on the basis of sex. Such discriminatory harassment is referred to as Title IX sexual harassment and is addressed in Board Policy #116, but is also referred to herein throughout.

Discrimination in any of its forms is inconsistent with the mission and educational goals of the Charter School and is prohibited. Violations of this policy, including acts of retaliation as described in this policy, or knowingly providing false information, may result in disciplinary consequences under other Board policies or the Charter School's employee code of conduct.

OVERVIEW

Employees who believe they or others have been subject to harassment, including sexual harassment, discrimination, or retaliation are strongly encouraged to promptly report the incidents to their immediate supervisor or to the Head of School, to provide for prompt investigation and resolution.

The scope of the investigation will depend upon the application of Board policy. In certain circumstances, the breadth or scope of allegations may require the assistance of an independent third-party, such as an attorney.

Nothing in this policy shall be construed to limit the Charter School's authority to assign one or more functions under this policy to an independent third party.

DEFINITIONS

Complainant shall mean an individual who is alleged to be the victim.

Respondent shall mean an individual who has been reported to be the perpetrator of the alleged conduct.

Harassment – Unwelcome, inappropriate, or illegal physical, written, verbal, graphic, or electronic conduct that relates to an individual's actual or perceived race, color, sex, sexual orientation, gender, gender identify, religion, disability, age, genetic information, active military/veteran status, marital status, familial status, ancestry, ethnic background, national origin, or any other category protected by state or federal law, when such conduct:

1. Is sufficiently severe, persistent or pervasive; and
2. A reasonable person in the complainant's position would find that it creates an intimidating, threatening, or abusive work environment.

Harassment may include but is not limited to slurs, jokes, bullying, epithets, name-calling, ridicule or mockery, insults or put-downs, offensive objects or pictures, or other physical, written, verbal, graphic or electronic conduct.

Sexual harassment – (*Note: the following definition applies only to allegations that have been determined by the Title IX Coordinator to not fall within the scope of Title IX sexual harassment as set forth in Policy # 116, and/or which otherwise will be investigated pursuant to this policy*.)

Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other inappropriate physical, written, verbal, graphic, or electronic conduct that satisfies one or more of the following:

(1) submission to such conduct is made explicitly or implicitly a term or condition of an employee's status; or

(2) submission to or rejection of such conduct is used as the basis for employment-related decisions affecting an employee; or

(3) such conduct is sufficiently severe, persistent or pervasive that a reasonable person in the complainant's position would find that it unreasonably interferes with the complainant's performance at work or otherwise creates an intimidating, hostile, or offensive working environment.

Sexual assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation:

This includes any sexual act directed against another person, without the consent of the complainant, including instances where the complainant is incapable of giving Consent. Sexual assault may be one of the following categories:

Sexual penetration without consent - Any penetration of the mouth, sex organs, or anus of another person,

however slight by an object or any part of the body, when consent is not present. This includes performing oral sex on another person when consent is not present.

Sexual contact without consent - Knowingly touching or fondling a person's genitals, breasts, buttocks, or anus, or knowingly touching a person with one's own genitals or breasts, when consent is not present. This includes contact done directly or indirectly through clothing, bodily fluids, or with an object. It also includes causing or inducing a person, when consent is not present, to similarly touch or fondle oneself or someone else.

Statutory sexual assault – The age of consent for sexual activity in Pennsylvania is 16. Minors under the age of 13 cannot consent to sexual activity. Minors aged 13-15 years old cannot consent to sexual activity with anyone who is 4 or more years older than they are at the time of the activity. Minors aged 16 years of age or older can legally consent to sexual activity, as long as the other person does not have authority over them as defined in Pennsylvania's institutional sexual assault statute, 18 Pa C.S. § 3124.2.

Dating violence means violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. Where the existence of such a relationship shall be determined based on a consideration of the following factors: length of relationship, type of relationship, and frequency of interaction between the persons involved.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is co-habitating with or has co-habitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for their safety or the safety of others; or
2. Suffer substantial emotional distress.

Consent exists when all parties exchange mutually understandable affirmative words or actions indicating their agreement to participate voluntarily in sexual activity. Consent must be informed, voluntary, and actively given. Resistance by the complainant is not required. Consent does not exist if the sexual act was by forcible compulsion which is the use of physical, intellectual, moral, emotional or psychological force. Consent does not exist if a person is threatened, unconscious, incapacitated due to the influence of drugs and/or alcohol, or suffers from a mental disability that makes them incapable of giving consent. Consent may be withdrawn by either party at any time. Once withdrawal of consent has been expressed through words or actions, sexual activity must cease. Pennsylvania defines the age of consent as age sixteen (16) or above. Children under age thirteen (13) cannot consent to sexual activity. Children between the ages of 13-15 cannot consent to sexual intercourse with a person four (4) or more years older than them.

CONFIDENTIALITY

Confidentiality of all parties, witnesses, the allegations, the filing of a report, and the investigation related to any form of discrimination or retaliation shall be handled in accordance with applicable law, regulations, this policy, and the Charter School's legal and investigative obligations.

Based on the context of what is reported to the Charter School, all incidents that are required by law to be reported to law enforcement, ChildLine, or to the Pennsylvania Department of Education will be made accordingly.

RETALIATION

The Board prohibits retaliation by the Charter School or any other person against another person for:

1. Reporting or making a formal complaint of any form or discrimination or retaliation.

2. Testifying, assisting, participating, or refusing to participate in a related investigation, process, or other proceeding, or hearing.

3. Acting in opposition to practices that the person reasonably believes to be discriminatory.

The Charter School, its employees, and others are prohibited from intimidating, threatening, coercing, or discriminating against anyone for actions described above. Individuals are encouraged to contact the Compliance Officer/Title IX Coordinator immediately if retaliation is believed to have occurred. Substantiated allegations of retaliation may result in the same disciplinary action applicable to one who engages in discrimination.

DELEGATION OF RESPONSIBILITY

The Head of School or designee shall notify law enforcement officials of reports, and/or incidents of discrimination or harassment in accordance with applicable legal requirements. The Head of School or designee shall also make all other mandated reports that may be required by law, such as a report under the Educator Misconduct Policy (*see* Policy #324).

The Board directs the Head of School to designate a Compliance Officer/Title IX Coordinator.

The Compliance Officer/Title IX Coordinator shall publish and disseminate this policy and complaint procedure at least annually to employees.

The Compliance Officer/Title IX Coordinator is responsible to ensure adequate nondiscrimination procedures are in place, to recommend new procedures or modifications to procedures and to monitor their implementation.

The Board directs that verbal and written complaints of discrimination shall be investigated promptly and corrective action be taken when allegations are substantiated.

The Board directs the Head of School to develop a complaint form which shall be applicable to all allegations of workplace discrimination, harassment, sexual harassment, Title IX sexual harassment, dating violence, and retaliation, and that the form be made readily available to individuals seeking to make a report.

II. RECEIVING AND ADDRESSING COMPLAINTS OF DISCRIMINATION

REPORTING

The Board encourages employees and third parties who believe that they or others have been subject to discrimination, harassment or retaliation by any student, employee, or third party to promptly report such incidents to their immediate supervisor or to the Head of School. A person who is not an intended victim or target of discrimination but is adversely affected by the conduct may file a complaint of discrimination.

Reports may be made using a designated report form or by making a general report verbally or in writing to the Head of School or the Compliance Officer/Title IX Coordinator.

If the Head of School or Title IX Coordinator/Compliance Officer is the subject of a complaint, the report shall be made directly to an individual that is not the subject of the complaint.

The Head of School shall promptly notify the Title IX Coordinator/Compliance Officer of all complaints of discrimination, Title IX sexual harassment, and retaliation.

INITIAL DUTIES UPON RECEIPT OF REPORT

The Head of School or designee shall be responsible to promptly complete the following duties upon receipt of a report of discrimination, harassment, or retaliation from an employee or third party:

1. Immediately notify the Compliance Officer/Title IX Coordinator of the complaint.

    a. The Compliance Officer/Title IX Coordinator shall evaluate any complaint of discrimination brought pursuant to this policy to determine whether the allegations fall within the scope of Policy # 116 (Title IX sexual harassment) and the grievance procedures thereunder, or whether the alleged conduct is most appropriately addressed under the procedures set forth herein (relating to non-Title

IX discriminatory harassment), or under another Board policy or procedure. The Compliance Officer/Title IX Coordinator may gather additional information from the reporter and other parties identified in the report.

b. The Compliance Officer/Title IX Coordinator shall assess whether the investigation should be conducted by the Head of School, another Charter School employee, the Compliance Officer/Title IX Coordinator, an attorney, or other independent third party, and shall promptly assign the investigation to that individual.

2. Under the guidance of the Compliance Officer/Title IX Coordinator, provide relevant information on resources available in addition to the school complaint procedure, such as making reports to the police, available assistance from domestic violence or rape crisis programs, community health resources including counseling resources, and other sources, where appropriate.

3. After consideration of the allegations and in consultation with the Compliance Officer/Title IX Coordinator and other appropriate individuals, promptly implement interim measures as appropriate to protect the complainant and others as necessary from violation of this policy during the course of the investigation.

INFORMAL REMEDIES

If, after a complaint has been reported, the Compliance Officer/Title IX Coordinator believes the circumstances are appropriate, the parties may be offered the opportunity to participate in informal remedies to address the reported conduct. Informal remedies may take many forms, such as mediation, facilitated discussions between the parties, restorative practices, acknowledgment of responsibility, apologies, a commitment to engage in specific services, and other measures.

If the parties are satisfied that informal remedies have resolved the matter, the individual facilitating the informal remedies shall obtain the parties' signatures indicating agreement with the resolution. A copy of the agreement shall be provided to the Compliance Officer/Title IX Coordinator. Upon provision of this agreement to the Charter School, the matter is considered closed.

INVESTIGATION

If a complaint is received and the complaint is inappropriate for informal resolution and this policy is determined to apply, an investigation shall be conducted.

The Compliance Officer/Title IX Coordinator shall ensure that the individual assigned to investigate the complaint has an appropriate understanding of the relevant laws pertaining to discrimination issues and this policy on how to conduct investigations.

The investigator shall conduct an adequate, reliable, and impartial investigation. The complainant and the respondent may suggest additional witnesses and provide other evidence during the course of the investigation. When the initial complaint involves allegations relating to conduct which took place away from school property, the investigation may include inquiries related to these allegations to determine whether they resulted in continuing effects such as harassment in workplace settings.

The investigation may consist of individual interviews with the complainant, the accused, and others with knowledge relative to the allegations. The investigator may also evaluate any other information and materials relevant to the investigation. The person making the report, parties, and witnesses shall be informed of the prohibition against retaliation for anyone's participation in the process and that conduct believed to be retaliatory should be reported.

If the investigation reveals that the conduct being investigated may involve a violation of criminal law, the investigator shall promptly notify the Compliance Officer/Title IX Coordinator, who shall promptly inform law enforcement authorities about the allegations.

The obligation to conduct this investigation shall not be negated by the fact that a criminal or child protective services investigation of the allegations is pending or has been concluded. The investigator should coordinate with any other ongoing investigations of the allegations, including agreeing to requests for a short delay in fulfilling the Charter School's investigative responsibilities during the fact-finding portion of a criminal or child protective services investigation. Deferments shall not extend beyond the time necessary to prevent interference with or disruption of the criminal or child protective services investigation.

INVESTIGATIVE REPORT

The investigator shall prepare and submit a written report to the Compliance Officer/Title IX Coordinator within twenty (20) school days of the initial report of alleged discrimination, unless the nature of the allegations, anticipated extent of the investigation or the availability of witnesses requires the investigator and the Compliance Officer/Title IX Coordinator to establish a different due date. The parties shall be notified of the anticipated date the investigative report will be completed and of any changes to the anticipated due date during the course of the investigation.

The report shall include a summary of the investigation, a determination of whether the complaint has been substantiated, the information and evaluation that formed the basis for this determination, whether the conduct violated this policy and/or any other law or Board policy which may warrant further Charter School action, and a recommended disposition of the complaint.

ACTION BY THE CHARTER SCHOOL

If the investigation determines by preponderance of evidence that a violation of this policy occurred, the Charter School shall take prompt, corrective action to ensure that such conduct ceases and that no retaliation occurs.

Charter School staff shall document the corrective action taken and, where not prohibited by law, inform the complainant. The Compliance Officer/Title IX Coordinator shall follow up by assessing the effectiveness of the corrective action at reasonable intervals.

If an investigation results in a finding that a different policy was violated separately from or in addition to violations of this policy, or that there are circumstances warranting further action, such matters shall be addressed at the conclusion of this investigation or through disciplinary or other appropriate referrals where further evaluation or investigation is necessary.

Disciplinary actions shall be consistent with the Employee Code of Conduct, Board policies and Charter School procedures, and state and federal laws.

APPEAL PROCEDURES

1. If the complainant or the respondent is not satisfied with a finding made pursuant to the policy or with recommended corrective action, s/he may submit a written appeal to the Compliance Officer/Title IX Coordinator within ten(10) school days. If the Compliance Officer/Title IX Coordinator investigated the complaint, such appeal shall be made to the Head of School or designee.

2. The individual receiving the appeal shall review the investigation and the investigative report and may also conduct or designate another person to conduct a reasonable supplemental investigation to assess the sufficiency and propriety of the prior investigation.

3. The person handling the appeal shall prepare a written response to the appeal within twenty (20) school days. Copies of the response shall be provided to the complainant, the accused and the investigator who conducted the initial investigation.
