



TITLE IX POLICY

Handbook

Board Approved 8/25/2020

The US Department of Education Office of Civil Rights has mandated new Title IX regulations with an effective date of August 14, 2020. Its purpose is to promote gender equity, prevent hostile environments based on sex, prohibit sexual harassment/violence, protection from retaliation, and to remedy other gender-based forms of discrimination in academic settings.

Horse Creek Academy (hereafter known as HCA,) as required by Title IX mandates, does not discriminate on the basis of sex or gender in its education programs or activities, and prohibits such discrimination by its employees, students, and third parties. Title IX prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex even if those acts do not involve conduct of a sexual nature.

HCA Title IX team will respond promptly to actual knowledge of sexual harassment in an education program or activity of the school against a person in the United States in a manner that is not deliberately indifferent. The response will treat complainants and respondents equitably. Any allegations of inappropriate conduct of a sexual nature that fall outside of this policy will be handled consistent with other applicable HCA Board policies, including the Code of Conduct.

Any complaints should be sent to the HCA Title IX Coordinator:

Sarah Ellen Morris, Title IX Coordinator
 1200 Toolebeck Rd, Aiken, SC 29803
 smorris@horsecreekacademy.org
 (803)226-0160 ext 264

LEGAL DEFINITIONS

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to HCA's Title IX Coordinator or any official of the school who has authority to institute corrective measures on behalf of HCA.

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Days means a day on which the school is open.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

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

Sexual harassment means conduct based on sex that satisfies one or more of the following:

1. An employee of the school's conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct.



TITLE IX POLICY

Handbook

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 school's education program or activity.
3. Sexual assault as defined by any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent, that meets the definition of rape, fondling, incest, statutory rape, dating violence, and/or stalking as used in the FBI's Crime Reporting system.

Supportive Measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. HCA utilizes restorative justice procedures to support its students and staff.

Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that HCA investigate the allegation of sexual harassment.

Jurisdiction (Education Program or Activity) means locations, events, or circumstances (operations) over which HCA exercised substantial control over both the respondent AND the context in which the sexual harassment occurs. This encompasses any form of communication, including (but not limited to) in person, text, social media, and other virtual/online/cellular media, and must be analyzed to determine if it occurs in an education program or activity. This type of harassment does not:

- a. create or apply a geographic test.
- b. draw a line between "off campus/property" and "on campus/property."
- c. does not create a distinction between sexual harassment occurring in person versus online.

Attempting to Participate means to:

1. apply for or intend to apply for admission
2. indicate a desire to re-enroll if the school appropriately responds to sexual harassment allegations
3. prevent schools from being legally obligated to investigate allegations made by complainants who have no relationship with the schools, yet still protects those complainants by requiring the school to respond promptly in a non-deliberately indifferent manner.

Non-deliberate and Indifferent manner means not clearly unreasonable considering the known circumstances and must comply with policy regardless of whether a formal complaint is ever filed.

Emergency Removal is where a respondent poses an immediate threat to the physical health or safety of the complainant (or anyone else).

Administrative leave is paid leave pending the outcome of an investigation; it may not be interpreted to alter any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

DESIGNATION OF ROLES AND RESPONSIBILITIES

Designation of Title IX Coordinator Requirements

1. Select at least one Title IX Coordinator for each school and ensure his/her name, title, office address, email address, and telephone number are prominently displayed on schools' website, in handbooks and in catalogs.



TITLE IX POLICY

Handbook

2. Ensure contact information is given to applicants for admission and employment, students, parents, and/or legal guardians of elementary and secondary schools; employees, unions or professional organizations holding collective bargaining or professional agreements.

Designate at least one Investigator, Initial Decision Maker, Appeals Decision Maker

1. Select an Investigator who may also be the Title IX Coordinator.
2. Select an Initial Decision Maker who cannot be the Appeals Decision Maker nor the Title IX Coordinator.
3. Select an Appeals Decision Maker who cannot be the Initial Decision Maker nor the Title IX Coordinator.

Investigator Responsibilities

- 1) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the school and not on complaint or respondent.
 - a) **The factors that a Title IX coordinator may consider when determining whether to sign a complaint include, but are not limited to:**
 - i) Whether there have been other reports of sexual harassment or other relevant misconduct concerning the same Respondent
 - ii) Whether or not the incidents occurred while the Respondent was an HCA student or employee;
 - iii) Whether the Respondent threatened further sexual harassment or other misconduct against the Complainant or others;
 - iv) Whether the alleged sexual harassment was committed by multiple perpetrators;
 - v) The nature and scope of the alleged sexual harassment including whether the sexual harassment was perpetrated with a weapon;
 - vi) The ages and roles of the Complainant and the Respondent;
 - vii) Whether HCA can pursue the investigation without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the alleged sexual harassment such as security cameras or physical evidence);
 - viii) Whether the report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a particular group.
- 2) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory (guilty) and exculpatory (not guilty) evidence.
- 3) Warrant that neither party's ability to discuss the allegations under investigation or to gather and present relevant evidence is restricted.
- 4) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice.
- 5) Provide, to individuals whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- 6) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the school does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- 7) Allow complainant, respondent, and their Advisors, if any, at least **10 days** to review, inspect and submit a written response to evidence sent to them in electronic or hard copy format prior to completion of the investigative report.
- 8) Consider responses to evidence provided by complainant prior to completion of the investigative report.



TITLE IX POLICY

Handbook

- 9) Ensure all evidence subject to the parties' inspection and review is available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
- 10) Create an investigative report that fairly summarizes relevant evidence and, at least **10 days** prior to a hearing, if requested.

Initial Decision Maker Responsibilities

1. Give each party reasonable time to submit written, relevant questions that a party wants asked of any party or witness.
2. Provide each party with the answers and allow for additional, limited follow-up questions from each party
3. Explain decision as to why questions/evidence are not relevant, if respondent/advisor is proposing questions and evidence about the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
4. Issue a written determination regarding responsibility after applying the standard of evidence where **either** a preponderance of evidence standard **or** clear and convincing evidence standard is chosen and adopted throughout process.
5. Provide written determination regarding responsibility to the parties simultaneously, which becomes final either on the date that the school provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
6. Offer both parties an appeal from a determination regarding responsibility, and from dismissal of a formal complaint or any allegations.

Appeals Decision Maker Responsibilities

1. Notify the other party in writing when an appeal is filed.
2. Give both parties to submit a written statement in support of or challenging the outcome
3. Issue written decision, simultaneously to both parties, describing the result and rationale for the results.

Informal Decision Maker Responsibilities

1. Meet with students, parents, advisors and facilitate resolutions after formal complaint and before determination regarding responsibility.
2. Obtain the parties' voluntary, written consent to the informal resolution process.
3. May facilitate an informal resolution process, such as mediation, at any time prior to reaching a determination of responsibility.
4. Provides complainant and respondent written notice of informal resolution process, such as mediation disclosing:
 - a. Allegations
 - b. Requirements of the informal resolution process
 - c. Circumstances under which it precludes formal complaint
 - d. May withdraw and resume formal complaint prior to agreeing to resolution
 - e. Consequences



TITLE IX POLICY

Handbook

REQUIRED NOTIFICATION

Ensure applicants for admission and employment, students, parents and/or legal guardians of elementary and secondary schools; employees, unions or professional organizations holding collective bargaining or professional agreements receive following notifications via medians such as website, handbooks, catalogs, applications highlighting that schools:

1. do not discriminate based on sex in education programs or school activities.
2. are required by Title IX not to discriminate based on sex.
3. requirement not to discriminate based on sex extends to admissions and employment.
4. refer inquiries about Title IX application to school's Title IX Coordinator.

GRIEVANCE PROCEDURES

Sexual Harassment Notification

1. May be received by the Title IX Coordinator or any official of HCA who has authority to institute corrective measures on behalf of the school. HCA has also classified all employees as Mandated Reporters of any knowledge they have that a member of the school community is experiencing sexual harassment and/or retaliation. The HCA Board authorizes the Title IX coordinator to coordinate HCA's required efforts under the law
2. Reporter must have actual knowledge of sexual harassment, which may:
 - a. come from personal observation.
 - b. have been shared by a complainant or third-party.
 - c. Have receipt of a written or oral complaint, or by any other means

Determine Jurisdiction

- 1) Title IX Coordinator decides:
 - a) if HCA has jurisdiction over the circumstance as previously defined
 - b) Complaint applies to any person, in the United States, based on sex, who is excluded from participation in, denied the benefits of, or is subjected to discrimination under any education program or activity receiving federal financial assistance
 - c) is filed by a complainant who is participating or attempting to participate in the education program or activity sanctioned by HCA or is signed by the Title IX Coordinator
 - d) covers all instances of sexual harassment on school property
 - e) includes "Off Campus" sexual harassment incidents that occur off campus if:
 - i) the off-campus incident occurs as part of the school's operations.
 - ii) the school exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus.

Response to Sexual Harassment Notification

When HCA has notice of sexual harassment, within 24 hours, the Title IX Coordinator must:

1. Contact the complainant to discuss the availability of supportive measures. Supportive measures must be non-disciplinary, non-punitive individualized services offered as appropriate, reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the school's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the school's educational environment, or deter sexual harassment.
2. consider the complainant's wishes with respect to supportive measures
3. Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint.



TITLE IX POLICY

Handbook

- a. Coordination and implementation of supportive measures are the responsibility of the Informal Resolutions Facilitator, who must:
 - i. maintain as confidentiality of any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the school to provide the supportive measures.
 - ii. maintain records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.
 - iii. document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the school's education program or activity
 - iv. document the reasons why such a response was not clearly unreasonable considering the known circumstances, if the school does not provide a complainant with supportive measures
 - v. undertake an individualized safety and risk analysis and determine 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.
 - vi. provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.

4. explain to the complainant the process for filing a formal complaint.

Formal Complaint

1. Complete Formal Complaint Form via HCA's website or obtain hard copy from school's administrative office. Form may be filed with the Title IX Coordinator in person, by mail, or by electronic mail.
2. Upon receipt of formal complaint that meets jurisdiction guidelines, HCA must initiate a grievance process that complies with the following grievance procedures:
 - a. Require an objective evaluation of all relevant evidence, including inculpatory (guilty) and exculpatory (not guilty) evidence, and assume the presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process
 - b. Apply the same standard of evidence for all formal complaints of sexual harassment
 - c. Do not require, allow, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
 - d. May consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances, but must give discretion in doing so. Facts and circumstances given by multiple complainants' allegations must be so intertwined that their allegations directly relate to all the parties
 - e. Describe the list of possible disciplinary sanctions and remedies based on a preponderance of evidence
 - f. Complete the grievance process within one hundred and twenty (120) days. Temporary delays and/or extensions of the time frames within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with explanation of the reasons for such action. Examples of good cause for delay/extensions include, but are not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.



TITLE IX POLICY

Handbook

Investigation

Upon receipt of a formal complaint, HCA must provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview. Written notice must include:

1. Notice of grievance process, including any informal resolution process;
2. Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the alleged conduct, if known) to allow the respondent to prepare a response; response to be submitted no later than 10 days from notice
3. Statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
4. Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; furthermore, the right to have others present during any grievance proceeding.
5. Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false information in the grievance process.
6. Notification that the school cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party's voluntary, written consent to do so for a grievance process under this section.
7. Notification that questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
8. An equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory (guilty) and exculpatory (not guilty) evidence.
9. 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.
10. 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 so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
11. An investigative report that fairly summarizes relevant evidence, given to each party in an electronic format or a hard copy, for their review and written response, at least 10 days prior to the determination of responsibility (hearing).

Emergency removal/administrative leave

In cases in which an employee is a respondent, HCA **may** place that employee on administrative leave during the pendency of an investigation and grievance process.

In cases in which a student is a respondent, the HCA **may** remove, on an emergency basis, the respondent from the school's educational program or activity provided HCA: (i) undertakes an individualized safety and risk analysis and 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 (ii) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision does not modify any rights under the Individuals with



TITLE IX POLICY

Handbook

Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Dismissal

- 1) Formal complaints must dismiss if:
 - a) conduct would not constitute sexual harassment even if proved.
 - b) conduct did not occur in the school's education program or activity.
 - c) conduct did not occur against a person in the United States.
 - d) dismissal does not preclude action under another provision of the school's code of conduct.
- 2) Formal complaints Discretionary Dismissals may occur if:
 - a) a complainant notifies the Title IX Coordinator in writing within **10 days** that the complainant would like to withdraw the formal complaint or any allegations.
 - b) the respondent is no longer enrolled or employed by the school.
 - c) specific circumstances prevent the school from gathering evidence sufficient to reach a determination.
- 3) Decision to dismiss formal complaint requires school to:
 - a) end written notice of the dismissal and reason(s) simultaneously to the parties within **5 days**.
 - b) offer both parties an appeal from a school's dismissal of a formal complaint or any allegations.

Determination of Responsibility

The initial decision process requires HCA to:

1. afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness.
2. provide each party with the answers, and allow for additional, limited follow-up questions.
3. issue a simultaneous written determination regarding responsibility, including:
 - a. identification of the allegations.
 - b. description of the procedural steps taken from the receipt of the formal complaint through the determination.
 - c. findings of fact supporting the determination.
 - d. conclusions regarding the application of the school's code of conduct to the facts.
 - e. Rationale for Appeal procedures.

Appeals Process

The appeals decision process requires HCA to:

1. notify the other party in writing within 2 days of when an appeal is filed and implement appeal procedures equally for both parties.
2. offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations when:
 - a. procedural irregularity that affected the outcome of the matter.
 - b. 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.
 - c. the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter
 - d. offer an appeal equally to both parties on additional bases. ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.



TITLE IX POLICY

Handbook

3. ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator, and that he/she complies with the standards set forth in the appeals process.
4. give both parties 5 days to submit a written statement in support of, or challenging, the outcome.
5. issue a written decision within 5 days describing the result of the appeal and the rationale for the result.
6. provide the written decision simultaneously to both parties.

Informal Resolution

Informal resolution process requires HCA to:

1. not require waiver of right to investigation and resolution of formal complaints.
2. not require parties to participate in an informal resolution process
3. not offer an informal resolution process unless a formal complaint is filed.
4. obtain the parties' voluntary, written consent to the informal resolution process.
5. not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
6. facilitate an informal resolution process at any time prior to reaching a determination of responsibility.
7. provide parties a written notice disclosing:
 - a. allegations.
 - b. requirements of the informal resolution process.
 - c. circumstances under which it precludes formal complaint
 - d. options to withdraw and resume formal complaint prior to agreeing to resolution.
 - e. consequences.

Training

Schools must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on:

1. definition of sexual harassment.
2. scope of the school's education program or activity (jurisdiction).
3. how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable.
4. how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
5. How to ensure that decision-makers receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
6. How to ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
7. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process
8. preventing sex stereotypes and promoting impartial investigations and decisions of formal complaints of sexual harassment.

Retaliation

Neither HCA nor any other person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege under Title IX or because the individual made a report, a complaint, testified, assisted, participated in, or refused to participate in any manner in an investigation or proceeding under this policy.



TITLE IX POLICY

Handbook

HCA shall keep confidential the identity of any individual who made a report or complaint of sexual discrimination or sexual harassment, any complainant, any individual reported as a perpetrator, any respondent and any witness except as permitted under FERPA or as required to carry out the purposes of this policy and its procedures.

Parties understand that exercise of rights protected under the First Amendment does not constitute retaliation. Furthermore, charging someone with making a materially false statement in bad faith, does not amount to retaliation.

Documentation/Recordkeeping

HCA must:

1. maintain for 7 years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.
2. document the basis for its conclusion that its response was not deliberately indifferent.
3. document that it has taken measures designed to restore or preserve equal access to the school's education program or activity.
4. document the reasons why not providing supportive measures was not clearly unreasonable considering the known circumstances if school does not provide a complainant with supportive measure



TITLE IX POLICY

Board Policy Manual