

## **Folk-Arts Cultural Treasures Charter School**

### **POLICY: Title IX**

This policy is posted, pending its adoption at the August 19, 2020 Board of Trustees Meeting.

Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 *et seq.*, protects students from discrimination based on sex in educational programs or activities that receive Federal financial assistance. Title IX states that:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient, which receives Federal financial assistance.

This policy reaffirms the commitment of the Folk-Arts Cultural Treasures Charter School (“Charter School”) to comply with Title IX. This policy covers student on student as well as employee on student sexual harassment.

### **When Does Title IX Apply?**

Title IX covers sexual harassment that happens in a school’s “education program or activity.” This includes locations, events, and circumstances where a school exercises substantial control over the context of the alleged harassment and the person accused of committing the sexual harassment.

### **Sexual Harassment**

Title IX prohibits the following conduct on the basis of sex that satisfies one or more of the following:

- 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.
- School employee conditioning educational benefits on participation in unwelcome sexual conduct, otherwise known as “Quid pro Quo” harassment.
- “Sexual assault,” as defined in 20 U.S.C. 1092(f)(6)(A)(v) “dating violence,” as defined in 34 U.S.C. 12291(a)(10) “domestic violence,” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30)

### **Charter School’s Response to Allegations/Knowledge of Sexual Harassment**

Once the Charter School has actual knowledge of sexual harassment or allegations of sexual harassment, the Charter school must respond or take action.

The Charter School has “actual knowledge” when it has been given notice that a person may have been victimized by sexual harassment. Any person, whether the alleged victim or a parent, friend, or bystander, has the right to report sexual harassment to put the Charter school on notice. A report to any school employee will result in the Charter School having “actual knowledge.” Further, Charter School personnel who personally witness sexual harassment can mean that the Charter School has “actual knowledge.”

The Charter School cannot be “deliberately indifferent” in responding to a complaint of sexual harassment. That means that it cannot be “clearly unreasonable” in light of the known circumstances. Upon receipt of a complaint, the Title IX Coordinator must act promptly, and must provide the following information to the complainant:

- The availability of supportive measures
- The right to file a complaint
- How to file a complaint

### **Supportive Measures:**

Supportive measures are free, individualized services designed to restore or preserve equal access to education, protect or preserve equal access to education, protect safety, or deter sexual harassment. A complainant does not need to file a formal complaint for him/her to receive supportive measures. Supportive measures are intended to support a student and are not punitive or disciplinary with respect to another student. These measures do not unreasonably burden any other person. Each student, the complainant and respondent, must have equal access to education prior to any determination of responsibility.

Examples of supportive measures include:

- Counseling
- Extension of deadlines
- Modification of work or class schedules
- Escort services
- Mutual restrictions on contact between individuals

The Title IX Coordinator is responsible for implementing these supportive measures and must consider the alleged victim’s wishes when it comes to requests for supportive measures. Generally, these measures must remain confidential.

## **Title IX Coordinator:**

Per Title IX federal funding mandates, the Charter School shall designate a Title IX Coordinator whose duties will include:

(a) receiving reports from victims and third parties of sexual discrimination or sexual harassment in person or by mail, telephone, email, or any other means that results in the Title IX Coordinator receiving the report at any time, including nonbusiness hours;

(b) oversee mandated (seven-year) recordkeeping regarding investigations, appeals, informal resolutions, and training for Coordinator, investigators and decision-makers on the definition of sexual harassment in the Final Rule, the application of the Title IX policy, how to make relevancy determinations (including how to apply rape shield protections for complainants), the Charter School's education program or activity, and the grievance process, including how to conduct investigations, hearings (including technology for live hearings), appeals, informal resolution processes, how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;

(c) maintaining current contact information in Charter School's nondiscrimination notices and website;

(d) ensuring Charter School is compliant with Title IX, coordinating the investigation and disciplinary process and looking for patterns or systematic problems with compliance to ensure Charter School fulfills federal obligations;

(e) signing formal complaints alleging sexual harassment;

(f) receiving notice of sexual harassment or allegations of sexual harassment (or authorized Charter School representative authorized to institute corrective measures), triggering actual knowledge designation;

(g) upon receipt of a complaint, providing prompt info to complainants about availability of supportive measures, the right to file a complaint and how to file a complaint and consideration of complainant's wishes regarding supportive measures;

(h) ensuring the Charter School grievance process and the Title IX Coordinator, investigator, decision-maker and facilitator of an informal resolution process is free of conflicts of interest or bias against a party;

(i) dismissing a complaint

(1) when complainant provides written notice to the Title IX Coordinator to do so,

(2) when allegations do not constitute sexual harassment,

(3) if the allegations did not occur in the Charter School's educational program or activity,

(4) if the allegations did not occur in the United States,

(5) if respondent is no longer enrolled or employed by the Charter School, or

(6) when specific circumstances prevent the gathering of evidence sufficient to reach a determination;

(j) coordinating Charter School efforts to comply with Title IX; and

(k) respecting a complainant's wishes regarding whether the Charter School investigates, unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances;

The Charter School's Title IX Coordinator's duties do not include:

(a) the ability to be named the decision-maker tasked with issuing a written determination regarding responsibility with findings of fact, conclusion about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent and whether remedies will be provided to the complainant (Title IX Coordinator or the investigator cannot be named decision-maker);

(b) the ability to be named as the decision-maker on any appeal (cannot be the same person as the initial decision-maker on the formal complaint, the investigator, or the Title IX Coordinator);

(c) any other job responsibility that creates a conflict of interest with responsibilities under Title IX;

(d) becoming a complainant or a party during the grievance process upon the signing of a formal complaint; and

(e) a requirement that the Title IX Coordinator file a formal complaint any time the Charter School received notice of multiple reports against a particular respondent and corresponding safe harbor.

### **Grievance Procedures**

Procedures outlining the Title IX Grievance Process that are consistent with this policy and final rules from the United States Department of Education are attached to this policy .

The Charter School will follow a grievance process that complies with the Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

The Charter School will not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, when complying with Title IX.

The Charter School will investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant, or signed by a Title IX Coordinator.

It is the policy of the Charter School during the grievance process to treat complainants and respondents equitably. That includes providing remedies to a complainant if a respondent is found responsible, and by following these policies in imposing discipline on the respondent.

The Title IX Coordinator shall be capable of conducting a thorough and complete investigation and shall seek advice and assistance from the Board of Trustees if the Title IX Coordinator believes that he or she lacks the capacity to conduct a thorough and complete investigation of the alleged misconduct. If the Title IX Coordinator or the CEO is the one accused of sexual harassment, or the Title IX Coordinator has bias or a conflict of interest, the Board will appoint a qualified individual who is not employed by the Charter School to conduct the investigation.

If the Title IX Coordinator submits the complaint, the Title IX Coordinator must recuse him/herself from the investigation and allow the Board to appoint a qualified individual who is not employed by the Charter School to conduct the investigation.

Once the Title IX Coordinator completes his/her investigatory report, the case will be turned over to a neutral decision maker for the hearing process. A neutral decision maker must be a person(s) who is free from all conflicts of interest or bias for or against complainants or respondents and must receive special training about how to be impartial and how to decide what evidence is relevant.

A school can remove a respondent from the Charter school's educational programs or activities on an emergency basis if the respondent poses an immediate threat to anyone's physical health or safety. If the respondent is an employee, the Charter school may place the employee on administrative leave pending the investigation.

No one will be forced, threatened, coerced, or discriminated against for choosing not to be a part of this grievance process.

Both complainant and respondent have equal rights throughout the entire investigation and hearing process, including, but not limited to, the opportunity to present witnesses and evidence, including expert witnesses, as well as inculpatory and exculpatory evidence. The Charter School will further comply with all disability laws to ensure that all participants are appropriately accommodated.

### **Publishing Requirements of this Policy:**

The Charter School will disseminate a notice of nondiscrimination, which the U.S. Department of Education recommends should specify that sexual harassment and violence are prohibited. Such notice shall appear in the Charter School's student handbook and/or code of conduct, on the Charter School's website, and be available in print on campus so that school members may understand its purpose and utility and include enough detail in the policy so that members of the community realize that sexual harassment and sexual violence are prohibited forms of sex discrimination.

The Charter School will adopt and publish a grievance procedure outlining the complaint, investigation, and disciplinary process for addressing sex discrimination, sexual harassment, and sexual violence occurring within educational programs. This process should address discrimination perpetrated by students, employees, or third parties. Additionally, school security and/or law enforcement personnel must notify victims of their rights to use the Charter school's grievance procedure in addition to being able to file a criminal complaint.

This grievance procedure requires the Charter school's process be "prompt and equitable," meaning it must be a timely response to discrimination and provide both parties equivalent rights during the disciplinary process rather than having one-sided due process. For example, if the accused student is given a right to have an attorney present, so may the accusing student.

While sexual misconduct complaints may be resolved through informal mechanisms, such as mediation, students are not required to use informal

methods of grievance resolution and should not be pressured into such a process.

The Charter School will provide educational and awareness programming on sexual harassment and discrimination. The Charter School must address hostile educational environments created by sex discrimination, sexual harassment, and sexual violence school-wide. Addressing a hostile environment means remedying a current situation, addressing its effects, and preventing its recurrence in the future.

The Charter School will maintain and make publicly available on its website all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process (or available in response to a request from the public if it does not maintain a website).

The Charter School shall designate an individual as its Title IX Coordinator and publish the Coordinator's name, title, office address, email address and phone number on its website, notifying applicants for admission or employment, students, parents, legal guardians, and employees of this designation. Designating one employee as the Title IX Coordinator ensures that students and employees know that notifying the Title IX Coordinator triggers the Charter School's legal obligations to respond to sexual harassment under the regulations.

### **Training**

Title IX mandates that Charter School employees that address sexual violence complaints have appropriate training. The U.S. Department of Education (ED) recommends that teachers, campus security, administrators, counselors, nurses, cleaning staff, coaches, and others likely to receive reports be trained on how to identify and report sexual harassment and violence.

Per the Department of Education, the Charter School will:

- 1) Ensure that responsible employees with the authority to address sexual violence know how to respond appropriately to reports of sexual violence;
- 2) That other responsible employees know that they are obligated to report sexual violence to appropriate school officials; and
- 3) That all other employees understand how to respond to reports of sexual violence.

The Charter School will ensure that counselors and advocates understand the extent to which they may and will keep a report confidential.

The Charter School will provide training to all employees likely to witness or receive reports of sexual violence, including teachers, school administrators, school counselors, support staff, and nurses.

The Charter School will train responsible employees to inform students of:

- 1) The reporting obligations of responsible employees;
- 2) Students' option to request confidentiality and available confidential advocacy, counseling, or other support services; and
- 3) Their right to file a Title IX complaint with the Charter School and to report a crime to local law enforcement.

The Charter School will ensure that the Title IX Coordinator, investigator, decision-maker, and/or facilitator of an informal resolution process be free of conflicts of interest or bias against a party and that such Charter School Title IX personnel be trained on the application of the Title IX Policy, the definition of sexual harassment in the Final Rule, the scope of the Charter School's education program or activity, how to conduct an investigation and grievance process, including hearings (and technology to be used at a live hearing), appeals, and informal resolution processes, as applicable, and how to make relevancy determinations (and applying rape shield protections for complainants) and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

The Charter School shall maintain and make publicly available on its website all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process (or available in response to a request from the public if it does not maintain a website).

The training materials must be impartial and not rely on sex stereotypes.

Additionally, the Charter School will ensure that staff members are capable of providing culturally competent counseling to all complainants. It will ensure that its counselors and other staff who are responsible for receiving and responding to complaints of sexual violence, including investigators and hearing board members, receive appropriate training about working with Lesbian/Gay/Bisexual/Transgender and gender-nonconforming students and same-sex sexual violence.

The Charter School will also ensure that any reporting forms, information, or training about sexual violence be provided in a manner that is accessible to students and employees with disabilities, for example, by providing electronically-accessible versions of paper forms to individuals with print



disabilities, or by providing a sign language interpreter to a deaf individual attending a training.

To ensure that students understand their rights under the laws cited herein, the Charter School will provide age-appropriate training to its students regarding Title IX and sexual violence. Training may be provided separately or as part of the Charter School's broader training on sex discrimination and sexual harassment.

The Charter School may include these education programs in its orientation programs for new students, faculty, staff, and employees, training for student athletes and coaches, and assemblies and "back to school nights." These programs will include a discussion of what constitutes sexual harassment and sexual violence, the Charter School's policies and disciplinary procedures, and the consequences of violating these policies.

The Charter School also will include such information in their employee handbook and any handbooks that student athletes and members of student activity groups receive. These materials will include where and to whom students should go if they are victims of sexual violence. These materials also will tell students and Charter School employees what to do if they learn of an incident of sexual violence.

#### **Other Reporting Requirements in Compliance with Local and State Laws:**

If the complaint involves sexual assault, rape or conduct of a criminal nature, the local Police Department shall be contacted and a report of the incident made by the Charter School, in accordance with law enforcement. A report must also be made by the mandatory reporter to ChildLine and the Department of Public Welfare in accordance with the Charter School's Board approved Mandatory Reporter Policy. If there is any question of whether the conduct complained of constituted criminal activity, the Charter School's Board Solicitor should be contacted immediately. Knowledge of a law enforcement investigation does not relieve the Charter School of its independent obligation to investigate the misconduct.

Documents regarding substantiated charges of sexual harassment shall be placed in the accused student's file. Documents regarding unsubstantiated charges shall not be placed in student files, but shall be maintained by the Board of Trustees in a confidential file established expressly for retaining Title IX complaints against students.

#### **Retaliation:**

Charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.

The Charter School will keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.

Complaints alleging retaliation may be filed according to the Charter school's prompt and equitable grievance procedures. The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.