

## Sexual Harassment/Misconduct: Know the Options

**Sexual Harassment** means 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;
- An employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct; or
- Sexual assault, as defined in the Clery Act, or dating violence, domestic violence, or stalking as defined in VAWA. (these definitions are listed in your Xenon Academy School Catalog and Handbook and later in this form)

### **Responding to Sexual Harassment**

An institution must respond to sexual harassment, with or without a formal complaint, when:

- The school has actual knowledge of the alleged sexual harassment;
- The alleged sexual harassment occurred in an education program or activity of the school; and
- The alleged sexual harassment was against a person physically located in the United States.

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

### **Title IX Coordinator**

- Oversees the school's response to Title IX reports and complaints.
- Must be informed of all reports and complaints raising Title IX issues, even if the report or complaint was initially filed with an Official with Authority.
- Conducts Title IX investigations and determines appropriate sanctions against the respondent and remedies for the complainant if necessary. The following employee is the Academy's Title IX Coordinator:

Omaha Campus: Lori Overgaard-Director of Corporate Business Office: [Lori@xenonacademy.net](mailto:Lori@xenonacademy.net)  
8516 Park Drive, Omaha, NE 68127 ph#402-697-2398

Grand Island Campus: Ashley Sheckler-Director at Xenon Academy Grand Island: [ashley@xenonacademy.net](mailto:ashley@xenonacademy.net)  
804 N Webb Road, Grand Island, NE 68803 ph#308-395-8600

### **Officials with Authority (Omaha/Grand Island campuses)**

Have the authority to institute corrective action as it pertains to allegation of Sexual Harassment. The following employees are the Academy's Officials with Authority:

Ryan Moss-Executive Director of Xenon Academy: [ryan@xenonacademy.net](mailto:ryan@xenonacademy.net)

## **Adjudicator (Omaha/Grand Island campuses)**

Is the party that has the task of making an official decision about something, especially about who is right in a disagreement. The adjudicator determines relevance of questions and evidence, including when questions and evidence about complainant's sexual history are not relevant. The Adjudicator is also responsible for ensuring there is an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

Ryan Moss-Executive Director: [ryan@xenonacademy.net](mailto:ryan@xenonacademy.net)

## **Title IX Coordinator Training**

Training completed for Title IX

- **Module 1 – Fundamentals of the Law:** <http://content.thompsoncoburn.com/video/Module-1-Fundamentals-of-the-Law.mp4>
- **Module 2 – Formal Complaints:** <http://content.thompsoncoburn.com/video/Module-2-Formal-Complaints.mp4>
- **Module 3 – Investigations & Informal Resolutions:** <http://content.thompsoncoburn.com/video/Module-3-Investigations-and-Informal-Resolutions.mp4>
- **Module 4 – Hearings:** <http://content.thompsoncoburn.com/video/Module-4-Hearings.mp4>
- **Module 5 – Determinations:** <http://content.thompsoncoburn.com/video/Module-5-Determinations.mp4>
- **Module 6 – Appeals:** <http://content.thompsoncoburn.com/video/Module-6-Appeals.mp4>

## **Non-Discrimination Statement**

Xenon Academy does not discriminate on the base of race, color, ethnic origin, sex, age, religion or handicap/disability in its educational programs or activities. Inquiries concerning Xenon Academy compliance with Title IX contact the schools designated Title IX coordinator: Lori Overgaard, 8456 Park Drive, Omaha, NE 68127 (402) 697-2398 ext #102 [lori@xenonacademy.net](mailto:lori@xenonacademy.net). Inquiries concerning Title IV or Section 504, Americans with Disabilities Act, and the Age Discrimination Act may contact the Campus Director.

Any person wishing to file a Formal Complaint concerning discrimination on the base of race, color, ethnic origin, sex, sexual orientation, age, religion, citizenship status, Veteran status, handicap/disability or other protected groups defined by law, will follow the guidelines of the following Formal Complaint policy.

- The Formal Complaint procedure is available to any student who believes that a school decision or action has adversely affected his/her status, rights or privileges. The purpose of the procedure is to provide a prompt and equitable process of resolving student grievances.
- A grievance must be submitted in writing to the Title IX Coordinator outlining the nature of the complaint.
- The coordinator will meet with the complainant after investigating and gathering pertinent information no later than 10 days after receipt of written grievance. The coordinators goal is to find a positive resolution for the complainant. The coordinator has 15 days from meeting with complainant to act on the allegations and respond in writing to the complainant. If the complainant is not satisfied with the resolution and wishes to pursue the matter further, after above required steps have been taken, further correspondence should be made to:

Office for Civil Rights, Kansas City Office  
U.S. Department of Health & Human Services  
601 East 12th Street-Room 248  
Kansas City, MO 64106  
Voice Phone- (816) 426-7278  
Fax- (816) 426-3686  
TDD- (816) 426-7065

The Title IX Coordinator will inform a complainant of supportive measures with or without the filing of a formal complaint. The Title IX Coordinator will explain to the complainant the process for filing a formal complaint.

Xenon will treat complainants and respondents equitably by offering supportive measures to a complainant, and by following our complaint grievance process before imposition of any disciplinary sanctions against a respondent.

**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 filing of a formal complaint or where no formal complaint has been filed.

Such 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.

Xenon will maintain as confidential 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. The Title IX coordinator is responsible for coordinating the effective implementation of supportive measures.

### **Formal Complaint**

A formal complaint of Title IX sexual harassment means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. The formal complaint can be a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

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 school with which the formal complaint is filed.

After receiving a formal complaint, the Title IX Coordinator will:

- Will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent. The remedies will be designed to restore or preserve equal access to the school's education program or activity.
- Will perform an objective evaluation of all evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness. The objective evaluation will have 1) impartial consideration of available evidence 2) No prejudgment of parties, witnesses, facts at issue, or how facts at issue are presented 3) will have no deference to recommendations of an investigator.
- Xenon will ensure that all parties involved in the process (Coordinators, Investigators and Adjudicators) will be free from conflict of interest. Xenon will ensure that all parties involved in the process be trained on conducting an investigation and grievance process including hearings, appeals, and informal resolutions. They will be trained on serving impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- Xenon's formal complaint process includes the presumption of innocence of the respondent. The Title IX Coordinator will interact with both the complainant and respondent in an impartial manner throughout the grievance process without prejudgment of the facts at issue, and without drawing inferences about credibility based on a party's status as a complainant or respondent.
- The process will have reasonably prompt timeframes for resolution.
- Sanctions and Remedies will be designed to restore or preserve equal access to the school's education program or activity when possible.
- The standard of evidence Xenon will use on all formal complaints is preponderance of the evidence.
- Appeals may be granted on the following bases 1) a procedural irregularity that affected the outcome 2) new evidence that was not reasonably available at the time the determination or dismissal was made and could affect the outcome 3) the Title IX Coordinator, investigator, or adjudicator had a conflict of interest or bias that affected the outcome of the matter.

- Xenon will have supportive measures available as applicable. They may include but not limited to: 1) extensions of deadlines or other course-related adjustments 2) modifications of class schedules 3) mutual restrictions on contact between the parties 4) Leaves of absence 5) list of professional counseling services (list included in this packet).
- We will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information projected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. Examples include: Attorney-Client; Priest-Penitent; Doctor-Patient; Spousal.

### **Notice of Allegations**

Upon receipt of a formal complaint, Xenon will provide written notice to both parties that includes:

- Discussion of the formal complaint process, including any informal resolution option.
- Sufficiently detailed statement of allegations-this will identify both parties, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.
- Statement that the respondent is presumed innocent and that a determination of responsibility is made at the conclusion of the process.

### **Confidentiality**

Xenon will keep confidential the identity of any individual who has made a report or complaint of any form of prohibited sex discrimination, including any reporter, complainant, respondent, or witness, except:

- As may be permitted by FERPA
- Or as required by law
- To carry out the Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

### **Access to Evidence**

Throughout the investigation Xenon will afford both parties equal opportunity to review and inspect any evidence that 1) was obtained ad part of the investigation 2) is directly related to the allegations.

Prior to issuing an investigative report Xenon will send both parties all evidence subject to inspection and review and afford at least 10 days to submit a written response.

10 days prior to hearing or other determination Xenon will send investigative report to parties for review and written response. Xenon will make all evidence available to parties and afford equal opportunity to review, including for purposes of cross-examination.

### **Informal Resolution**

Xenon cannot require a student or employee to waive the right to an investigation and adjudication of formal complaints under Title IX. However, at any time prior to reaching a final determination, Xenon may facilitate an informal resolution that does not involve a full investigation and adjudication, provided that the school:

- Provides the parties a written notice disclosing 1) the allegations, 2) the requirements of the informal resolution process 3) the circumstances under which if precludes the parties from resuming a formal complaint arising from the same facts, and 3) any other consequences of participating in the informal resolution process 4) the records that will be maintained or could be shared
- Obtains the parties' voluntary, written consent to the informal resolution.
- An informal resolution is not available to resolve allegations that an employee sexually harassed a student.
- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution and resume the formal complaint process.

## **Dismissal of Formal Complaint**

A formal complaint of sexual harassment under Title IX will be dismissed if:

- Would not constitute sexual harassment even if proved
- Did not occur in the school's education program or activity
- Did not occur against a person in the United States

A formal complaint of sexual harassment under Title IX may be dismissed if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw
- The respondent is no longer enrolled or employed by the school
- Specific circumstances prevent the school from gathering sufficient evidence to reach a determination

In the event of a required or optional dismissal, Xenon will promptly and simultaneously send written notice to both parties.

## **Title IX Hearings**

In the event that an informal resolution cannot be made, a live hearing will be held. During any aspect of the formal complaint process, each party may have an advisor of their choice present. This advisor may or may not be an attorney.

During the live hearing, each party's advisor is permitted to cross-examine the other party and any witnesses. The complainant or the respondent are not allowed to cross-examine the other party or their witnesses. The adjudicator must determine whether the cross-examination questions are relevant, and explain any decision to exclude a question as not relevant.

## **Title IX Determinations**

At the conclusion of the hearing and after deliberation, Xenon will simultaneously notify each party in writing of the outcome of the hearing. This will include any action taken by the school for either party. It will include how Xenon came to the conclusion.

A determination becomes final either:

- 1) On the date on which an appeal would no longer be considered timely; or
- 2) If an appeal is filed, on the date that the school provides the parties with written appeal determination.

## **Appealing a Title IX Determination**

Appeals may be granted on the following bases 1) a procedural irregularity that affected the outcome 2) new evidence that was not reasonably available at the time the determination or dismissal was made and could affect the outcome 3) the Title IX Coordinator, investigator, or adjudicator had a conflict of interest or bias that affected the outcome of the matter.

- Appeals must be submitted in writing to the Title IX Coordinator within 10 days of the Determination. The appeal can be submitted by either party.
- Xenon will appoint an appeal officer if either party decided to appeal the Determination.

## **Other definitions**

- **Consent/without consent**

Under Nebraska Law: Without consent means:

(a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim express a lack of consent through conduct or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor

(b) the victim need only resist, either verbally or physically, so as to make the victims' refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and

(c) A victim need not resist verbally or physically where it would be useless or futile to do so; and

(d) Force or threat of force means (a) the use of physical force which overcomes the victims' resistance or (b) the threat of physical force, expressed or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.

- **Domestic Violence**

- (i) A felony or misdemeanor crime of violence committed:
  - (A) By a current or former spouse or intimate partner of the victim;
  - (B) By a person with whom the victim shares a child in common;
  - (C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
  - (D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
  - (E) 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 another jurisdiction in which the crime of violence occurred.

- **Dating Violence**

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- (i) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of the interaction between the persons involved in the relationship.
- (ii) For the purposes of this definition-
  - (A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - (B) Dating violence does not include acts covered under the definition of domestic violence.

- **Stalking**

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

- (A) Fear for the person's safety or the safety of others; or
- (B) Suffer substantial emotional distress

*Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

*Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.

*Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

All complainants have the right to seek protection with judicial, no contact, restraining & protective orders. For information on & assistance with the process of obtaining/filing for an order of protection:

<http://clerk.dc4dc.com/family-and-juvenile/domestic-violence--protection-orders>

300 Hall of Justice  
1701 Farnam St, 3<sup>rd</sup> floor  
Omaha, NE 68183  
(402)-444-7018

The Academy will work closely with a complainant to abide by any restraining orders, orders for protection or no contact orders. The administration will meet with the complainant & review the specifics of any order to put procedures in place & to enforce the guidelines set forth in the order. The educational team, as well as client

services, will work closely with the complainant to assure all accommodations within our authority have been made.

Xenon Academy policy prohibits retaliation against any person making a complaint of sexual harassment or misconduct or against any person cooperating in the investigation, including but not limited to witnesses. The prohibition of actual or threatened retaliation applies to employees and third parties as well as students.

**List of professional services:**

**National Domestic Violence Hotline**

1-800-799-7233

[www.ndvh.org](http://www.ndvh.org)

**Rape, Abuse, & Incest National Network**

1-800-656-4673

[www.rainn.org](http://www.rainn.org)

**National Teen Dating Abuse Helpline**

1-866-331-9474

[www.Loveisrespect.org](http://www.Loveisrespect.org)

**National Suicide Prevention Lifeline**

1-800-273-8255

[www.Suicidepreventionlifeline.org](http://www.Suicidepreventionlifeline.org)

**Nebraska Domestic Violence Sexual Assault Coalition**

<http://ndvsac.org/get-informed/>

**The Rape Assistance and Awareness Program**

<http://www.raap.org/>

**National Child Abuse Hotline**

1-800-422-4453

[www.childhelp.org](http://www.childhelp.org)

**OMAHA LOCATIONS:**

**Women's Center for Advancement**

222 S 29<sup>th</sup> St

Omaha, NE 68131

402-345-6555 (24/7 Crisis Hotline: 402-345-7273)

[www.wcaomaha.org](http://www.wcaomaha.org)

**Heartland Family Services**

2101 S 42<sup>nd</sup> St

Omaha, NE 68105

402-553-3000

[www.heartlandfamilyservice.org](http://www.heartlandfamilyservice.org)

**Domestic Violence Services; The Shelter (Catholic Charities of Omaha)**

24-hour crisis line: 402-558-5700

Counseling and Advocacy; Emergency Shelter and Temporary Housing

[www.ccomaha.org](http://www.ccomaha.org)

**Catholic Charities of Omaha**

Immigration Legal Assistance

5211 S 31<sup>st</sup>

Omaha, NE 68107

402-939-4615

[www.ccomaha.org/what-we-go/immigration-legal-assistance.html](http://www.ccomaha.org/what-we-go/immigration-legal-assistance.html)

**Legal Aid of Nebraska**  
209 S 19<sup>th</sup> St Suite 200  
Omaha, NE 68102  
402-348-1069  
[www.legalaidofnebraska.org](http://www.legalaidofnebraska.org)

**GRAND ISLAND LOCATIONS:**

**Family Violence Coalition**  
203 West 2<sup>nd</sup> St  
Grand Island, NE 68801  
308-385-5346  
<http://local.yahoo.com/info-18095288-family-violence-coalition-grand-island>

**Central Health Center**  
217 E Stolley Park Road Suite E  
PO Box 2539  
Grand Island, NE 68802  
308-384-7625  
[www.chcmail@hamilton.net](mailto:www.chcmail@hamilton.net)

**Crisis Center**  
2251 North Webb Road  
Grand Island, NE 68803  
308-381-0555  
[www.gicrisis.org](http://www.gicrisis.org)

**Family Resources of Greater Nebraska**  
3532 W Capital Ave  
Grand Island, NE 68803  
308-381-7487  
[www.family-resources.net](http://www.family-resources.net)

**Lutheran Family Services**  
1811 W 2<sup>nd</sup> St Suite 440  
Grand Island, NE 68803  
308-382-4255  
[www.lfsneb.org/community/immigration.asp](http://www.lfsneb.org/community/immigration.asp)

**Legal Aid of Nebraska**  
1811 W 2<sup>nd</sup> St Suite 440  
Grand Island, NE 68803  
308-381-0517  
[www.legalaidofnebraska.org](http://www.legalaidofnebraska.org)