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## Sexual Harassment Policy

### I. PURPOSE AND PHILOSOPHY

- A. It is the intent of the Academy for Mathematics, Engineering and Science (“AMES” or “the LEA” or “the School”) to ensure a safe learning environment, free from discrimination and harassment on the basis of sex in compliance with title IX, 20 U.S.C. §1681 and 34 C.F.R., Part 106.
- B. AMES will not tolerate any form of Sexual Harassment and will address all allegation of Sexual Harassment with a complete and thorough investigation, ensuring due process for all parties involved.

### II. POLICY

- A. Sexual Harassment is prohibited in the School, at all School sponsored activities or events, including school-provided transportation.
- B. Students and employees who feel they have been subject to Sexual Harassment are strongly encouraged to file a complaint in accordance with the process outline in this Policy so that AMES can respond to and address all instances of Sexual Harassment.
- C. Employees who become aware of or suspect Sexual Harassment shall report to the designated administrator so that a thorough investigation may take place.

### III. DEFINITIONS

**Note:** When these precise definitions are used throughout the Policy, they will be capitalized, to distinguish them from less legal or exact definitions or phrases.

- A. “Actual knowledge” means notice of Sexual Harassment or allegations of Sexual Harassment given to *any* School employee which triggers the School’s obligation to respond. “Notice” includes, but is not limited to, a report of Sexual Harassment to the School Title IX Coordinator.
- B. “Complainant” means an individual who is alleged to be the victim of conduct that may constitute Sexual Harassment.
- C. “Dating Violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be established because of the reporting party’s statement with consideration of the following factors:

1. the length of the relationship.
2. the type of relationship (boy/girlfriend, employer/employee, etc.).
3. the frequency of interaction between the person involved in the relationship.
4. Dating Violence may include, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.

D. "Domestic Violence" means 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-habiting with or has co-habited 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 Utah.

E. "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 the School investigate the allegation of Sexual Harassment. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information of the Title IX Coordinator listed in this Policy and on the School's website.

F. "LEA" means local education agency and may be used interchangeably with (charter) School.

G. "Respondent" means an individual who has been reported to be the perpetrator of conduct that may constitute Sexual Harassment.

H. "Responsible," for purposes of this Policy, means a finding of, preponderance (more than 50%) of the evidence, that a Respondent engaged in Sexual Harassment. Analogous to the term "guilty" in the criminal context, or "liable" in the civil context, this term is used when a Determination has been made, based on all the evidence, that the Respondent's conduct constitutes Sexual Harassment.

I. "Responsible Employee," for purposes of this Policy, means every employee of the LEA who observes, is informed of, or otherwise becomes aware of conduct that may constitute Sexual Harassment. Every Responsible Employee is obligated to report such conduct to the employee's immediate supervisor or, if necessary, to the alleged offender's supervisor.

J. "Sexual Assault" means:

1. "Rape" means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
2. "Fondling" means the touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of victim's age or because of victim's temporary or permanent mental incapacity.
3. "Incest" means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

4. "Statutory rape" means sexual intercourse with a person who is under the statutory age of consent [in Utah, that age is 15 or younger].

K. "Sexual Harassment" means conduct on the basis of sex that satisfies one or more of the following:

1. An LEA employee conditioning the provision of an aid, benefit, or service of the LEA on an individual's participation in unwelcome sexual behavior;
2. Unwelcome behavior determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the LEA's education program or activity; or
3. Sexual Assault, Dating Violence, Domestic Violence, or Stalking, as defined in the Clery Act and in this Policy.

L. "Sexual Misconduct" means conduct of a sexual nature that violates an LEA's student discipline or professional conduct policy because it is behavior or threatened behavior that poses a threat to the welfare, safety, or morals of other students or school personnel, but does not rise to the level of Sexual Harassment.

M. "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or 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. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. Any incident meeting this definition is considered a crime for the purposes of the Clery Act reporting.

N. "Supportive Measures" means individualized services offered to a Complainant or a Respondent that are non-punitive, non-disciplinary or unreasonably burden the other party. Supportive Measures should be offered promptly, before or after filing a Formal Complaint or when no Formal Complaint has been filed but a report has been made.

O. "Title IX Coordinator" means the designated LEA employee responsible for coordinating efforts to comply with the LEA's responsibilities to ensure this Policy and federal regulations are appropriately followed and enforced.

#### **IV. JURISDICTION**

A. AMES will address all allegations of Sexual Harassment occurring:

1. at the School or at any school program or activity,
2. en route to school in/at AMES and School activities, or
3. where the School exercised substantial control over both the Respondent and the context in which the reported Sexual Harassment occurred.

B. Allegations of Sexual Harassment that occurred outside of the United States, but as part of a School sponsored program or activity, may be addressed under another School policy, but will NOT be addressed UNDER THIS POLICY.

C. Allegations of Sexual Harassment that originated off-campus or not at school-sponsored activities or events, but that have a clear nexus to School AND which impact a Complainant's ability to effectively access and continue in the Complainant's educational program MAY be addressed under this Policy.

D. This includes allegations of Sexual Harassment via the internet, electronic devices and/or social media platforms.

E. If an allegation of Sexual Harassment originating off campus and not at school-sponsored activities/events is not addressed under this Policy, it may be addressed under other School policies.

## V. PROCEDURES

A. Complainants and Respondents shall be treated equitably by providing remedies to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent, and by following these grievance procedures before imposing any disciplinary sanction or other actions against the Respondent.

B. These grievance procedures require an objective evaluation of all relevant evidence, both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a Complainant, Respondent or Witness.

C. Individuals designated as Title IX Coordinator, Investigator(s), Decision-maker(s), or any person designated to facilitate an Informal Resolution Process shall:

1. not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
2. receive training as outlined in the Training Section, below.

D. Respondent is presumed not Responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

E. AMES will ensure reasonably prompt timeframes for conclusion of the grievance process, including for filing and resolving appeals and informal resolution processes. AMES' grievance process may be delayed for good cause, including 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.

F. AMES may implement any of the following sanctions and/or remedies following a determination of Responsibility:

1. Potential sanctions may include short or long-term removal from school.
2. Potential remedies may include:
  - a. counseling,
  - b. extensions of deadlines or other course-related adjustments,
  - c. modifications of work or class schedules,

- d. altering work arrangements for employees or student/employees,
- e. School safety plan,
- f. mutual restriction on contact between the parties,
- g. changes in work locations,
- h. leaves of absence,
- i. increased security and monitoring measures, using personnel or devices, and/or
- j. other similar reasonable methods.

G. The standard of evidence for all complaints of Sexual Harassment through this process is preponderance of the evidence.

H. Both Complainant and Respondent shall have the right to appeal the Decision-maker's decision, consistent with the Appeal Section, below.

I. Supportive Measures shall be available to Complainant and Respondent throughout the grievance process. Examples of Supportive Measures are listed in this Policy.

J. The grievance process does not require, allow, rely upon, 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 waives it.

## **VI. REPORTING**

A. A student or employee experiencing Sexual Harassment may report to any employee of the School, including directly to the Title IX Coordinator.

B. All employees of the School shall report any allegation or observation of Sexual Misconduct and/or Sexual Harassment to the employee's immediate supervisor or to that person's supervisor. Employees shall be trained that actual knowledge of Sexual Harassment by an employee imputes actual knowledge to the School.

C. The supervisor (or alternate person) shall report to the School principal where the Complainant is enrolled or employed.

D. The principal will follow up with an initial inquiry to determine if the conduct, on the face of the allegations, is more likely Sexual Misconduct or Sexual Harassment.

E. If, after the initial inquiry, the principal decides the conduct is more likely than not Sexual Harassment, the principal shall notify the Title IX Coordinator.

F. The Title IX Coordinator will contact the Complainant and provide information detailing:

1. how to file a Formal Complaint, and
2. that Supportive Measures are available to the Complainant, regardless of whether Complainant files a Formal Complaint.

G. A Formal Complaint may be filed directly with the Title IX Coordinator in person, by mail, or by electronic mail.

## **VII. SUPPORTIVE MEASURES**

- A. Supportive Measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party and should be designed to protect the safety of all parties or the educational environment or deter Sexual Harassment.
- B. Supportive Measures will be offered to the Complainant and the Respondent when the LEA learns of allegations of Sexual Harassment.
- C. Supportive Measures may not be punitive or disciplinary actions.
- D. Supportive Measures may be individualized depending on the circumstances of the Complainant and/or the Respondent.
- E. Supportive Measures are not limited to but may include:
  - 1. counseling,
  - 2. extensions of deadlines (employment or student-related) or other education-related adjustments,
  - 3. work arrangement modifications for employees or student-employees,
  - 4. School safety plans,
  - 5. mutual restriction on contact between parties,
  - 6. changes in work locations,
  - 7. leaves of absence or alternative School schedules for students,
  - 8. increased security and monitoring of designated School areas and
  - 9. other appropriate measures.
- F. AMES must maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that such confidentiality would not impair the School's ability to provide the Supportive Measures effectively.
- G. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures with the School principal and other necessary employees.
- H. The Title IX Coordinator must document all Supportive Measures. If a Complainant is NOT offered Supportive Measures, reasons for NOT offering those Measures must be documented.

## **VIII. FORMAL COMPLAINT**

- A. A student or employee who experiences Sexual Harassment may file a Formal Complaint by submitting a written statement that includes all of the following elements:

1. Allegations of Sexual Harassment against a Respondent or multiple Respondents (multiple Respondents may be listed in one Complaint if they were all directly involved in the same incident).
  2. Request for an investigation.
  3. The School where the Complainant is enrolled, or, if an employee, the School department where Complainant is employed.
  4. The School position where Respondent is enrolled or employed, if known by Complainant.
- B. The Complainant may use a School-specific form or may make a written statement that includes all required elements.
- C. A Formal Complaint may be filed by a student or the student's parents/guardians if the student is a minor. An employee shall file the employee's own Formal Complaint, unless the Title IX Coordinator agrees to file a Formal Complaint for the employee.
- D. The Title IX Coordinator may file a Formal Complaint on behalf of a student or an employee in consultation with legal counsel and on a case-by-case evaluation of the circumstances.

#### **IX. EMERGENCY REMOVAL**

- A. A student Respondent may be removed from Respondent's school, program or activity on an emergency basis if the School determines, based on an individualized safety and risk analysis, 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.
- B. An employee Respondent may be placed on paid leave with or without an emergency situation requiring it.

#### **X. DISMISSAL**

- A. A Formal Complaint **MUST** be dismissed if:
1. the alleged conduct does not constitute Sexual Harassment, *on its face*, as defined in this Policy,
  2. the alleged conduct did not occur in the School's education program or activity, or
  3. the alleged conduct did not occur in the United States.
- B. A Formal Complaint **MAY** be dismissed if:
1. the Complainant provides written notification to the Title IX Coordinator that Complainant wants to withdraw the Formal Complaint;
  2. Respondent is no longer enrolled in or employed by the School; or
  3. specific circumstances prevent the School from gathering evidence sufficient to reach a determination.

C. If a Formal Complaint is dismissed, the Title IX Coordinator shall promptly send written notice, including reasons, to Complainant and Respondent simultaneously.

D. Nothing in THIS Policy prohibits the School from pursuing an investigation under a different School Policy and/or imposing appropriate sanctions against a Respondent if a Formal Complaint is dismissed for failure to constitute Sexual Harassment, but where conduct may violate another School Policy.

E. Complainant may appeal a dismissal under the procedures outlined in Appeals Section of this Policy.

## **XI. NOTICE**

A. Following the filing of a Formal Complaint, and, absent a dismissal, the Title IX Coordinator shall send notice to both parties.

B. The Notice shall include:

1. Complainant's specific allegations;
2. identities of the parties involved;
3. the School's sexual harassment grievance process, including information about and offer of any informal resolution process;
4. date(s) of the alleged incident(s);
5. the location of incident(s);
6. presumption of No Responsibility for Respondent;
7. that determination regarding responsibility/no responsibility will be made at the end of the process;
8. provision that party may bring an advisor (may be an attorney) to the meeting(s); and
9. any provision(s) from School's Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process;
10. the standard of evidence that will be applied which is a preponderance of the evidence; and
11. directives not to retaliate.

## **XII. INFORMAL RESOLUTION PROCESS**

A. Following the filing of a Formal Complaint, the Complainant and the Respondent will have the opportunity to participate in an Informal Resolution Process.

B. The Informal Resolution Process may be facilitated at any time after a Formal Complaint has been filed and prior to a determination regarding Responsibility with the voluntary written consent of both parties.



C. If parties request and agree to the Informal Resolution Process, both parties must be provided written notice that includes:

1. the allegations;
2. the requirements of the process, including what information and documents will be shared with the other party;
3. circumstances which would result in resuming the Formal Complaint arising from the same allegations;
4. the right to withdraw/resume the Informal Resolution Process at any time; and
5. consequences, including records kept and shared.

D. The Informal Resolution Process MAY NOT:

1. be required as a condition of enrollment or employment or
2. be offered or facilitated when the allegations are of an employee sexually harassing a student.

E. If the Informal Resolution Process fails, the Formal Complaint procedures will resume.

### **XIII. INVESTIGATION**

A. All investigators will be trained to conduct Sexual Harassment investigations.

B. Upon receipt of a Formal Complaint, the investigator(s) will provide a Notice of Interview to the parties, to include:

1. the date, time, and location of the meeting (no fewer than two days from the date this Notice is received by the parties);
2. the purpose of the meeting;
3. the participants expected at the meeting;
4. a provision that the party may bring an advisor (may be an attorney) to the meeting; and
5. a provision that the party may bring any documents, evidence, or other information the party would like the investigator to consider.

C. The assigned investigator(s) will meet first with the Complainant to hear first-hand the allegations listed in the Formal Complaint.

1. Investigator(s) will ask for documentary evidence and witnesses from the Complainant.
2. An advisor may attend any interview with Complainant, but will be present *only for support and may not speak for the Complainant*.

3. The investigator(s) will take detailed notes and may record the interviews with consent from the Complainant. **Note** that all recordings and notes of meetings **MUST** be made available to both parties as part of the evidence.

D. The investigator(s) will next meet with the Respondent to hear Respondent's response to the allegations.

1. Investigator(s) will ask for documentary evidence and witnesses from the Respondent.

2. An advisor may attend any interview with Respondent, but may be present only for support and may not speak for the Respondent.

3. Investigator(s) will take detailed notes and may record the interviews with consent from the Respondent. **Note** that all recordings and notes of meetings **MUST** be made available to both parties as part of the evidence.

E. Investigator(s) will review any relevant security camera footage or other evidence maintained on the School network or computers or devices.

F. Investigator(s) may interview other students, employees, and parents who are not the Complainant or the Respondent and may record, take statements or document the interviews.

G. Investigator(s) will comply with School's search and seizure policy in all searches conducted in the course of the investigation.

H. After investigation, the investigator(s) will send a summary of the evidence (electronic or hard copy) to both parties for inspection.

1. Both parties have ten (10) calendar days to respond to the summary of the evidence.

2. Investigator(s) shall consider the responses from both parties, but need not adopt the responses.

I. Following the ten (10) day period for responses, investigator(s) shall draft a final investigative report which shall include a summary of the evidence.

J. Investigator(s) shall share the Investigative Report with both parties and the Decision-maker(s).

#### **XIV. DECISION-MAKING**

A. Upon the parties' receipt of the Investigative Report, the Title IX Coordinator shall notify both parties that they have ten (10) days to submit written cross-examination questions for the other party, witnesses, and send proposed questions to the Decision-making Team.

1. The Decision-maker(s) shall review submitted questions for relevance and appropriateness and shall determine which questions to forward to the other party and witnesses.

2. Both parties shall have an opportunity to respond to questions forwarded by the Decision-maker(s).

3. Decision-maker(s) shall decide a deadline for parties to provide responses.

B. Decision-maker(s) will review the responses to questions from parties and the Investigative Report, and will issue a written Determination which SHALL include:

1. identification of allegations;
2. a description of procedural steps taken from receipt of Formal Complaint through investigation, including any notifications to parties, interviews with parties and witnesses, site visits, and methods used to gather evidence;
3. findings of fact supporting the determination;
4. conclusions regarding the application of this Policy to the facts;
5. statement of rationale for the result as to each allegation, including a determination regarding the Responsibility;
6. any recommended disciplinary (student or employee) sanctions;
7. any remedies to restore or preserve equal access in the School's education program or activity for Complainant (if a student);
8. procedures for appeal.

C. The written Determination may be appealed by either party consistent with the Appeals Process outlined in this Policy.

## **XV. APPEALS**

A. A request for an appeal must be in writing and made to the Title IX Coordinator within five (5) business days of receiving the written Determination from the Decision-maker(s).

B. The Title IX Coordinator shall forward the appeal to the Superintendent who SHALL grant the requesting party an appeal based on the following:

1. the requesting party presents evidence of procedural irregularity that affected the outcome of the matter;
2. the requesting party presents new evidence that was not reasonably available at the time the Determination was made that could affect the outcome of the matter; or
3. the Title IX Coordinator, investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against the requesting party such that it affected the outcome of the matter.

C. The School Principal MAY grant the requesting party an appeal on additional bases in the Principal's discretion.

D. If an appeal is granted, both parties shall have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

E. Upon review of the written statements, the Principal shall issue a written decision describing the result of the appeal and rationale for the result and shall provide the written decision simultaneously to both parties.

F. The written decision on the appeal may take ONLY ONE OF THE FOLLOWING THREE POSITIONS:

1. affirm the Decision-maker(s)' decision;
2. repeal the Decision-maker(s)' decision; or
3. remand the Decision-maker(s)' decision

## **XVI. RETENTION OF RECORDS**

A. All records created during the investigative process shall be maintained by the School for, the longer of, seven (7) years or for two (2) years after the student graduates, if a student is involved.

B. "All records" includes:

1. any determination regarding Responsibility;
2. any disciplinary sanctions imposed on the Respondent;
3. any remedies provided to the Complainant designed to restore or preserve equal access to the School's education program or activity;
4. any appeal and the result therefrom;
5. any informal resolution process and the result therefrom;
6. all materials used to train Title IX Coordinator(s), investigator(s), Decision-maker(s), and any person who facilitates an informal resolution process;
7. records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment, that document the basis for its conclusion that its response was not deliberately indifferent, and document that the School has taken measures designed to restore or preserve equal access to the School's education program or activity.

## **XVII. TRAINING**

A. All Title IX Coordinators, investigator(s), Decision-maker(s), and any person who facilitate an informal resolution process shall receive training on the following:

1. definition of Sexual Harassment;
2. scope of the School's education program or activity;
3. how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution process; and

4. how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.
- B. All Decision-maker(s) shall receive training on the issues of relevance of questions and evidence, including where questions and evidence about the Complainant's predisposition or prior sexual behavior are NOT relevant.
  - C. All investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
  - D. All training materials shall promote impartial investigations and shall not rely on sex stereotypes.
  - E. The School shall make all training materials publicly available on its website.

## **XVIII. RETALIATION**

### **A. Retaliation prohibited**

1. No person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceedings.
2. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sex harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, constitutes retaliation.
3. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation provided, however, that a determination regarding Responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

### **B. Consequences for retaliation**

1. An individual who engages in retaliation as described in this Policy will be disciplined in accordance with the School's student or employee's discipline policy.
2. Consequences for retaliation apply equally to any individual who engages in retaliation, and not just to the Respondent.