

# Provident Charter School

## Title IX Grievance Procedures

### **Overview**

Provident Charter School (“Provident”) will act on any formal or informal notice/complaint of violation of the Title IX Policy that is received by the Title IX Coordinator or any other employee by applying these procedures.

The procedures below apply **only** to qualifying allegations of sexual harassment involving students, staff, administrator, or faculty members.

If a dismissal occurs under these procedures or the allegations fall outside of the jurisdiction of these procedures, as determined by the Title IX Coordinator, the applicable procedures under the Student Handbook or the applicable employee handbook will be used to resolve the complaint.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by these procedures will be addressed through procedures described in the student and employee handbooks.

- **Notice/Complaint**

Upon receiving a complaint or notice, the Title IX Coordinator will conduct a prompt initial assessment of the conduct, the Complainant’s desired course of action, and the necessity for any supportive or interim measures to protect the safety of the complainant or community. The goal is to eliminate any hostile environment.

Please note: The Title IX Coordinator is not a confidential source of support. While he/she will address your complaint with sensitivity and will keep your information as private as possible, confidentiality cannot be guaranteed. For confidential resources, please contact confidential community-based resources such as:

- Employee Assistance Program
- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

All of the above-listed individuals are not Provident employees and may maintain confidentiality

when acting under the scope of their licensure, professional ethics, and/or professional credentials.

Please also note: Making a report is different from filing a formal complaint. Filing a formal complaint initiates the formal disciplinary process at Provident. Once notice is given, the Title IX Coordinator will seek to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.

## 2. **Initial Inquiry**

Provident will conduct an initial inquiry to determine if the allegations, if true, would rise to the level of a violation of Provident's policy. The possible next steps include (1) a decision to close the matter when insufficient evidence exists to move forward or because the allegation, even if proven, would not violate Provident's policy; (2) informal resolution; or (3) formal resolution.

## 3. **Informal Resolution**

Informal resolution involves a mutual agreement by the parties to resolve the matter. Informal resolution may not be used when formal resolution is desired by a reporting party or where the Title IX Coordinator determines that Provident needs to proceed with an investigation.

Informal resolution may take place at any time prior to a decision being issued in a hearing or a respondent taking responsibility. The informal resolution process will be conducted by the Title IX Coordinator or a designee. Both the complainant and the respondent have the right to end the informal resolution process at any time. Any informal resolution must be acceptable to the complainant, the respondent and the Title IX Coordinator/designee.

If a resolution is reached, the complainant and respondent shall be notified in writing and the Title IX Coordinator/designee will confer with appropriate parties to memorialize the agreed upon resolution and any consequences for non-compliance in a memorandum. This memorandum will be included in the respondent's student record and maintained by the School. If no agreement is reached within a reasonable time, the Title IX Coordinator/designee shall proceed with the formal grievance process.

## 4. **Formal Grievance Process**

- Dismissal. If the formal grievance process is initiated, the Title IX Coordinator shall determine if the misconduct alleged falls within the scope of Title IX and will initiate a formal investigation. Otherwise, the Title IX Coordinator will dismiss the complaint.
  - Reasons for Mandatory Dismissal: Provident must dismiss a formal complaint or any allegations therein if, at any time during the investigation, it is determined that: (1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined

above, even if proved; and/or (2) The conduct did not occur in an educational program or activity controlled by Provident and/or Provident does not have control of the Respondent; and/or (3) The conduct did not occur against a person in the United States; and/or (4) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of Provident.

- Reasons for Discretionary Dismissal: Provident may dismiss a formal complaint or any allegations therein if, at any time during the investigation: (1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint in whole or in part; or (2) The Respondent is no longer enrolled in or employed by Provident; or (3) Specific circumstances prevent Provident from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
  - Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit Provident's authority to address a complaint with other school Code of Conduct processes and remedies.
  - Upon any dismissal, Provident will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.
- Appeal: The dismissal decision is appealable by any party under the appeal procedures below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.
- Counterclaims.
  - Provident permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.
  - Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

- Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator.
- When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.
- Right to an Advisor

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available. For students, this Advisor can be someone in addition to their parent/guardian who may also be present with them for all meetings, interviews, and hearings within the resolution process.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

For addition information, please see *Provident's Guidelines for Advisors*.

- Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged Title IX policy violations at any point during the process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process shall be paused, and the Title IX Coordinator shall determine whether Informal Resolution (outlined above) may be used. If so, the Title IX Coordinator will determine whether all parties and Provident are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator will implement the accepted finding that the Respondent is in violation of Provident's Title IX policy and will implement agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s) and Board, as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the formal process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions will be promptly implemented in order to effectively stop the sexual harassment or retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the Provident community.

- **Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (“NOIA”) to the Respondent upon commencement of the Formal Grievance Process. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

- The NOIA shall include:
  - A meaningful summary of all of allegations,
  - The identity of the involved parties (if known),
  - The precise misconduct being alleged,
  - The date and location of the alleged incident(s) (if known),
  - The specific policies implicated,
  - A description of the applicable procedures,
  - A statement of the potential sanctions/responsive actions that could result,
  - A statement that Provident presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
  - A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
  - A statement about Provident’s policy on retaliation,
  - Information about the privacy of the process,
  - Information on the ability of each party to have an Advisor of their choosing,
  - A statement informing the parties that Provident’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
  - Detail on how the party may request disability accommodations during the resolution process,
  - The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
  - An instruction to preserve any evidence that is directly related to the allegations.
  
- Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of any allegations.
  
- Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Provident records, or emailed to the parties’ Provident-issued email or designated accounts. Once mailed, emailed, and/or

received in-person, notice will be presumptively delivered.

- Resolution Timeline

Provident will make a good faith effort to complete the resolution process within thirty to sixty (30-60) business days, including appeal. This time frame can be extended as necessary by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

- Appointment of Investigator

Once the Title IX Coordinator decides to begin a formal investigation, the Title IX Coordinator will appoint an Investigator to conduct the investigation, usually within two (2) business days determining that an investigation should proceed.

### **5. Impartiality**

Any individual materially involved in the administration of the Title IX resolution process including the Title IX Coordinator, Investigator(s), and Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the CEO or designee.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Provident Schools presumes that the Respondent is not responsible for the reported misconduct unless and until a final determination is made that this Policy has been violated.

### **6. Referral to a Decision-maker**

If the complaint is not resolved through Informal Resolution, and after an investigation, completion of an investigation report, and the final investigation report is shared with the

parties, the Title IX Coordinator will refer the matter to a neutral qualified hearing examiner (“Decision Maker”) appointed by the Board of Trustees for the hearing process. A neutral decision maker must be a person who is free from all conflicts of interest or bias for or against complainant or respondent and must receive special training about how to be impartial and how to decide what evidence is relevant.

The hearing process shall have the same due process requirements as suspension or expulsion hearings pursuant to Pennsylvania law, regulations and School policy.

The Title IX Coordinator will select an appropriate Decision-maker depending on whether the Respondent is an employee or a student.

### **7. Emergency Removal**

Provident may remove a respondent from the school’s education 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 School may place the employee on administrative leave pending the investigation and Decision-maker determination regarding responsibility.

### **8. Adjudication and Standard of Proof**

The Decision-maker will make a determination whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used.

The Decision-maker cannot make a determination regarding responsibility prior to ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Decision-maker will then prepare a written proposed adjudication and deliver it to the Title IX Coordinator.

This proposed adjudication must be submitted to the Title IX Coordinator within two (2) business days after the Decision-maker held their final meeting with the parties/witnesses or concluded the paper evidence exchange/questioning process, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **9. Notice of Outcome**

Using the proposed adjudication, the Decision-maker will work in conjunction with the Title IX Coordinator as needed to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the proposed adjudication, rationale, and any applicable sanction(s) with

the Board of Trustees who will take action on the Notice of Outcome after the hearing. The Title IX Coordinator will then share the final Board-approved Notice of Outcome simultaneously with the parties and their Advisors within seven (7) business days of receiving the final Board approval.

Notification to the parties will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Provident records, or emailed to the parties' Provident-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by Provident from the receipt of the misconduct report to the proposed adjudication, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent Provident is permitted to share such information under state or federal law; any sanctions issued which Provident is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Provident's educational or employment program or activity, to the extent Provident is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include the relevant procedures and bases for any available appeal options.

## **10. Sanctions**

Factors to be considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual Harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this procedure are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

#### **a. Student Sanctions**

The following are the usual sanctions that may be imposed upon students singly or in combination:

- *Warning*
- *Required Counseling*
- Required substance abuse treatment program
- Exclusion from participating in extra-curricular activities or other school programs/activities
- Alternative placement
- *Suspension; In-school; out-of-school; long-term; short-term; extended, etc.*
- *Expulsion*
- *Other Actions:* In addition to or in place of the above sanctions, Provident may assign any other sanctions as deemed appropriate.

#### **b. Employee Sanctions/Responsive Actions**

Responsive actions for an employee who has engaged in harassment and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*

- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, Provident may assign any other responsive actions as deemed appropriate.

### **11. Withdrawal or Resignation While Charges Pending**

- *Students:* Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from Provident, the resolution process ends, as Provident no longer has disciplinary jurisdiction over the withdrawn student.

However, Provident will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation.

- *Employees:* Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as Provident no longer has disciplinary jurisdiction over the resigned employee.

However, Provident will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with Provident, and the records retained by the Title IX Coordinator will reflect that status. Any state mandates for reporting of this resignation with respect to licensure or certification will be met.

All Provident responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

### **12. Appeals**

**Any party may file a request for appeal (“Request for Appeal”) in writing to the Title IX Coordinator within seven (7) business days of the delivery of the Notice of Outcome.**

A single Appeal Decision-maker will Chair the appeal. No Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to

whether the request meets the grounds and is timely filed.

- **Grounds for Appeal**

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
  - 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; and
  - 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 specific Complainant or Respondent that affected the outcome of the matter.
- **Decision on Appeal:** The Appeal Chair will collect any additional information needed and all documentation regarding the appeal will render a decision in no more than seven (7) business days, barring unusual circumstances. All decisions apply the preponderance of the evidence standard. A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision and rationale on the appeal. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which Provident is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent Provident is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' Provident-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

- **Sanctions Status During the Appeal**

Any sanctions imposed by the Decision-maker take effect following the appeal process. Supportive measures may remain in effect during an appeal process, subject to the same supportive measure procedures above.

- **Appeal Considerations**
  - Appeal decisions defer to the original decision, making changes to the determination only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
  - Appeals are not intended to provide for a full reconsideration of the allegation(s) and evidence. In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
  - The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
  - Appeals granted based on new evidence should normally be remanded (returned) to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
  - Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). In rare cases where a procedural error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
  - The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
  - In cases in which the appeal results in reinstatement to Provident or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **13. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the school community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program

- Education to the individual and/or the community
- Permanent alteration of work arrangements for employees
- Provision of school safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by Provident to the Respondent to ensure no effective denial of educational access.

Provident will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair Provident's ability to provide these services.

**14. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from Provident.

**15. Disabilities Accommodations in the Resolution Process**

Provident is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to Provident's grievance process.

Anyone needing such accommodations or support should contact the Title IX Coordinator.

**16. Revision of these Procedures**

These procedures supersede any previous procedures addressing harassment, sexual misconduct and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. Provident reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the school website, with the appropriate effective date identified) upon determining that changes to law or regulation require procedural alterations not reflected in these procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

These procedures are effective August, 2020.