

**THE 2020 ATIXA INTERIM SEXUAL HARASSMENT MODEL POLICIES AND PROCEDURES**

**FOR K-12 SCHOOLS AND DISTRICTS**

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**FOR K-12 SCHOOLS AND DISTRICTS**

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**POLICY: Sexual Harassment, Including Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Retaliation**

**1. Glossary**

- *Advisor* means a person chosen by Guadalupe School to accompany the party to meetings, interviews, or hearings related to the resolution process and to advise the party on that process.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute sexual harassment based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted by a Complainant or their parent/guardian or signed by the Title IX Coordinator alleging sexual harassment or retaliation under this Policy and requesting that the school investigate the allegation.
- *Confidential Resource* means a non-school employee who is not a Mandated Reporter of notice of harassment and/or retaliation.
- *Day* means a school day when Guadalupe is in normal operation.
- *Education program or activity* means locations, events, or circumstances where Guadalupe exercises substantial control over both the Respondent and the context in which the sexual harassment occurs.
- *Final Determination*: A conclusion by the standard of proof that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Grievance Process* means the method of formal resolution designated by the school to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- *Grievance Process Pool* includes any investigators, Decision-makers, hearing officers, appeal Decision-makers, and/or Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).

- *Decision-maker or Panel* refers to those who have decision-making and sanctioning authority within Guadalupe’s Formal Grievance process.
- *Investigator* means the person or persons assigned by Guadalupe to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of Guadalupe who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator and/or their supervisor.<sup>1</sup>
- *Notice* means that an employee, student, parent/guardian, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means any school employee.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Guadalupe* means a K-12 education program that receives federal funding.
- *Remedies* are applied following a Resolution to the Complainant and/or the community to address safety, prevent recurrence, and restore access to the school’s educational program.
- *Respondent* means an individual who has been reported as having engaged in conduct that could constitute sexual harassment or retaliation under this Policy.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by Guadalupe on a Respondent who is found to have violated this policy.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence. [See Section 16.](#) for greater detail.

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<sup>1</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

- *Title IX Coordinator* is the official(s) designated by Guadalupe to ensure compliance with Title IX and Guadalupe’s Title IX program. References to the Title IX Coordinator throughout this policy may also include a designee of the Title IX Coordinator for specific tasks.
- *Title IX Team* refers to the Title IX Coordinator, investigator, decision maker, and any member of the Grievance Process Pool.

## **2. Rationale for Policy**

Guadalupe is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Guadalupe has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual harassment or retaliation. Guadalupe values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

## **3. Applicable Scope**

The core purpose of this policy is to prohibit sexual harassment and retaliation. When an alleged violation of this policy is reported, the allegations are subject to resolution using the process as detailed below.

When the Respondent is a member of Guadalupe community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Guadalupe community. This community includes, but is not limited to, students,<sup>2</sup> student organizations, teachers, administrators, staff, and third parties (such as parents/guardians, guests, visitors, volunteers, invitees, contractors, and consultants).

The procedures below may be applied to incidents, to patterns, and/or to the school climate, all of which may be addressed and investigated in accordance with this policy.

## **4. Title IX Coordinator**

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<sup>2</sup> For the purpose of this policy, Guadalupe defines “student” as any individual who is registered for or enrolled in a school program or any individual who has accepted an offer of admission, and who maintains an ongoing relationship with Guadalupe.

The Charter Business Manager serves as the Title IX Coordinator and oversees implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating Guadalupe's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment and retaliation prohibited under this policy.

**5. Independence and Conflict-of-Interest**

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures.

The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case or biased for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Executive Director. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct committed by the Title IX Coordinator should be reported to the Executive Director or designee. Reports of misconduct committed by any other Title IX Team member should be reported to the Title IX Coordinator.

**6. Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Title IX Coordinator/Administrator  
Business Office  
1385 N. 1200 West, Salt Lake City, UT 84116  
(385) 424-1058

Executive Director  
Business Office  
1385 N. 1200 West, Salt Lake City, Utah 84116  
(385) 424-1059

Title IX Investigator  
Business Office

1385 N. 1200 West, Salt Lake City, UT 84116  
801-531-6100

In addition to the Title IX Team members listed above, the officials listed below may also accept notice or complaints on behalf of Guadalupe. List all such officials here: Employee's supervisor

Guadalupe has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing sexual harassment and/or retaliation.

The section below on Mandated Reporting details the responsibilities and duties that all Guadalupe employees have as Mandated Reporters under Title IX.

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

May also add contact information for any other applicable federal or state agency (e.g. DOJ)<sup>3</sup>

For complaints involving employees: [Equal Employment Opportunity Commission](http://www.eeoc.gov) (EEOC)<sup>4</sup>

## **7. Notice/Complaints of Sexual Harassment and/or Retaliation**

Notice or complaints of sexual harassment and/or retaliation may be made using any of the following options:

- 1) File a complaint with, or give verbal notice to, the Title IX Coordinator or Investigator:

Title IX Coordinator/Administrator

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<sup>3</sup> Consult grant terms and program participation agreements for specific disclosures required.

<sup>4</sup> EEOC has jurisdiction over Title IX employment claims. Please consult: <http://www.eeoc.gov/field/index.cfm> to locate your local office's contact info.

Business Office  
1385 N. 1200 West, Salt Lake City, UT 84116  
(385) 424-1058

Title IX Investigator  
Business Office  
1385 N. 1200 West, Salt Lake City, UT 84116  
801-531-6100

A report may be made at any time (including during non-school hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.

2) Complete the form in Appendix A and submit to the Title IX Coordinator.

3) Report online, using the reporting form posted at [\[https://publicportal.eeoc.gov/Portal/Login.aspx\]](https://publicportal.eeoc.gov/Portal/Login.aspx). Reports may be made anonymously but may result in a need to investigate. Guadalupe tries to provide supportive measures to all Complainants, which is often not possible with an anonymous report. Know that reporting carries no obligation to file a Formal Complaint, which would trigger a formal response. Guadalupe respects requests from Complainants to dismiss complaints unless there is a compelling threat to health and/or safety, criminal activity, child abuse, and/or the Respondent is an employee.

A Formal Complaint means a document submitted or signed by the Complainant or their parent/guardian or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that Guadalupe investigate the allegation(s). The school's formal complaint form can be accessed at <https://guadschool.org/title-ix/>.

A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information above, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by Guadalupe) that contains the Complainant's, or their parent/guardian's, physical or digital signature, or otherwise indicates that the Complainant, or their parent/guardian, is the person filing the complaint, and requests that Guadalupe investigate the allegations.

If a complaint is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant, and/or their parent/guardian, to ensure that it is filed correctly.



## **8. Supportive Measures**

Guadalupe will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties. Supportive measures are designed to restore or preserve access to Guadalupe's education program or activity, including measures designed to protect the safety of all parties or Guadalupe's educational environment, and/or deter sexual harassment and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Guadalupe will inform the Complainant, in writing, that they may file a formal complaint with Guadalupe either at that time or in the future, if they have not done so already.

A member of the Title IX Team works with the Complainant and/or their parent/guardian, if a minor to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

Guadalupe will maintain the privacy of the supportive measures so long as the privacy does not impair Guadalupe's ability to provide the supportive measures. Guadalupe will reduce the academic/occupational impact on the parties as much as possible. Guadalupe will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Education to the school community or community subgroup(s)
- Altering work arrangements for employees
- Safety planning
- Providing school safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Class schedule modifications, withdrawals, or leaves of absence

- Increased security and monitoring of certain areas of the school
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

### **9. Emergency Removal**

Guadalupe can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

This risk analysis is performed by the Title IX Coordinator in conjunction with the Title IX Team, Executive Director, Program Director and/or the School Counselor using its standard objective violence risk assessment procedures. In cases when an emergency removal involves a student with a disability who is receiving services under an Individualized Education Program (IEP), this risk analysis will also be performed in conjunction with the student's IEP Team and may present the need for a manifestation determination.

In all cases in which an emergency removal is imposed, the student and parent/guardian will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to demonstrate why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. A student Respondent may be accompanied by an Advisor of their choice during the meeting. The student Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

When this meeting is not requested within (5) five days, objections to the emergency removal will be deemed waived, except as below.

In cases when an emergency removal involves a student with a disability who is receiving services under an IEP, this meeting can serve as the student's manifestation determination hearing and will be conducted in accordance with the requirements of the Individuals with Disabilities Education Act (IDEA). The student will not have to request such a meeting as it will be scheduled and held within ten (10) days of the decision to implement the emergency removal. If it is determined that an

emergency removal is necessary for more than ten (10) school days, that would constitute a change in placement and would be addressed in accordance with the requirements of the IDEA.

This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.<sup>5</sup>

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

Guadalupe will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Team, these actions could include, but are not limited to: temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, changing transportation arrangements, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student organizational leadership, or athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the Respondent is an employee, existing provisions for interim action are applicable.

## **10. Promptness**

All allegations, whether by notice or formal complaint, are acted upon promptly. Complaints can take 30-60 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but Guadalupe will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in Guadalupe procedures will be delayed, Guadalupe will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## **11. Privacy**

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<sup>5</sup> The results of the manifestation determination can be appealed in accordance with the requirements under the IDEA.

Every effort is made by Guadalupe to preserve the privacy of reports.<sup>6</sup> Guadalupe will not share the identity of any individual who has made a report or complaint of harassment or retaliation, any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

Guadalupe reserves the right to determine which Guadalupe officials have a legitimate educational interest in information about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

## **12. Jurisdiction of Guadalupe**

This policy applies to the education program and activities of Guadalupe, to conduct that takes place within school or on property owned or controlled by Guadalupe, or at Guadalupe-sponsored events. The Respondent must be a member of Guadalupe's community in order for its policies to apply.

This policy can also be applicable to the effects of out-of-school misconduct that effectively deprive someone of access to Guadalupe's educational program. Guadalupe may also extend jurisdiction to out-of-school and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial Guadalupe interest.

Regardless of where the conduct occurred, Guadalupe will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on school or in an out-of-school sponsored program or activity. A substantial Guadalupe interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;

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<sup>6</sup> **Privacy** means that information related to a complaint will only be shared with the parties, their advisors, and a limited number of Guadalupe employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the Recipient's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the Recipient's Student Records Policy. The privacy of employee records will be protected in accordance with Human Resources policies.

- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that materially and substantially interferes with the requirements of appropriate discipline in the operation of the school; and/or
- d. Any situation that is detrimental to the educational interests or mission of Guadalupe.

If the Respondent is unknown or is not a member of the Guadalupe community, the Title IX Coordinator will assist the Complainant in identifying appropriate school and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of Guadalupe's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Team.

In addition, Guadalupe may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Guadalupe property and/or events.

All vendors serving Guadalupe through third-party contracts are subject to the policies and procedures of their employers and to these policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another school, or institution of higher education, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that school or institution, as it may be possible to allege violations through that school or institution's policies.

### **13. Time Limits on Reporting**

There is no time limit on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to Guadalupe's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, Guadalupe will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.<sup>7</sup>

#### **14. Online Sexual Harassment and/or Retaliation**

The policies of Guadalupe are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on Guadalupe's education program and activities or use Guadalupe networks, technology, or equipment.

Although Guadalupe may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to Guadalupe, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of Guadalupe community.

Public Recipients: Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of Guadalupe's control (e.g., not on Guadalupe networks, websites, or between Guadalupe email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Out-of-school harassing speech by employees, whether online or in person, may be regulated by Guadalupe typically only when such speech is made in an employee's official or work-related capacity.

#### **15. Policy on Nondiscrimination**

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<sup>7</sup> There is an argument to be made to apply current policy definitions to past misconduct, but such an approach would have to be consented to by the parties and/or carefully vetted with legal counsel.

Guadalupe prohibits discrimination or harassment of any kind on the basis of race, color, age, sexual orientation, gender identification, pregnancy, religion, disability, national origin, ethnic background, genetic status, military service, and/or citizenship, or any other classification protected by applicable local, state or federal law. Guadalupe will not tolerate discrimination or harassment of any sort, and as described below, will take prompt disciplinary action against those responsible for the discrimination/harassment. No employee is expected to tolerate any conduct prohibited by this policy while at work or while engaged in Guadalupe business or Guadalupe-sponsored events.

**16. Definition of Sexual Harassment**

The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Utah regard Sexual Harassment as an unlawful discriminatory practice.

Guadalupe has adopted the following definition of Sexual Harassment in order to address the unique environment of an educational setting.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or that is sexual that satisfies one or more of the following:

- 1) Quid Pro Quo:
  - a. an employee of the school,
  - b. conditions<sup>8</sup> the provision of an aid, benefit, or service of the school,
  - c. on an individual’s participation in unwelcome sexual conduct.
  
- 2) Sexual Harassment:
  - a. unwelcome conduct,
  - b. determined by a reasonable person,
  - c. to be so severe, and
  - d. pervasive, and,
  - e. objectively offensive,
  - f. that it effectively denies a person equal access to the school’s education

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<sup>8</sup> Implicitly or explicitly.

program or activity.<sup>9</sup>

3) Sexual assault, defined as:

- Sex Offenses, Forcible:
- Any sexual act<sup>10</sup> directed against another person<sup>11</sup>,

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<sup>9</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

<sup>10</sup> Sexual acts include:

Forcible Rape:

- 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 Complainant.

Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person’s will (non-consensually), or
- not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age<sup>#</sup> or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person’s will (non-consensually),
- or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person’s will (non-consensually),
- or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>11</sup> This would include having another person touch you sexually, forcibly, or without their consent.



- o without the consent of the Complainant,
  - o including instances in which the Complainant is incapable of giving consent.<sup>12</sup>
- b) Sex Offenses, Non-forcible:
- o Incest:
    - 1) Non-forcible sexual intercourse,
    - 2) between persons who are related to each other,
    - 3) within the degrees wherein marriage is prohibited by Utah State law.
  - o Statutory Rape:
    - 1) Non-forcible sexual intercourse,
    - 2) with a person who is under the statutory age of consent of Utah.
- 4) Dating Violence, defined as:
- a. violence,
  - b. on the basis of sex,
  - c. committed by a person,
  - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
    - i. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
    - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - iii. Dating violence does not include acts covered under the definition of domestic violence.
- 5) Domestic Violence, defined as:
- a. violence,
  - b. on the basis of sex,
  - c. committed by a current or former spouse or intimate partner of the Complainant,
  - d. by a person with whom the Complainant shares a child in common, or

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<sup>12</sup> This definition set is not taken from SRS/NIBRS verbatim. ATIXA has substituted Complainant for “victim,” has removed references to his/her throughout, has defined “private body parts,” has removed the confusing and unnecessary term “unlawfully,” and has inserted language clarifying that the Recipient interprets “against the person’s will” to mean “non-consensually.” These are liberties ATIXA thinks are important to take with respect to the federal definitions, but users should consult legal counsel before adopting them.

- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the State of Utah, or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the State of Utah.

\*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6) Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

See [Appendix D](#) for a Guadalupe Unethical Relationship policy

Guadalupe reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

**c. Force, Coercion, Consent, and Incapacitation**

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome

resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Consent is:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should stop within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) does not imply there is consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Guadalupe to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

## **17. Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Guadalupe will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Guadalupe and any member of Guadalupe's community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or

because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Filing a complaint under another school policy could be considered retaliatory if those charges could be applicable under this policy, when the charges are made for the purpose of interfering with or circumventing any right or privilege provided under this policy that is not provided under the other school policy that was used. Therefore, Guadalupe vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.

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 grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

### **18. Mandated Reporting**

All Guadalupe employees (teachers, staff, administrators) are expected to report actual or suspected sexual harassment or retaliation to appropriate officials immediately. This includes employees who might otherwise be considered confidential resources.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting school resources. In school, some resources may maintain confidentiality and are not required to report actual or suspected sexual harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or school official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at Guadalupe for a Complainant or third-party (including parents/guardians when appropriate):

#### **a. Confidential Resources**

Because all Guadalupe employees are required to report actual or suspected sexual harassment or retaliation, any such information a Complainant shares with any Guadalupe employee cannot remain confidential.

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with a non-Guadalupe employee. Following are some confidential community-based resources:

- 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 Guadalupe employees and may maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/individual with a disability, or when required to disclose by law or court order.

#### **b. Mandated Reporters and Formal Notice/Complaints**

All employees of Guadalupe are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Failure of a Mandated Reporter to report an incident of sexual harassment or retaliation of which they become aware is a violation of Guadalupe policy and can be subject to disciplinary action.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though Guadalupe is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

**19. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the school and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether Guadalupe proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator’s decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires Guadalupe to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Guadalupe may be compelled to act on alleged employee misconduct irrespective of a Complainant’s wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and Guadalupe’s ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to have experienced conduct that could constitute a violation of this policy.

When Guadalupe proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor or the student’s parent/guardian may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony except in situations where a Complainant is unable to provide evidence or testimony without assistance (e.g. due to age, disability, etc.).

Note that Guadalupe's ability to remedy and respond to notice may be limited if the Complainant does not want Guadalupe to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing Guadalupe's obligation to protect its community.

In cases in which the Complainant requests no formal action and the circumstances allow Guadalupe to honor that request, Guadalupe will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by Guadalupe, and to have the incident investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## **20. Emergency Notifications**

Guadalupe may issue emergency notifications for incidents that are reported and pose a serious or continuing threat of bodily harm or danger to members of the school community.

Guadalupe will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

These notifications may be issued school-wide or may be limited to those members of the community who are potentially impacted. The Title IX Coordinator will work in conjunction with the appropriate school officials in determining the scope and content of the notification that may be issued.

## **21. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under Guadalupe's policy.

## **22. Amnesty for Complainants and Witnesses**



Guadalupe community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Guadalupe officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of Guadalupe community that Complainants choose to report misconduct to Guadalupe officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Guadalupe maintains a policy of offering parties and witnesses amnesty from minor policy violations related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

In determining whether to offer amnesty, the Title IX Coordinator will consider factors such as: the nature and severity of the policy violation; the age of the individual; the impact on the health and safety of the individual and the school community; and the best interests of the school community.

**Students:** Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to seek assistance.

Guadalupe maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, Guadalupe may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

**Employees:**<sup>13</sup> Sometimes, employees are hesitant to report sexual harassment or retaliation they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to Guadalupe officials.

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<sup>13</sup> This section is optional as most traditional policies only offer amnesty to students. If a Recipient decides not to include this section, the “student” section can simply be merged into the amnesty section.

Guadalupe may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

## **INTERIM RESOLUTION PROCESS<sup>14</sup> FOR ALLEGED VIOLATIONS OF THE POLICY ON SEXUAL HARASSMENT**

### **1. Overview**

Guadalupe will act on any formal or informal notice/complaint of violation of the Policy that is received by the Title IX Coordinator<sup>15</sup> or any other employee by applying these procedures.

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) 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.

Unionized/other categorized employees are subject to the terms of their agreements/employees' rights to the extent those agreements do not conflict with federal or state compliance obligations.

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 the Policy will be addressed through procedures described in the student and employee handbooks.

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<sup>14</sup> For Recipients with Formal Grievance Processes enabling students and/or employees to challenge Recipient action, it is recommended that allegations under this policy be exempted from that process and replaced with the resolution process outlined here. Most existing grievance proceedings are neither equitable (by definition), nor are they sufficiently prompt to satisfy Title IX.

<sup>15</sup> Anywhere this procedure indicates "Title IX Coordinator," Guadalupe may substitute a trained designee.

## **2. Notice/Complaint**

Upon receiving a complaint or notice, the Title IX Coordinator<sup>16</sup> initiates a prompt initial assessment. The Title IX Coordinator will initiate at least one of three responses:

- 1) Offering and/or implementing supportive measures only because the Complainant<sup>17</sup> does not want to file a formal complaint;
- 2) An informal resolution (upon submission of a formal complaint); and/or
- 3) A Formal Grievance Process including an investigation and a determination of whether policy was violated (upon submission of a formal complaint).

Guadalupe uses the Formal Grievance Process to determine whether or not the Policy has been violated. If so, Guadalupe will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, or their effects.

## **3. Initial Assessment**

The Title IX Coordinator's initial assessment typically occurs within one to three business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If not, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.

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<sup>16</sup> If circumstances require, the Superintendent or Title IX Coordinator will designate another person to oversee the resolution process should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

<sup>17</sup> References to the Complainant, Respondent, or to the parties collectively throughout these procedures may also include their parent(s)/guardian(s) when applicable or as mandated by Guadalupe policy, state, and/or federal law.

- If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
- If an informal resolution option is preferred, the Title IX Team assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available and may seek to determine if the Respondent is also willing to engage in informal resolution.
- If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
  - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
    - an incident, and/or
    - a pattern of alleged misconduct, and/or
    - a culture/climate concern, based on the nature of the complaint.
  - If it does not, the Title IX Team determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit Guadalupe’s authority to address a complaint with an appropriate process and remedies.

#### **a. Violence Risk Assessment**

The Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Title IX Team as part of the initial assessment. A VRA can aid in critical and/or required determinations, including:

- Emergency removal of a student Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation should focus on the incident alone and/or assess pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, ;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Timely Warning/Trespass order/Persona-non-grata is needed.

Threat assessment evaluates the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct/discipline officers, or other Title IX team members.

A VRA authorized by the Title IX Coordinator should occur in collaboration with the Title IX team. In cases where the Respondent is a student with a disability who is receiving services under an Individualized Educational Plan (IEP), a VRA should also occur in collaboration with the student's IEP Team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

More about Guadalupe's process for VRA can be found below in [Appendix E](#).

**b. Dismissal (Mandatory and Discretionary)<sup>18</sup>**

Guadalupe must dismiss a formal complaint or any allegations therein if, at any time during the investigation or meeting with the Decision-maker, 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 Guadalupe and/or Guadalupe does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or

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<sup>18</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

- 4) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in an education program or activity of Guadalupe.<sup>19</sup>

Guadalupe may dismiss a formal complaint or any allegations therein if, at any time during the investigation or meeting with the Decision-maker:

- 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 Guadalupe; or
- 3) Specific circumstances prevent Guadalupe from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, Guadalupe will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This 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.

#### **4. Counterclaims**

Guadalupe is obligated to ensure that the grievance process is not abused for retaliatory purposes. Guadalupe 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.

#### **5. Right to an Advisor**

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<sup>19</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

The parties may each have an Advisor<sup>20</sup> of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>21</sup> 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).

**a. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the Guadalupe community.

Parties also have the right to choose not to have an Advisor during the resolution process.

**b. Advisor’s Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings, interviews, and hearings at which the party is entitled to be present, including intake and investigation interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Guadalupe cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, Guadalupe is not obligated to provide an attorney.

Where applicable under state law or Guadalupe policy, Advisors or attorneys are permitted to fully represent their advisees or clients in resolution proceedings, including all meetings, interviews, and hearings. Although Guadalupe prefers to hear from parties directly, in these cases, parties are

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<sup>20</sup> This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally), but some Recipients do permit more than one. If the Recipient allows more than one Advisor for one party, they should do so for all parties.

<sup>21</sup> “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.



entitled to have evidence provided by their chosen representatives.<sup>22</sup>

**c. Pre-Interview Meetings**

Advisors may request to meet with the administrative officials conducting interviews/meetings/hearings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Guadalupe’s policies and procedures.

**d. Advisor Violations of Guadalupe Policy**

All Advisors are subject to the same Guadalupe policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings or meetings. Advisors should not address Guadalupe officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee<sup>23</sup> during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s).

The parties are expected to ask and respond to questions on their own behalf throughout the resolution process. In cases where a party requires assistance in asking and/or responding to questions on their own behalf (e.g. due to age or disability), the Advisor will be allowed to ask and/or respond to questions on behalf of their advisee, at the discretion of the Investigator(s) or Decision-maker(s). Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor’s non-compliance and future role.

**e. Sharing Information with the Advisor**

Guadalupe expects that the parties may wish to have Guadalupe share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly

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<sup>22</sup> Recipients should be mindful that this may be applicable for suspension/expulsion hearings that may result from Title IX complaints resolved under these procedures.

<sup>23</sup> Subject to the state law provisions or Guadalupe’s policy above.

with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

Guadalupe also provides a consent form that authorizes Guadalupe to share such information directly with their Advisor. The parties must submit this completed form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before Guadalupe is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, Guadalupe will comply with that request at the discretion of the Title IX Team.

**f. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Guadalupe. Guadalupe may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by Guadalupe's privacy expectations.

**g. Expectations of an Advisor**

Guadalupe generally expects an Advisor to adjust their schedule to ensure attendance at Guadalupe meetings when planned but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

Guadalupe may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

**h. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) and Decision-maker(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators and Decision-makers (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured.

**i. Assistance in Securing an Advisor**

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

## **6. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Guadalupe policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. Guadalupe encourages parties to discuss any sharing of information with their Advisors before doing so.

### **a. Informal Resolution**

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- When the parties agree to resolve the matter through an alternate resolution mechanism as described below, usually before a formal investigation takes place; see discussion in b., below.
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation); see discussion in c., below.

To initiate Informal Resolution, a Complainant must submit a formal complaint, as described above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, Guadalupe will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by Guadalupe.

Guadalupe will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

Informal resolution will not be used to resolve allegations of complaints where the Complainant is a student and the Respondent is an employee.

#### **b. Alternate Resolution Mechanism**

Alternate Resolution is an informal mechanism by which the parties mutually agree to resolve an allegation. All parties must consent to the use of an Alternate Resolution mechanism.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' preference for Alternate Resolution;
- Likelihood of potential resolution, considering any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of allegation;
- Complaint complexity;
- Capacity of parties to understand the process and fully participate in the process;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

#### **c. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above. If so, the Title IX Coordinator will determine whether all parties and Guadalupe are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of Guadalupe policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), 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 Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are 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 community.

#### **d. Negotiated Resolution**

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and Guadalupe. Negotiated Resolutions are not appealable.

### **7. Grievance Process Pool**

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees.

The list of Pool members and a description of the Pool can be found at <https://guadschool.org/title-ix/>.

#### **a. Pool Member Roles**

Members of the Pool are trained annually, and can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternate Resolution if

appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices)

- To perform or assist with initial assessment
- To investigate complaints
- To serve as a meeting/hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

#### **b. Pool Member Appointment**

The Title IX Coordinator, in consultation with the Superintendent, identifies individuals who will serve in the Pool,<sup>24</sup> which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, Guadalupe can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

#### **c. Pool Member Training**

The Pool members receive annual training. This training may include, but is not limited to:

- The scope of Guadalupe's Sexual Harassment Policy and Procedures
- How to conduct investigations, meetings, and hearings in a manner that protects the safety of Complainants and Respondents, and promotes accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity

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<sup>24</sup> This does not preclude Guadalupe from having all members of the Pool go through an application and/or interview/selection process.

- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by Guadalupe with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including meetings, hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used during an interview, meeting, or hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and/or retaliation allegations
- Recordkeeping

Specific training is also provided for Appeal Decision-makers, intake personnel. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: <https://guadschool.org/title-ix/>.

#### **d. Pool Membership**

The Pool may include:

- 3 or more members of the Academic administration staff
- 3 or more members of the staff
- 1 or more representatives from School Safety
- 2 representatives from Human Resources

### **8. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. 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 will 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 Guadalupe 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 Guadalupe's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that Guadalupe'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 Guadalupe records, or emailed to the parties' Guadalupe-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **9. Resolution Timeline**

Guadalupe 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.

## **10. Appointment of Investigators**



Once the Title IX Coordinator decides to begin a formal investigation, the Title IX Coordinator appoints Pool members to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

### **11. Ensuring Impartiality**

Any individual materially involved in the administration of the 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 Pool member 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 Title IX Investigator.

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.

Guadalupe 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.

### **12. Investigation Timeline**

Investigations are completed promptly, normally within thirty (30) business days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Guadalupe will make a good faith effort to complete investigations as promptly as possible and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### **13. Delays in the Investigation Process and Interactions with Law Enforcement**

Guadalupe may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to a request from law

enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

Guadalupe will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. Guadalupe will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Guadalupe will implement supportive measures as deemed appropriate.

Guadalupe action(s) or processes may be delayed, but are not stopped by, civil or criminal charges involving the underlying incident(s). Dismissal or reduction of those criminal charges may or may not impact on Guadalupe's action(s) or processes.

#### **14. Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with school partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - Notice should inform the parties of their right to have the assistance of an Advisor of their choosing present for all meetings attended by the party

- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the investigation report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (when Advisors are identified) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which Guadalupe does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made following the review and comment period
- The Investigator(s) shares the report with the Title IX Coordinator and/or legal counsel for their review and feedback.

- The Investigator will incorporate any relevant feedback, and the final investigation report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a meeting with the Decision-maker. The parties are also provided with a file of any directly related evidence that was not included in the report

### **15. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of Guadalupe are expected to cooperate with and participate in Guadalupe's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline. Student witnesses and witnesses from outside the school community are encouraged to share what they know about the complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. Guadalupe will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

### **16. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to<sup>25</sup> audio and/or video recording.

### **17. Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

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<sup>25</sup> Consent of the interviewer and interviewee is required in "dual-party recording" states.

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

If the complaint is not resolved through Informal Resolution, and after the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter to a Decision-maker to make a determination regarding responsibility.

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 Title IX Coordinator will select an appropriate Decision-maker(s) from the Pool depending on whether the Respondent is an employee or a student.

## **19. Decision-maker Designation**

Guadalupe will designate one or more Decision-makers from the Pool, at the discretion of the Title IX Coordinator, and inform the parties/advisors.

The Decision-maker(s) will not have had any previous involvement with the investigation. Those who have served as Investigators in this investigation may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter. The Title IX Coordinator may not serve as a Decision-maker in the matter.

All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator no later than two (2) business days after being notified of the identity of the Decision-maker. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial consideration of the evidence.

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

## **20. Evidentiary Consideration By the Decision-Maker**

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The Decision-maker will not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about

the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared with the Decision-maker until then.

The parties may each submit a written impact statement for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

The Decision-maker determines based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged. OR clear and convincing evidence; whether there is a high probability that the Respondent violated the Policy as alleged.

**21. Exchange of Questions (If the Meeting in Section 22 below is not held/required)**

The Decision-maker will facilitate the exchange of written questions between the parties and direct any written questions to any witnesses before a final determination is made.

The Decision-maker will invite each party to submit proposed written questions for other parties/witnesses. Upon receipt of the proposed questions, the Decision-maker will review the proposed questions and determine which questions will be permitted, disallowed, or rephrased. The Decision-maker will limit or disallow questions on the basis that they are irrelevant, repetitive (and thus irrelevant), or abusive. The Decision-maker has full authority to decide all issues related to questioning and determinations of relevance. The Decision-maker may ask a party to explain why a question is or is not relevant from their perspective. The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the parties and witnesses with the relevant written questions to be answered and allow for a period of time whereby the parties and witnesses are to submit written responses to the questions and any appropriate follow-up questions or comments by the parties. The exchange of questions and responses by the parties and witnesses will be concluded within a 5 business day period.

## **22. Notice of Decision-Making**<sup>26</sup>

The Decision-maker may choose to meet with each party individually and any witnesses, as needed, prior to making a determination of responsibility, or to meet with the parties jointly.<sup>27</sup>

No less than ten (10) business days prior to any meeting or the decision-making phase of the process, the Title IX Coordinator or the Decision-maker will send notice to each party. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of any meeting.
- Any technology that will be used to facilitate the meeting.
- The name and contact information of the Decision-maker, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the meeting.
- Information on whether the meeting will be recorded and, if so, information on access to the recording for the parties after the meeting.
- A statement that if any party does not appear at the scheduled meeting, the meeting will only be rescheduled for compelling reasons.
- Notification that the parties may have the assistance of an Advisor of their choosing at the meeting.
- A copy of all the materials provided to the Decision-maker(s) about the matter.<sup>28</sup>
- An invitation for the parties to review and submit a written response to the final investigation report within 5 business days of the date of the notice.

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<sup>26</sup> This step is intended to allow schools/districts to satisfy the Goss hearing requirement for suspensions/expulsions exceeding 10 days. These procedures may need to be modified to accommodate the requirements of state law or board policy. If a Recipient intends to use existing hearing procedures, those may need to be modified to satisfy the regulatory requirements of Title IX.

<sup>27</sup> In determining whether to incorporate an in-person meeting at this point, schools should consider whether a meeting at this step can substitute for a meeting/hearing that may subsequently be required in your process in accordance with school policy and/or state law (e.g. if suspension or expulsion longer than 10 days is recommended as a sanction). This will help to streamline the resolution process and timeline for those cases.

<sup>28</sup> This includes all pertinent documentary evidence and the final investigation report. The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

- An invitation to each party to submit to the Decision-maker any written, relevant questions they want the Decision-maker to ask of any other party or witness within 5 business days of the date of the notice.
- An invitation to each party to submit to the Decision-maker an impact statement pre-meeting that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at any meeting or in the decision-making process, at least 5 business days prior to the meeting/final determination.
- Whether parties can/cannot bring mobile phones/devices into the meeting.

Meetings for possible violations that occur near or after the end of a school year (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of the school year will typically be held as soon as possible given the availability of the parties, but no later than immediately upon the start of the following school year. Guadalupe will implement appropriate supportive measures intended to correct and remediate any hostile environment while the resolution is delayed.

### **23. Decision-Maker Meeting Procedures**

Participants at a meeting may include the Decision-maker, the Investigator(s) who conducted the investigation, the party/witness, the party's advisor, the Title IX Coordinator the parent/guardian, and anyone providing authorized accommodations or assistive services.

At a meeting, the Decision-maker has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Policy.

Any witness scheduled to meet with the Decision-maker must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Decision-maker assent to the witness's participation.

If the parties and Decision-maker do not assent to the admission of evidence newly offered at the meeting, the Decision-maker may delay the meeting and instruct that the investigation needs to be re-opened to consider that evidence.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the meeting, the Decision-maker may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the



meeting, the Decision-maker should not permit irrelevant questions that probe for bias.

#### **24. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will then deliberate to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence OR clear and convincing evidence standard of proof is used.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) may review the statements and any pertinent conduct history provided by appropriate administrator and will recommend/determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

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

This statement 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.

#### **25. Notice of Outcome**

Using the deliberation statement, 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 final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within 5 business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. 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 Guadalupe records, or emailed to the parties' Guadalupe-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 Guadalupe from the receipt of the misconduct report to the determination, 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 Guadalupe is permitted to share such information under state or federal law; any sanctions issued which Guadalupe is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Guadalupe's educational or employment program or activity, to the extent Guadalupe 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.

## **26. Statement of the Rights of the Parties (see Appendix C)**

### **27. Sanctions**

Factors 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 policy 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, Guadalupe 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*
- *Delay of tenure track progress*
- *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, Guadalupe may assign any other responsive actions as deemed appropriate.

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

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 Guadalupe, the resolution process ends, as Guadalupe no longer has disciplinary jurisdiction over the withdrawn student.

However, Guadalupe 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.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to Guadalupe unless and until all sanctions have been satisfied.

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

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

## **29. Appeals**

Any party may file a request for appeal (“Request for Appeal”) in writing to the Title IX Coordinator within 5 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 Chair 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.

**a. Grounds for Appeal**

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 5 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in 5 business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses, and the Chair will render a decision in no more than 5 business days, barring unusual circumstances.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. 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 Guadalupe is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent Guadalupe 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' Guadalupe-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

#### **b. 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.

#### **c. 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.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the determination and/or sanction(s).
- 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 Guadalupe 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.

### **30. 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 Guadalupe to the Respondent to ensure no effective denial of educational access.

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

### **31. 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/Panel).

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 Guadalupe.

### **32. Recordkeeping**

Guadalupe will maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to Guadalupe's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. Guadalupe will make these training materials publicly available on Guadalupe's website.; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to Guadalupe's education program or activity; and
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Guadalupe will also maintain any and all records in accordance with state and federal laws.

### **33. Disabilities Accommodations in the Resolution Process**

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

Anyone needing such accommodations or support should contact the Appropriate HR individual if employee, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.



### **34. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. Guadalupe 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 policy or procedural alterations not reflected in this Policy and 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.

This Policy and procedures are effective August 14, 2020.

## **APPENDIX A: POLICY EXAMPLES**

Some examples of possible sexual harassment include:<sup>29</sup>

- A teacher offers for a student to have sex with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually-oriented jokes and pictures around school via social media to hundreds of other students. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender in school, eventually asking to be moved from a class they had together.
- A teacher engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The teacher inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah in school.

### Examples of Stalking

- Students A and B were "friends with benefits." Student A wanted a more serious relationship, which caused student B to break it off. Student A could not let go, and pursued student B relentlessly. Student B obtained a school no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if they had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.
- A graduate student working as student-teacher received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate

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<sup>29</sup> ATIXA recommends incorporation of examples into policy as an educational and preventive tool. Some schools may prefer to break these out into separate documents or resources.

student thanked the student and stated that it was not necessary and would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the student-teacher's car, both in-school and at home. Asked again to stop, the student stated by email, "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything to make you have the feelings for me that I have for you." When the student-teacher did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. If I can't have you, no one will."

#### Examples of Sexual Assault:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come to his house. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being "a prude." He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to "jerk him off" (hand to genital contact). Amanda would have never done it but for Bill's incessant coercion.
- Jiang and Beth sit next to each other in their film elective. Whenever the lights are out and the class is watching a film, Beth tries to fondle Jiang. Jiang is uncomfortable but does not say anything. He repeatedly tries to remove Beth's hand, but she continues the behavior despite his resistance and lack of consent.
- Kevin and John convince Stacy to snap them a pic of her butt. She reluctantly sends it to them. The boys then tell her that if she doesn't meet them in the back stairwell between classes for "oral," they will send her snap out to the whole school. Stacy agrees to do it, feeling that she had no choice.

#### Examples of Retaliation:

- Student-athlete A alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A teacher alleges gender inequity in pay within her department; the Department Chair then revokes his approval for her to attend a national conference, citing the teacher's tendency to "ruffle feathers."
- A student from the chess club participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of the chess club; the student is subsequently removed as a member of the chess club because of their participation in the investigation.

## **APPENDIX B: A SUGGESTED FRAMEWORK FOR INFORMAL RESOLUTION (IR)**

ATIXA has framed a process for IR that includes:

1. A response based on supportive measures; and/or
2. A response based on a Respondent accepting responsibility; and/or
3. A response based on alternative resolution, which could include various approaches and facilitation of dialogue.

Alternative resolution approaches like mediation, restorative practices, transformative justice, etc., are likely to be used more and more often by colleges and universities. ATIXA does not endorse these approaches as better or worse than other formal or informal approaches.

ATIXA believes that if they are to be used in, and are effective for, sex offenses, they need to be designed and executed carefully and thoughtfully and be facilitated by well-trained administrators who take the necessary time to prepare and lay a foundation for success. Although no approach is a panacea, the framework below can help to lay that foundation, regardless of which approach(es) are used.

Here are the principles to be considered for supporting various approaches to informal resolution:

- IR can be applied in any sex/gender-based interpersonal conflict but may not be appropriate or advisable in cases involving violent incidents (sexual violence, stalking, domestic and dating violence, severe sexual harassment, sexual exploitation, etc.).
- IR will not be used to resolve complainants where the Complainant is a student and the Respondent is an employee.
- Situations involving dangerous patterns or significant ongoing threat to the community should not be resolved by IR.
- The determination of whether to permit an IR-based resolution is entirely at the discretion of the Title IX Coordinator (TIXC) and in line with the requirements for IR laid out in the Title IX regulations.
- Any party can end IR early-, mid-, or late-process for any reason or no reason.
- IR can be attempted before and in lieu of formal resolution as a diversion-based resolution of a formal complaint.
- Alternative approaches can inform formal resolution, as in a formal resolution model infused with restorative practices.
- IR could be deployed after formal resolution, as an adjunct healing/catharsis opportunity (that could potentially mitigate sanctions or be a form of sanction).
- Alternate Resolution approaches to IR must be facilitated by Guadalupe or a third-party. There may be value in creating clearly agreed-upon ground rules, which the parties must sign in advance and agree to abide by, otherwise the informal resolution process will be deemed to have failed.

- Technology-facilitated IR can be made available, should the parties not be able or willing to meet in person.
- If IR fails, a formal resolution can take place thereafter. No evidence elicited within the “safe space” of the IR facilitation is later admissible in the formal resolution unless all parties consent.
- With cases involving violence, the preferred alternative approach typically involves a minimal number of essential parties and is not a wide restorative circle approach in order to ensure confidentiality.
- Some approaches require a reasonable gesture toward accountability (this could be more than an acknowledgement of harm) and some acceptance, or at least recognition, by the Respondent that catharsis is of value and likely the primary goal of the Complainant. A full admission by the Respondent is not a prerequisite. This willingness needs to be vetted carefully in advance by the TIXC before determining that an incident is amenable/appropriate for resolution by IR.
- IR can result in an agreement between the parties (Complainant, Respondent, Guadalupe) that is summarized in writing by and enforced by Guadalupe. This can be a primary goal of the process.
- IR can result in the voluntary imposition of safety measures, remedies, and/or agreed-upon resolutions by the parties that are enforceable by Guadalupe. These can be part of the accord/agreement.
- As a secondary goal, IR can result in the voluntary acceptance of “sanctions,” meaning that a Respondent could agree to withdraw, self-suspend (by taking a leave of absence), or undertake other restrictions/transfers/online course options that would help to ensure the safety/educational access of the Complainant, in lieu of formal sanctions that would create a formal record for the Respondent. These are enforceable by Guadalupe as part of the accord/agreement, as may be terms of mutual release, non-disparagement, and/or non-disclosure.
- Although a non-disclosure agreement (NDA) could result from IR, it would have to be mutually agreed-upon by the parties in an environment of non-coercion verified by the TIXC.
- Schools must develop clear rules for managing/facilitating the conference/meeting/dialogue of alternative resolution approaches, to ensure they are civil, age-appropriate, culturally-competent, reflective of power imbalances, and maximize the potential for the resolution process to result in catharsis, restoration, remedy, etc., for the harmed party(ies).

### **APPENDIX C: STATEMENT OF RIGHTS OF THE PARTIES**

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or retaliation made in good faith to Guadalupe officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by Guadalupe officials.
- The right to have Guadalupe policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by Guadalupe officials from reporting sexual harassment or retaliation to both school and local authorities.
- The right to be informed by Guadalupe officials of options to notify proper law enforcement authorities, including in-school and local police, and the option(s) to be assisted by Guadalupe officials in notifying such authorities, if the party so chooses. This also includes the right not to report, as well, except when Guadalupe officials are required to report by law.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by Guadalupe law enforcement and/or other Guadalupe officials.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both in school and in the community.

- The right to a Guadalupe-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available assistance in changing academic, and/or working situations after an alleged incident of sexual harassment and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either school or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation accommodations
  - Visa/immigration assistance
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Transferring class sections
  - Temporary leave of absence
  - School safety escorts
  - Alternative course completion options.
- The right to have Guadalupe maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair Guadalupe's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
- The right not to have irrelevant prior sexual history or character admitted as evidence.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used

to produce the investigation report, subject to the privacy limitations imposed by state and federal law and the right to have at least ten (10) business days to review the report prior to any determination being made.

- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
- The right to a Title IX Committee that is not single-sex in its composition.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any Guadalupe representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings, interviews and/or hearings associated with the resolution process.
- The right to the use of the appropriate standard of evidence, (preponderance of the evidence; clear and convincing evidence) to make a finding after an objective evaluation of all relevant evidence.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by Guadalupe is considered final and any changes to the sanction(s) that occur before the decision is finalized.



- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by Guadalupe.
- The right to a fundamentally fair resolution as defined in these procedures.

## **APPENDIX D: GUADALUPE UNETHICAL RELATIONSHIPS POLICY**

### **EXPECTATIONS REGARDING EMPLOYEE UNETHICAL RELATIONSHIPS<sup>30</sup>**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as supervisor and employee). These relationships may, in reality, be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.

Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. Guadalupe does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of Guadalupe. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., supervisor-employee) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of their supervisor and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of this policy, the duty to notify the appropriate supervisor still pertains.

While no relationships are prohibited by this policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.

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<sup>30</sup> This section is offered as an optional inclusion, as some schools prefer to include this policy elsewhere, such as an employee manual. We include it here to inform the school community, not just employees, of our expectations. Regardless, violation of this policy is a Human Resources/Employee Relations matter and should not be addressed under this resolution process unless the elements of the definition of harassment are met.

## **APPENDIX E: VIOLENCE RISK ASSESSMENT (VRA)**

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A ***Violence Risk Assessment (VRA)*** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers.

A VRA occurs in collaboration with the threat assessment team (TAT) (which may include the Special Education Behavior Invention Team) and must be understood as an on-going process, rather than a singular evaluation or meeting. In cases where the Respondent is a student with a disability who is receiving services under an Individualized Educational Plan (IEP), a VRA should also occur in collaboration with the student's IEP Team. A VRA is not an evaluation for an involuntary behavioral health hospitalization nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

1. an appraisal of ***risk factors*** that escalate the potential for violence;
2. a determination of ***stabilizing influences*** that reduce the risk of violence;
3. a contextual ***analysis of violence risk*** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
4. the application of ***intervention and management*** approaches to reduce the risk of violence.

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the TAT. The TAT will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.

The assessor will follow the process for conducting a violence risk assessment as outlined in the TAT manual and will rely on a consistent, research-based, reliable system that allows the for the operationalization of the risk levels.

Some examples of formalized approaches to the VRA process include: The NaBITA Risk Rubric,<sup>31</sup> The Structured Interview for Violence Risk Assessment (SIVRA-35),<sup>32</sup> The Extremist Risk Intervention Scale (ERIS),<sup>33</sup> Looking Glass,<sup>34</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>35</sup> Historical Clinical Risk Management (HCR-20),<sup>36</sup> and MOSAIC.<sup>37</sup>

The VRA is conducted independently from the Title IX process, free from outcome pressure, but is informed by it. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The TAT conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to health and/or safety of an individual or the community.

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<sup>31</sup> [www.nabita.org/tools](http://www.nabita.org/tools)

<sup>32</sup> [www.nabita.org/resources/assessment-tools/sivra-35/](http://www.nabita.org/resources/assessment-tools/sivra-35/)

<sup>33</sup> [www.nabita.org/resources/assessment-tools/eris/](http://www.nabita.org/resources/assessment-tools/eris/)

<sup>34</sup> [www.nabita.org/looking-glass](http://www.nabita.org/looking-glass)

<sup>35</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>36</sup> [hcr-20.com](http://hcr-20.com)

<sup>37</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com)