

## **PACE ACADEMY TITLE IX**

PACE, as required by Title IX of the Education amendments of 1972 and its corresponding regulations (“Title IX”), does not discriminate on the basis of sex in its education programs or activities. Title IX prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex even if those acts do not involve conduct of a sexual nature. PACE prohibits discrimination and harassment on the basis of sex or gender in all of its programs and activities by its employees or students.

PACE will respond promptly to actual knowledge of sexual harassment in an education program or activity of PACE against a person in the United States in a manner that is not deliberately indifferent. The response will treat complainants and respondents equitably.

Any allegations of inappropriate conduct of a sexual nature that fall outside of this policy will be handled consistent with other applicable Board policies, including the Student Code of Conduct.

### **DEFINITIONS**

#### ***Sexual Harassment***

34 CFR § 106.30(a)

Sexual harassment is conduct on the basis of sex that satisfies one or more of the following:

- An employee of PACE conditioning the provision of an aid, benefit, or service of PACE on an individual’s participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to PACE’s education program or activity; or
- “sexual assault” as defined in 20 USC 1092(f)(6)(A)(v), “dating violence” as defined in 34 USC 12291(a)(10), “domestic violence” as defined in 34 USC 12291(a)(8), or “stalking” as defined in 34 USC 12291(a)(30).

(Note: use of email, internet, or other technologies may constitute “sexual harassment” on a similar basis to use of in-person, postal mail, handwritten or other communications)

#### ***Education program or activity***

34 CFR § 106.44(a)

Includes any locations, events, or circumstances over which PACE exercised substantial control over both the alleged harasser (respondent) and the context in which the harassment occurred.

#### ***Consent***

An active agreement to participate in sexual contact or penetration. An active agreement is words and/or conduct that communicates a person’s willingness to participate in sexual contact or sexual

penetration. Consent may not be given in some circumstances based upon incapacitation, force, coercion, or age.

***Formal complaint***

34 CFR § 106.30(a)

A document filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that PACE investigate the allegation of sexual harassment.

**The factors that a Title IX coordinator may consider when determining whether to sign a complaint include, but are not limited to:**

- Whether there have been other reports of sexual harassment or other relevant misconduct concerning the same Respondent;
- Whether or not the incidents occurred while the Respondent was a PACE student or employee;
- Whether the Respondent threatened further sexual harassment or other misconduct against the Complainant or others;
- Whether the alleged sexual harassment was committed by multiple perpetrators;
- The nature and scope of the alleged sexual harassment including whether the sexual harassment was perpetrated with a weapon;
- The ages and roles of the Complainant and the Respondent;
- Whether PACE can pursue the investigation without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the alleged sexual harassment such as security cameras or physical evidence);
- Whether the report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a particular group.

***Complainant***

An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

A parent or legal guardian who has the legal authority to act on behalf of his or her child may act as the complainant and file a complaint on behalf of his or her child. 34 CFR § 106.6(g).

***Respondent***

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

***Days***

Any reference to days means a day on which PACE is open.

***Actual Knowledge***

34 CFR § 106.30(a)

Actual knowledge of sexual harassment means notice of sexual harassment or allegations of sexual harassment to PACE's Title IX coordinator or *any* PACE employee.

### ***Burden of Proof***

PACE will use the preponderance of evidence standard to determine responsibility.

### **Role of Title IX Coordinator**

34 CFR § 106.8(a)

PACE administration will designate a Title IX coordinator. The Board authorizes the Title IX coordinator to coordinate PACE's required efforts under the law.

The Title IX coordinator's name or title, email address, office address, and office telephone number will be posted on PACE's website and will be included in any handbook provided to employees, students and parents or legal guardians.

### **Notice requirement**

34 CFR § 106.8

In addition to providing notice of the Title IX coordinator's name and contact information, the administration will also provide notice of PACE's nondiscrimination policy and grievance procedures, including how to file or report sexual harassment and how PACE will respond to applicants for admission and employment, students, and parents or legal guardians.

### **Training**

34 CFR § 106.45(b)

PACE administration will ensure that Title IX coordinators, investigators, decision makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of PACE's education program or activity, how to conduct an investigation and grievance process, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The decision makers must also receive training on issues of relevance of questions and evidence.

The investigators must also receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. The administration will make training materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process publicly available on PACE's website.

### **Reporting Allegations**

34 CFR § 106.8(a)

Any person may report sex discrimination, including sexual harassment, regardless of whether the person is the alleged victim of the reported conduct, in person, by mail, by telephone, or by email. The report can be made at any time, including during non-business hours, by using the telephone number or email address, or by mail to the office address, listed for the Title IX coordinator.

### **Supportive Measures**

34 CFR § 106.30(a)

The Title IX Coordinator must promptly contact the complainant (alleged victim) to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain the process for filing a formal complaint.

Supportive measures are non-disciplinary, non-punitive, individualized services, offered as appropriate, as reasonably available, and without charge to a complainant or a respondent before or after the filing of a formal complaint, or where no formal complaint has been filed. Confidentiality of supportive measures must be maintained to the extent that maintaining confidentiality would not impair the ability of PACE to provide the supportive measures. (Examples may include counseling, course modification, scheduling changes, mutual restrictions on contact between the parties, and increased monitoring or supervision).

The Title IX Coordinator's prompt response (to offer supportive measures) is required regardless of whether a formal complaint is filed.

Supportive measures offered should be documented.

### **Response to a Formal Complaint**

34 CFR § 106.45(b)(1)

PACE's grievance process will:

- Treat parties equitably.
- Require an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
- Require that any person designated as a Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal process not have a conflict of interest against complainants or respondents generally or against the particular complainant and respondent. PACE will ensure required training is provided to these individuals
- Include a presumption that the respondent is not responsible for the alleged conduct until a determination has been made at the conclusion of the grievance process.
- Include reasonably prompt time frames for conclusion of the grievance process.
- Describe or list the possible disciplinary outcomes and remedies that may be implemented following a determination of responsibility. (*See Student Code of Conduct and Staff Code of Conduct*).
- Include the procedures and permissible reasons for appeal by a respondent or a complainant.

- Describe the range of supportive measures available to complainants and respondents.
- Not require, allow or use evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.

### **Written Notice**

34 CFR § 106.45(b)(2)

Upon receipt of a formal complaint, PACE must provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview. Written notice must include:

- Notice of grievance process, including any informal resolution process;
- Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the alleged conduct, if known) to allow the respondent to prepare a response;
- Statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
- Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false information in the grievance process.

### **Dismissal of Complaint**

34 CFR § 106.45(b)(3)

PACE administration will investigate the allegations in a formal complaint.

The complaint *must* be dismissed if the allegations:

- would not constitute sexual harassment as defined in § 106.30, even if proved;
- did not occur in PACE's education program or activity; or
- did not occur against a person in the United States.

The complaint *may* be dismissed:

- if the complainant notifies the Title IX coordinator in writing at any time that he or she wishes to withdraw the complaint or any allegations in it;
- if the respondent's enrollment or employment ends, or;
- if specific circumstances prevent PACE from gathering evidence sufficient to reach a determination.

PACE will promptly send written notice of dismissal and reasons for dismissal simultaneously to parties. Such a dismissal does not preclude action under other provisions of PACE's code of conduct.

## **Investigation Process**

34 CFR § 106.45(b)(5)

When investigating a complaint, the investigator will:

- Ensure that the burden of proof and of gathering evidence rests on PACE rather than the parties, except that certain treatment records cannot be obtained without voluntary, written consent from the party or parent;
- Provide an equal opportunity for the parties to present witnesses and evidence;
- Not restrict either party's ability to discuss the allegations or gather and present relevant evidence;
- Provide the parties with the same opportunities to have others present during interviews or other related proceedings, including an advisor who may, but is not required to be, an attorney (PACE may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties);
- Provide to a party who is invited or expected to attend, written notice of the date, time, participants, purpose and location of any investigative interview or other meeting with enough time to allow the party to prepare to participate;
- Provide both parties and advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which PACE does not intend to rely and any inculpatory or exculpatory evidence from any source; such evidence must be provided prior to the completion of the final investigation and in time to give the parties at least 10 days to prepare a written response, which the investigator must consider prior to completing the investigation report; and
- Prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to the parties and their advisors, if any, at least 10 days before the decision maker makes a determination of responsibility.

## **Determination of responsibility by decision maker**

34 CFR § 106.45(b)(7)

After the investigator has sent the investigative report to the parties, and before a determination has been made regarding responsibility, the decision maker will:

- Provide each party 10 days to respond to the investigative report and the opportunity to submit written, relevant questions that the party wants asked of another party or witness;
- Provide each party with the answers to written questions; and
- Provide for limited follow-up questions from each party.

The decision maker, who cannot be the investigator or the Title IX coordinator, will apply PACE's preponderance of the evidence standard and issue a written determination of responsibility that:

- Identifies the allegations that potentially constitute sexual harassment;
- Describes PACE's procedural steps taken from the receipt of the complaint through the determination;
- Includes findings of fact supporting the determination;

- Includes conclusions regarding the application of PACE’s code of conduct to the facts;
- Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions, and whether remedies to restore or preserve equal access to PACE’s education program or activity will be provided to the complainant; and
- Includes procedures and permissible bases for the complainant and respondent to appeal. The written determination must be provided to the parties simultaneously.
- Explains to the other party proposing the questions any decision to exclude a question as not relevant.

**Appeals Process**

34 CFR § 106.45(b)(8)

Within 10 days of receipt of the determination, either party may appeal a determination of responsibility, or PACE’s dismissal of a formal complaint or any allegations therein, for the following reasons:

- A procedural irregularity that affected the outcome;
- New evidence that was not reasonably available at the time of determination and could affect the outcome; or
- Conflict of interest on the part of the Title IX coordinator, investigator, or decision maker that affected the outcome.

For all appeals, PACE will provide written notice to both parties of the appeal and provide both parties an equal opportunity to submit a written statement in support of, or challenging, the determination. The parties will have five days to provide their written response.

The appeal must result in a written decision that must be provided to both parties simultaneously.

The decision maker for the appeal cannot be the same person as the decision maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX coordinator; cannot have a conflict of interest; and must receive training (outlined in 34 CFR § 106.45(b)(1)(iii)).

**Informal Resolution**

34 CFR § 106.45(b)(9)

PACE cannot offer to facilitate an informal resolution process unless a formal complaint of sexual harassment is filed.

At any point during the formal complaint process, PACE may offer to facilitate an informal process that does not require a full investigation, provided both parties are given the required notice of rights, and they consent. This process cannot be used in the context of a complaint that an employee harassed a student. Additionally, at any point prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process.

### **Emergency removal/administrative leave**

34 CFR § 106.44

In cases in which an employee is a respondent, PACE may place that employee on administrative leave during the pendency of an investigation and grievance process.

In cases in which a student is a respondent, PACE may remove, on an emergency basis, the respondent from PACE's educational program or activity provided PACE: (i) undertakes an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal and (ii) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision does not modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

### **Recordkeeping**

34 CFR § 106.45(b)(10)

PACE will maintain records related to this policy for seven years. Specifically, PACE will maintain records pertaining to: (i) each investigation and determination; (ii) any disciplinary sanctions imposed on respondent; (iii) any remedies provided to the complainant; (iv) any appeal and the result thereof; (v) any informal resolution and result; (vi) any materials used to train Title IX coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.

PACE shall also create and maintain records related to any action or supportive measures taken in response to a report or complaint of sexual harassment. The records shall document the basis for PACE's conclusion that its response was not deliberately indifferent and document that it has taken measures designed to restore or preserve equal access to PACE's educational programs or activities. If no supportive measures are provided, PACE shall document why such a response was not clearly unreasonable.

### **Retaliation**

34 CFR § 106.71

Neither PACE nor any other person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege under Title IX or because the individual made a report, a complaint, testified, assisted, participated in, or refused to participate in any manner in an investigation or proceeding under this policy.

PACE shall keep confidential the identity of any individual who made a report or complaint of sexual discrimination or sexual harassment, any complainant, any individual reported as a perpetrator, any respondent and any witness except as permitted under FERPA or as required to carry out the purposes of this policy and its procedures thereunder.

Charging someone with making a materially false statement in bad faith, does not amount to retaliation, provided that a determination regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.

### **Timeline for process**

The grievance process will be completed within one hundred and twenty (120) days. Temporary delays and/or extensions of the time frames within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with explanation of the reasons for such action. Examples of good cause for delay/extensions include, but are not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

Any questions about this policy or Title IX should be directed to the Title IX Coordinator, OCR's Assistant Secretary, or both.

Legal references:

A. Federal statutes:

1. Title IX of the Education Amendments of 1972, 20 USC § 1681, *et seq.* - Prohibits discrimination on the basis of sex.
2. 34 CFR Section 106 *et seq.*
3. 42 U.S.C. 2000e – Prohibits discrimination in employment on the basis of race, color, national origin, religion, or sex.
4. Title VII of the Civil Rights Act of 1964, as amended.