

## Nondiscrimination and Harassment Policy and Grievance Procedures

Salem Academy Charter School (the “School”) does not discriminate in admission to, access to, treatment in, or employment in its services, programs and activities on the basis of race, color, national origin, creed, ancestry, sex, sexual orientation, gender identity, mental or physical disability, genetics, religion, age, athletic performance, special need, proficiency in the English language or a foreign language, prior academic achievement, immigration status, pregnancy or related conditions or veteran status (each a “protected characteristic”) in accordance with Title VI of the Civil Rights Act of 1964 (“Title VI”); Title VII of the Civil Rights Act of 1964 (“Title VII”); Title IX of the Education Amendments of 1972 (“Title IX”); Section 504 of the Rehabilitation Act of 1973 (“Section 504”); Title II of the Americans with Disabilities Act of 1990; Age Discrimination in Employment Act of 1974; M.G.L. c. 76 § 5; M.G.L. c. 151B and 151C; and 603 C.M.R. § 26.00.

The School also prohibits discrimination and harassment along those bases, in accordance with applicable federal and state laws and regulations. This includes discrimination and harassment by administrators, teachers, certified and support personnel, students, vendors, and other individuals in school or at school-related events. Further, any retaliation against an individual who has complained about discrimination or harassment or against individuals for cooperating with an investigation of a discrimination or harassment complaint is similarly prohibited and will not be tolerated.

### **DEFINITIONS**

**Complainant:** An individual who is alleged to be the victim or target of conduct that could constitute discrimination, harassment, or retaliation under this Nondiscrimination and Harassment Policy and Procedures (the “Policy”). Parents and/or legal guardians of a Complainant are not considered a Complainant but may file formal complaints on behalf of a minor child and act on behalf of the minor child in any civil rights matter.

**Discrimination:** unequal, adverse, or unfair treatment of an individual on the basis of any protected characteristic.

**Harassment:** unwelcome conduct on the basis of any protected characteristic that is sufficiently severe, persistent or pervasive to create or contribute to a hostile environment for the individual at school. Harassment may include insults, name-calling, off-color jokes, threats, comments, innuendoes, notes, display of pictures or symbols, gestures, unwelcome touching or other conduct which rises to the level of a hostile environment. Harassment is a form of discrimination. A **hostile environment** is one which unreasonably interfered with an individual’s participation in, denied the individual the benefits of, or otherwise subjected the individual to discrimination under any program or activity of the School. When determining whether an environment is hostile, the School shall consider the context, nature, frequency, and location of the incidents as well as the credibility of witnesses and the identity, number and relationships of the persons involved. The School must consider whether the alleged harassment was sufficient to have created such an environment for a reasonable person of the same age, gender, and experience as the Complainant, and under similar circumstances. Off-campus conduct may constitute harassment if it creates a hostile environment at school for the Complainant; however, conduct does not constitute harassment where the incident occurs off-campus at a

non-school sponsored activity and does not create a hostile environment at school for the Complainant.

**Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute discrimination, harassment, or retaliation under this Procedure.

**Retaliation:** Retaliatory acts against any individual who exercises their rights under the civil rights statutes covered by this Policy or the School's Title IX Policy and Grievance Procedures (the "Title IX Policy") are considered to be discrimination and are unlawful. Individuals are prohibited from coercing, intimidating, threatening, or interfering with an individual because the individual exercised any right granted or protected under this Policy and/or the Title IX Policy.

**Title IX Sexual Harassment:** Sexual harassment as defined in the regulations promulgated under Title IX, i.e., conduct on the basis of sex that satisfies one or more of the following:

1. a School employee conditioning the provision of an aid, benefit, or service of the School on an individual's participation in unwelcome sexual conduct;
2. unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the School's education programs or activities; or,
3. sexual assault, dating violence, domestic violence, or stalking (as defined under the Clery Act and the Violence Against Women Act).

**Non-Title IX Sexual Harassment:** Unwelcome conduct on the basis of sex, including on the basis of sexual orientation or gender identity/expression, that does not meet the definition of Title IX sexual harassment.

#### **NON-APPLICABILITY OF THIS POLICY TO TITLE IX SEXUAL HARASSMENT ALLEGATIONS**

Allegations of conduct that could, if proven, meet the definition of Title IX sexual harassment shall be addressed through the School's Title IX Policy, available at the following website: <https://www.salemacademy.org/about/compliance/>. Similarly, allegations of conduct that could, if proven, meet the definition of Title IX sexual harassment and simultaneously meet the definition of non-Title IX sexual harassment will also be addressed through the Title IX Policy.

Allegations of conduct that would not, even if proven, meet the definition of Title IX sexual harassment, but could, if proven, instead meet the definition of non-Title IX sexual harassment, shall be addressed through this Policy.

In certain cases, and in particular, sexual harassment of a student, harassment may constitute child abuse under Massachusetts laws. Verbal sexual harassment of any child by anyone, including school employees/volunteers, is recognized as a form of child abuse and a warning sign of actual physical or sexual abuse. Any such abuse must be reported immediately to the Department of Children and Families in accordance with the requirements of M.G.L. c. 19, § 51A. The School will comply with all legal requirements governing the reporting of suspected cases of child abuse.

## **GRIEVANCE PROCEDURES**

The School will promptly investigate all complaints of discrimination, harassment, and retaliation on the bases of any protected characteristic (excluding complaints of Title IX sexual harassment or other violations of Title IX, which shall be addressed through the School's Title IX Policy) in accordance with the procedures outlined in this Policy below. If the School determines that discrimination, harassment or retaliation has occurred, the School will take reasonable steps to restore a sense of safety to the victim, stop the offending conduct and prevent recurrence.

Individuals who engage in discrimination, harassment, or retaliation in violation of this Policy may be subject to discipline up to and including suspension or expulsion (students), termination (employees) or other disciplinary sanctions, subject to applicable school policies and applicable contractual requirements. It should be noted that, while this Policy sets forth the goal of the School to maintain a work and educational environment that is free of discrimination and harassment on the basis of any legally protected characteristic, the Policy is not designed or intended to limit the authority of school officials to discipline or take remedial action for conduct which is deemed unacceptable, whether or not that conduct satisfies the definitions of discrimination, harassment or retaliation under the law.

### **Where to File a Grievance**

Any student or employee who believes that they have been discriminated against or harassed on the basis of a protected characteristic in admission to, access to, treatment in, or employment in the School's services, programs, or activities may file a complaint with a Civil Rights Coordinator, identified in the "Civil Rights Coordinator" section below.

**If an individual wishes to file a complaint against a Civil Rights Coordinator**, they may file it with Executive Director Stephanie Callahan ([scallahan@salemacademycs.org](mailto:scallahan@salemacademycs.org), 978-744-2105).

In the event the complaint consists of a student Complainant's allegation that another student is harassing the Complainant based upon a protected characteristic, the student Complainant may, in the alternative, report incidents of harassing conduct to a teacher, administrator, or counselor. Any complaint received by school personnel shall be promptly reported to a Civil Rights Coordinator.

Students or employees who are unsure whether discrimination, harassment, or retaliation has occurred are encouraged to discuss the situation with a Civil Rights Coordinator. Any School employee who observes or receives a report of discrimination, harassment, or retaliation shall promptly notify a Civil Rights Coordinator.

Individuals who wish to file a complaint under this Policy should be aware that although the School will often be able to maintain confidentiality of reporting persons, the School may sometimes be required to take actions to protect the safety of the school community that may result in the identity of the reporting person being disclosed (to law enforcement or the Department of Children and Families, for example). When individuals who file a complaint wish to remain anonymous or have their identities kept confidential, they will be informed that honoring such a request may limit the ability of the School to respond fully to any reported event. In addition, while an individual may make an anonymous report under this Policy, no disciplinary action may be taken against a student solely on the basis of an anonymous report.

### **Complaints of Discrimination Based on Disability**

A person who alleges discrimination on the basis of disability relative to the identification, evaluation, or educational placement of a person, who because of a disability needs or is believed to need special instruction or related services, pursuant to Section 504, M.G.L. c. 71B, and/or the Individuals with Disabilities Education Act (IDEA), may also use the procedure outlined in the Massachusetts Department of Elementary and Secondary Education's *Parents' Rights Brochure* rather than this Policy. A copy of the brochure is available in the Main Office.

### **Contents of Complaints and Timelines for Filing**

Complaints under this Policy must be put into writing either by the Complainant themselves, or with the assistance of a Civil Rights Coordinator or any person of the Complainant's choosing. The written complaint should include the following information:

1. The name and school (or address and telephone number if not a student or employee) of the Complainant.
2. The name (and address and telephone number if not a student or employee) of the Complainant's representative, if any.
3. The name of the person(s) alleged to have engaged in the discrimination, harassment, or retaliation (the "alleged conduct") against Complainant (i.e., the Respondent(s)).
4. A description, in as much detail as possible, of the alleged conduct.
5. The date(s) of the alleged conduct.
6. The names of all persons who have knowledge about the alleged conduct (i.e., witnesses), as can be reasonably determined.
7. A description, in as much detail as possible, of how the Complainant wants the complaint to be resolved.

The School encourages Complainants to file complaints under this Policy as soon as possible after the alleged discrimination, harassment, or retaliation occurs (e.g., within 10 days of the conduct) in order to allow the School to promptly investigate and take appropriate action.

### **Initial Assessment of Complaint**

The Civil Rights Coordinator will make an initial assessment following a complaint. Based on that assessment, the Civil Rights Coordinator may: (a) if the conduct, even if substantiated, would not constitute harassment, discrimination or retaliation, dismiss the complaint; (b) if the alleged conduct (or complaint) could not, even if true, constitute discrimination, harassment or retaliation, but is within the scope of another school policy, refer the matter to the appropriate school personnel; (c) if the Civil Rights Coordinator concludes that it is possible to resolve the complaint in a prompt, fair and adequate manner through an informal resolution process involving and with the consent of both Complainant and Respondent, the Civil Rights Coordinator may seek to do so in accordance with procedures described in "Informal Resolution Process" below; or (d) if the alleged conduct, if substantiated, would constitute discrimination, harassment or retaliation, the Civil Rights Coordinator will initiate an investigation. The Civil Rights Coordinator may also, in their discretion, identify, offer, and initiate any interim measures, as described in "Interim Measures" below.

### **Investigation and Resolution of the Complaint**

Respondents will be informed of complaints against them by the Civil Rights Coordinator and have an opportunity to provide evidence and information to defend themselves during the investigation. The Civil Rights Coordinator may delay notice of allegations to Respondent as appropriate, based upon the

nature of the allegations and the initial investigation required. However, a finding of discrimination, harassment, or retaliation shall not be made prior to Respondent being notified of the allegations and provided with an opportunity to present evidence and information to defend themselves.

### **Informal Resolution Process**

If the Civil Rights Coordinator concludes that it is possible to resolve a matter, in a prompt, fair and adequate manner through an informal process involving, and with the consent of, the Complainant and Respondent, the School may seek to do so. The informal process is voluntary, and a Complainant and/or Respondent may terminate or decline any informal process at any time, without penalty.

### **Interim Measures**

The School will provide prompt and reasonable interim measures during the pendency of the investigation, if appropriate, to support and protect the safety of the parties, the educational environment, and the School and/or school community; to deter retaliation; and to preserve the integrity of the investigation and resolution process. Any interim measures will be monitored to ensure they are effective based on the evolving needs of the parties. Violations of the restrictions imposed by interim measures could be considered a violation of school rules and may be considered in determining whether discrimination, harassment or retaliation has occurred.

### **Investigation and Determination Process**

#### ***Timeframes***

The School will seek to complete an investigation after receiving a complaint and provide the written notice of the outcome of the investigation within a reasonable time. The Civil Rights Coordinator or their designee (the "Investigator") may impose reasonable timeframes on all parties to facilitate the timely completion of the investigation. The Investigator may extend the investigation period beyond the anticipated time period identified due to extenuating circumstances, including but not limited to availability and cooperation of witnesses, complexity of the investigation, school vacation periods, and the involvement of law enforcement and other outside agency investigations. If the Investigator extends the investigation, he or she will notify the Complainant and Respondent of the extension. A report to the law enforcement will not automatically delay an investigation; however, a request from law enforcement to delay the investigation may require a temporary suspension of an investigation, and the School will promptly resume its investigation upon being advised that law enforcement's evidence gathering is completed. Any interim measures provided to the parties may continue during the period of postponement.

The Investigator for a complaint filed under this Policy shall be any individual designated by the School to conduct an investigation in accordance with the grievance procedures described in this Policy.

#### ***During the investigation:***

1. Each party (i.e., Complainant, Respondent) shall be provided with an opportunity to be heard over the course of the investigation, including the opportunity to identify witnesses and other relevant evidence to the Investigator.
2. The privacy rights of the parties shall be maintained in accordance with applicable state and federal laws.
3. The Investigator will keep a written record of the investigation process.
4. The investigation will be completed in a timely manner.

5. The notification of the outcome of the investigation, including, if appropriate, a description of the remedies taken and/or the sanctions imposed, will be provided to the parties.

**Standard of Proof:** The investigation shall make factual findings based on a preponderance of the evidence standard.

**Determinations and Next Steps:** If the Investigator determines that discrimination, harassment or retaliation has occurred, the School shall take steps to stop the eliminate the discriminatory or harassing conduct and eliminate any effects on the learning environment, which shall include but not be limited to:

- Identifying what steps are necessary to prevent recurrence of any discriminatory behavior, including but not limited to any identified harassment or retaliation, and to correct its discriminatory effects on the target(s) and the climate and culture of the School; and
- Notifying the Complainant and Respondent or, in the case of minor children, the parties' parent(s)/legal guardian(s) of the results of the investigation (in accordance with applicable state and federal privacy laws) in a timely manner.

The School may also refer the Respondent for disciplinary procedures to be conducted in accordance with federal and state law. Nothing in this Policy shall be interpreted as limiting or prohibiting the School's ability to take appropriate disciplinary action against the Respondent in accordance with the applicable code(s) of conduct, policies or employment contracts, where appropriate, prior to completion of the investigation, in accordance with the due process rights of employees and students, as applicable. When informing the parties' parent(s)/legal guardian(s) about the results of the investigation, the School may consider appropriate notification processes when special circumstances may apply (e.g., disclosure of sexual orientation or gender identity/expression).

Retaliation against someone because they filed a complaint under this Policy is strictly prohibited. Acts of retaliation may result in disciplinary action, up to and including suspension (students) or termination (employees).

### **Appeals**

If the Complainant or Respondent is not satisfied with a disposition of an investigation, they may appeal the disposition to Executive Director Stephanie Callahan ([scallahan@salemacademycs.org](mailto:scallahan@salemacademycs.org), 978-744-2105) within five (5) school days of receipt of notice of investigation determination<sup>1</sup>; except for circumstances in which the Respondent is subject to long-term suspension as a result of a finding of discrimination, harassment or retaliation. In such an instance, the appeal rights of the Respondent will be provided in a manner consistent with the disciplinary due process requirements applicable to the circumstances (e.g., M.G.L. c. 71, §§ 37H, 37H ½ or 37H ¾).

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A written response to the appeal will be issued within a reasonable timeframe of receiving the appeal, taking into consideration the complexity of the complaint and investigation.

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<sup>1</sup> If the Executive Director was a party to the complaint or otherwise involved in the investigation or determination of the complaint, the Complainant or Respondent may appeal the disposition to an independent third party selected by the Board of Trustees of the School.

## **CIVIL RIGHTS COORDINATOR**

The School's Civil Rights Coordinators are identified below:

- For employee complaints: Krissy Sgambellone, Managing Director of Operations and Human Resources, available at 978-744-2105 or [ksgambellone@salemacademycs.org](mailto:ksgambellone@salemacademycs.org).
- For student complaints: Drea Jacobs, Senior Director of Academics, available at 978-744-2105 or [ajacobs@salemacademycs.org](mailto:ajacobs@salemacademycs.org).

The Civil Rights Coordinators shall understand and have knowledge of civil rights legal requirements and the School's own policies and procedures on discrimination, anti-bullying, anti-retaliation, school place violence, and sexual harassment. The Civil Rights Coordinators are responsible for consulting on the handling of complaints for consistency with this Policy and applicable procedures and legal requirements, and for identifying and addressing any patterns or systemic problems that arise during the review of such complaints as well as ensuring appropriate training on and implementation of this Policy. For questions about this Policy or other civil rights matters, please contact a Civil Rights Coordinator.

The School shall require that the Civil Rights Coordinators, Investigators, decision-makers, and anyone else involved in facilitating an informal resolution process or implementing the grievance procedures in this Policy be free of any conflict of interest or bias for or against complainants or respondents, generally, or an individual complainant or respondent. Any training materials for those individuals shall not rely on sex stereotypes and must promote impartial investigations and decision-making for formal complaints.

## **OTHER RESOURCES**

State and federal agencies that enforce laws prohibiting discrimination and harassment and those who receive complaints thereunder:

- Massachusetts Commission Against Discrimination (MCAD) – One Ashburton Place, Room 601, Boston, MA 02108; telephone (617) 994-6000; TTY: (617) 994-6196; Springfield Office: 436 Dwight Street, Room 220, Springfield, MA 01103, (413) 739-2145
- Massachusetts Department of Elementary and Secondary Education, Problem Resolution System Office – 135 Santilli Highway, Everett, MA 02149; telephone (781) 338-3300; TTY Users (800) 439-2370.
- United States Equal Employment Opportunity Commission (EEOC) – John F. Kennedy Federal Bldg., Room 475, 15 New Sudbury St., Boston, MA 02203; (800) 669-4000; TTY: (617) 565-2445
- United States Department of Education, Office for Civil Rights (OCR) – 400 Maryland Avenue, SW Washington, D.C. 20202; (202) 453-6020; TTY: 800-877-8339