# TRIO Wolf Creek Distance Learning Charter School #4095

## 522 TITLE IX SEX NONDISCRIMINATION POLICY, GRIEVANCE PROCEDURE AND PROCESS

***[Note: On May 6, 2020, the U.S. Department of Education, Office for Civil Rights (OCR), released the long-awaited final rule amending Title IX regulations at 34 C.F.R. Part 106. These regulations, which go into effect on August 14, 2020, are the first Title IX regulations applicable to sexual harassment and are applicable to complaints by both school district students and employees. The extensive regulations will require districts to revise their policies and procedures with respect to sexual harassment and ensure that administration and staff are trained on the new requirements.***

***The final rule requires school districts to provide notice of its nondiscrimination policy and grievance procedures, including how to file or report sexual harassment and how the school district will respond to the following groups: applicants for admission and employment; students; parents or legal guardians; and unions or professional organizations holding agreements with the school district. 34 C.F.R. § 106.8(b). The provisions of this policy generally conform to the requirements of the new regulations].***

## I. GENERAL STATEMENT OF POLICY

A. The charter school does not discriminate on the basis of sex in its education programs or activities, and it is required by Title IX of the Education Amendments Act of 1972, and its implementing regulations, not to discriminate in such a manner. The requirement not to discriminate in its education program or activity extends to admission and employment. The charter school is committed to maintaining an education and work environment that is free from discrimination based on sex, including sexual harassment.

B. The charter school prohibits sexual harassment that occurs within its education programs and activities. When the charter school has actual knowledge of sexual harassment in its education program or activity against a person in the United States, it shall promptly respond in a manner that is not deliberately indifferent.

C. This policy applies to sexual harassment that occurs within the charter school's education programs and activities and that is committed by a charter school employee, student, or other members of the school community. This policy does not apply to sexual harassment that occurs off school grounds, in a private setting, and outside the scope of the charter school's education programs and activities. This policy does not apply to sexual harassment that occurs outside the geographic boundaries of the United States, even if the sexual harassment occurs in the charter school's education programs or activities.

D. Any student, parent, or guardian having questions regarding the application of

## TRIO Wolf Creek Distance Learning Charter School #4095

Title IX and its regulations and/or this policy and grievance process should discuss them with the Title IX Coordinator. The charter school's Title IX Coordinator(s) is/are:

**Tracy Quarnstrom, Director, tquarnstrom@wolfcreekhs.org**
**(651) 213-2017, 29678 Karmel Avenue, Chisago City, MN 55013**

Questions relating solely to Title IX and its regulations may be referred to the Title IX Coordinator(s), the Assistant Secretary for Civil Rights of the United States Department of Education, or both.

E. The effective date of this policy is August 14, 2020 and applies to alleged violations of this policy occurring on or after August 14, 2020.

## II. DEFINITIONS

A. "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to the charter school's Title IX Coordinator or to any employee of the charter school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the charter school with actual knowledge is the respondent.

B. "Complainant" means a person who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX. A Title IX Coordinator who signs a formal complaint is not a complainant unless the Title IX Coordinator is alleged to be the victim of the conduct described in the formal complaint.

C. "Day" or "days" means, unless expressly stated otherwise, business days (i.e. day(s) that the charter school office is open for normal operating hours, Monday - Friday, excluding State-recognized holidays).

A. "Deliberately indifferent" means clearly unreasonable in light of the known circumstances. The charter school is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

B. "Education program or activity" means locations, events, or circumstances for which the charter school exercises substantial control over both the respondent and the context in which the sexual harassment occurs and includes charter school education programs or activities that occur on or off of charter school property.

C. "Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the charter school investigate the allegation of sexual harassment.

1. A formal complaint filed by a complainant must be a physical document or an electronic submission. The formal complaint must contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint, and must be submitted to the Title IX Coordinator in person, by mail, or by email.

2. A formal complaint shall state that, at the time of filing the formal complaint, the complainant was participating in, or attempting to participate in, an education program or activity of the charter school with which the formal complaint is filed.

D. "Informal resolution" means options for resolving a formal complaint that do not involve a full investigation and adjudication. Informal resolution may encompass a broad range of conflict resolution strategies, including mediation or restorative justice.

E. "Relevant questions" and "relevant evidence" are questions, documents, statements, or information that are related to the allegations raised in a formal complaint. Relevant evidence includes evidence that is both inculpatory and exculpatory. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, 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 by the complainant, 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.

F. "Remedies" means actions designed to restore or preserve the complainant's equal access to education after a respondent is found responsible. Remedies may include the same individualized services that constitute supportive measures, but need not be non-punitive or non-disciplinary, nor must they avoid burdening the respondent.

G. "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX.

H. "Sexual harassment" means any of three types of misconduct on the basis of sex that occurs in a charter school education program or activity and is committed against a person in the United States:

1. *Quid pro quo* harassment by a charter school employee (conditioning the provision of an aid, benefit, or service of the charter school on an individual's participation in unwelcome sexual conduct);

2. Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; or

3. Any instance of sexual assault (as defined in the Clery Act, 20 U.S.C. §1092(f)(6)A(v)), dating violence, domestic violence, or stalking (as defined in the Violence Against Women Act, 34 U.S.C. §12291).

I. "Supportive measures" means individualized services provided to the complainant or respondent without fee or charge that are reasonably available, non-punitive, non-disciplinary, not unreasonably burdensome to the other party, and designed to ensure equal educational access, protect safety, and deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, alternative educational services as defined under Minn. Stat. § 121A.41, as amended, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the charter school buildings or property, and other similar measures.

J. "Title IX Personnel" means any person who addresses, works on, or assists with the charter school's response to a report of sexual harassment or formal complaint, and includes persons who facilitate informal resolutions. The following are considered Title IX Personnel:

1. "Title IX Coordinator" means an employee of the charter school that coordinates the charter school's efforts to comply with and carry out its responsibilities under Title IX. The Title IX Coordinator is responsible for acting as the primary contact for the parties and ensuring that the parties are provided with all notices, evidence, reports, and written determinations to which they are entitled under this policy and grievance process. The Title IX Coordinator is also responsible for effective implementation of any supportive measures or remedies. The Title IX Coordinator must be free from conflicts of interest and bias when administrating the grievance process.

2. "Investigator" means a person who investigates a formal complaint. The investigator of a formal complaint may not be the same person as the Decision-maker or the Appellate Decision-maker. The Investigator may be a charter school employee, charter school official, or a third party designated by the charter school.

3. "Decision-maker" means a person who makes a determination regarding responsibility after the investigation has concluded. The Decision-maker

cannot be the same person as the Title IX Coordinator, the Investigator, or the Appellate Decision-maker.

4. "Appellate Decision-maker" means a person who considers and decides appeals of determinations regarding responsibility and dismissals of formal complaints. The Appellate Decision-maker cannot be the same person as the Title IX Coordinator, Investigator, or Decision-maker. The Appellate Decision-maker may be a charter school employee, or a third party designated by the charter school.

5. The superintendent of the authorizing school district may delegate functions assigned to a specific charter school employee under this policy, including but not limited to the functions assigned to the Title IX Coordinator, Investigator, Decision-maker, Appellate Decision-maker, and facilitator of informal resolution processes, to any suitably qualified individual and such delegation may be rescinded by the superintendent at any time. The charter school may also, in its discretion, appoint suitably qualified persons who are not charter school employees to fulfill any function under this policy, including, but not limited to, Investigator, Decision-maker, Appellate Decision-maker, and facilitator of informal resolution processes.

## III. BASIC REQUIREMENTS FOR GRIEVANCE PROCESS

A. Equitable Treatment

1. The charter school shall treat complainants and respondents equitably. However, equality or parity with respect to supportive measures provided to complainants and respondents is not required.

2. The charter school will not impose any disciplinary sanctions or take any other actions against a respondent that do not constitute supportive measures until it has completed this grievance process and the respondent has been found responsible.

3. The charter school will provide appropriate remedies to the complainant any time a respondent is found responsible.

B. Objective and Unbiased Evaluation of Complaints

1. Title IX Personnel, including the Title IX Coordinator, Investigator, Decision-maker, and Appellate Decision-maker, shall be free from conflicts of interest or bias for or against complainants or respondents generally or a specific complainant or respondent.

2. Throughout the grievance process, Title IX Personnel will objectively evaluate all relevant evidence, inculpatory and exculpatory, and shall avoid credibility determinations based solely on a person's status as a complainant, respondent, or witness.

C. Title IX Personnel will presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

D. Confidentiality

The charter school will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, or FERPA's regulations, and State law under Minn. Stat. § 13.32 34 C.F.R. Part 99, or as required by law, or to carry out the purposes of 34 C.F.R. Part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder (i.e., the charter school's obligation to maintain confidentiality shall not impair or otherwise affect the complainants and respondents receipt of the information to which they are entitled with respect to the investigative record and determination of responsibility).

E. Right to an Advisor; Right to a Support Person

Complainants and respondents have the right, at their own expense, to be assisted by an advisor of their choice during all stages of any grievance proceeding, including all meetings and investigative interviews. The advisor may be, but is not required to be, an attorney. In general, an advisor is not permitted to speak for or on behalf of a complainant or respondent, appear in lieu of complainant or respondent, participate as a witness, or participate directly in any other manner during any phase of the grievance process.

A complainant or respondent with a disability may be assisted by a support person throughout the grievance process, including all meetings and investigative interviews, if such accommodation is necessary. A support person may be a friend, family member, or any individual who is not otherwise a potential witness. The support person is not permitted to speak for or on behalf of a complainant or respondent, appear in lieu of complainant or respondent, participate as a witness, or participate directly in any other manner during any phase of the grievance

process.

F. Notice

The charter school will send written notice of any investigative interviews or meetings to any party whose participation is invited or expected. The written notice will include the date, time, location, participants, and purpose of the meeting or interview, and will be provided to allow sufficient time for the party to prepare to participate.

G. Consolidation

The charter school may, in its discretion, consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

H. Evidence

1. During the grievance process, the charter school will not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

2. The charter school shall not access, consider, disclose, or otherwise use a party's medical, psychological, and similar treatment records unless the charter school obtains the party's voluntary, written consent.

I. Burden of Proof

1. The burden of gathering evidence and the burden of proof shall remain upon the charter school and not upon the parties.

2. The grievance process shall use a preponderance of the evidence standard (i.e. whether it is more likely than not that the respondent engaged in sexual harassment) for all formal complaints of sexual harassment, including when charter school employees are respondents.

J. Timelines

1. Any informal resolution process must be completed within thirty (30) calendar days following the parties' agreement to participate in such informal process.

2. An appeal of a determination of responsibility or of a decision dismissing a formal complaint must be received by the charter school within five (5) days of the date the determination of responsibility or dismissal was provided to the parties.

3. Any appeal of a determination of responsibility or of a dismissal will be decided within thirty (30) calendar days of the day the appeal was received by the charter school.

4. The charter school will seek to conclude the grievance process, including any appeal, within 120 calendar days of the date the formal complaint was received by the charter school.

5. Although the charter school strives to adhere to the timelines described above, in each case, the charter school may extend the time frames for good cause. Good cause may include, without limitation: the complexity of the allegations; the severity and extent of the alleged misconduct; the number of parties, witnesses, and the types of other evidence (e.g., forensic evidence) involved; the availability of the parties, advisors, witnesses, and evidence (e.g., forensic evidence); concurrent law enforcement activity; intervening charter school holidays, breaks, or other closures; the need for language assistance or accommodation of disabilities; and/or other unforeseen circumstances.

K. Potential Remedies and Disciplinary Sanctions

1. The following is the range of possible remedies that the charter school may provide a complainant and disciplinary sanctions that the charter school might impose upon a respondent, following determination of responsibility: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual or unilateral restrictions on contact between the parties, changes in work locations, leaves of absence, monitoring of certain areas of the charter school buildings or property, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge.

2. If the Decision-maker determines a student-respondent is responsible for violating this policy, the Decision-maker will recommend appropriate remedies, including disciplinary sanctions/consequences. The Title IX Coordinator will notify the superintendent of the recommended remedies, such that an authorized administrator can consider the recommendation(s) and implement appropriate remedies in compliance with MSBA Model Policy 506 – Student Discipline. The discipline of a student-respondent

must comply with the applicable provisions of Minnesota Pupil Fair Dismissal Act, the Individuals with Disabilities Education Improvement Act (IDEA) and/or Section 504 of the Rehabilitation Act of 1972, and their respective implementing regulations.

## IV. REPORTING PROHIBITED CONDUCT

A. Any student who believes they have been the victim of unlawful sex discrimination or sexual harassment, or any person (including the parent of a student) with actual knowledge of conduct which may constitute unlawful sex discrimination or sexual harassment toward a student should report the alleged acts as soon as possible to the Title IX Coordinator.

B. Any employee of the charter school who has experienced, has actual knowledge of, or has witnessed unlawful sex discrimination, including sexual harassment, or who otherwise becomes aware of unlawful sex discrimination, including sexual harassment, must promptly report the allegations to the Title IX Coordinator without screening or investigating the report or allegations.

C. A report of unlawful sex discrimination or sexual harassment may be made at any time, including during non-business hours, and may be made in person, by mail, by telephone, or by e-mail using the Title IX Coordinator's contact information. A report may also be made by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

D. Sexual harassment may constitute both a violation of this policy and criminal law. To the extent the alleged conduct may constitute a crime, the charter school may report the alleged conduct to law enforcement authorities. The charter school encourages complainants to report criminal behavior to the police immediately.

## V. INITIAL RESPONSE AND ASSESSMENT BY THE TITLE IX COORDINATOR

A. When the Title IX Coordinator receives a report, the Title IX Coordinator shall promptly contact the complainant confidentially 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 to the complainant the process for filling a formal complaint.

B. The charter school will offer supportive measures to the complainant whether or not the complainant decides to make a formal complaint. The charter school must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the charter school's ability to provide the supportive measures. The Title IX

Coordinator is responsible for coordinating the effective implementation of supportive measures.

C. If the complainant does not wish to file a formal complaint, the allegations will not be investigated by the charter school unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the complainant's wishes is not clearly unreasonable in light of the known circumstances.

D. Upon receipt of a formal complaint, the charter school must provide written notice of the formal complaint to the known parties with sufficient time to prepare a response before any initial interview. This written notice must contain:

1. The allegations of sexual harassment, including sufficient details known at the time, the identities of the parties involved in the incident (if known), the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known;

2. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;

3. A statement explaining that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;

4. A statement that the parties may inspect and review evidence gathered pursuant to this policy;

5. A statement informing the parties of any code of conduct provision that prohibits knowingly making false statements or knowingly submitting false information; and

6. A copy of this policy.

## VI. STATUS OF RESPONDENT DURING PENDENCY OF FORMAL COMPLAINT

A. Emergency Removal of a Student

1. The charter school may remove a student-respondent from an education program or activity of the charter school on an emergency basis before a determination regarding responsibility is made if:

a. The charter school undertakes an individualized safety and risk analysis;

b. The charter school 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 of the student-respondent; and

c. The charter school determines the student-respondent poses such a threat, it will so notify the student-respondent and the student-respondent will have an opportunity to challenge the decision immediately following the removal. In determining whether to impose emergency removal measures, the Title IX Coordinator shall consult related charter school policies, including MSBA Model Policy 506 – Student Discipline. The charter school must take into consideration applicable requirements of the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973, prior to removing a special education student or Section 504 student on an emergency basis.

B. Employee Administrative Leave

The charter school may place a non-student employee on administrative leave during the pendency of the grievance process of a formal complaint. Such leave will typically be paid leave unless circumstances justify unpaid leave in compliance with legal requirements. The charter school must take into consideration applicable requirements of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act prior to removing an individual with a qualifying disability.

## VII. INFORMAL RESOLUTION OF A FORMAL COMPLAINT

A. At any time prior to reaching a determination of responsibility, informal resolution may be offered and facilitated by the charter school at the charter school's discretion, but only after a formal complaint has been received by the charter school.

B. The charter school may not require as a condition of enrollment or continued enrollment, or of employment or continued employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment.

C. The informal resolution process may not be used to resolve allegations that a charter school employee sexually harassed a student.

D. The charter school will not facilitate an informal resolution process without both

parties' agreement, and will obtain their voluntary, written consent. The charter school will provide to the parties a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, the parties' right to withdraw from the informal resolution process, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

E. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

## VIII. DISMISSAL OF A FORMAL COMPLAINT

A. Under federal law, the charter school must dismiss a Title IX complaint, or a portion thereof, if the conduct alleged in a formal complaint or a portion thereof:

1. Would not meet the definition of sexual harassment, even if proven;

2. Did not occur in the charter school's education program or activity; or

3. Did not occur against a person in the United States.

B. The charter school may, in its discretion, dismiss a formal complaint or allegations therein if:

1. The complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein;

2. The respondent is no longer enrolled or employed by the charter school; or

3. Specific circumstances prevent the charter school from gathering sufficient evidence to reach a determination.

C. The charter school shall provide written notice to both parties of a dismissal. The notice must include the reasons for the dismissal.

D. Dismissal of a formal complaint or a portion thereof does not preclude the charter school from addressing the underlying conduct in any manner that the charter school deems appropriate.

# TRIO Wolf Creek Distance Learning Charter School #4095

## IX. INVESTIGATION OF A FORMAL COMPLAINT

A. If a formal complaint is received by the charter school, the charter school will assign or designate an Investigator to investigate the allegations set forth in the formal complaint.

B. If during the course of the investigation the charter school decides to investigate any allegations about the complainant or respondent that were not included in the written notice of a formal complaint provided to the parties, the charter school must provide notice of the additional allegations to the known parties.

C. When a party's participation is invited or expected in an investigative interview, the Investigator will coordinate with the Title IX Coordinator to provide written notice to the party of the date, time, location, participants, and purposes of the investigative interview with sufficient time for the party to prepare.

D. During the investigation, the Investigator must provide the parties with an equal opportunity to present witnesses for interviews, including fact witnesses and expert witnesses, and other inculpatory and exculpatory evidence.

E. Prior to the completion of the investigative report, the Investigator, through the Title IX Coordinator, will provide the parties and their advisors (if any) with an equal opportunity to inspect and review any evidence directly related to the allegations. The evidence shall be provided in electronic format or hard copy and shall include all relevant evidence, evidence upon which the charter school does not intend to rely in reaching a determination regarding responsibility, and any inculpatory or exculpatory evidence whether obtained from a party or another source. The parties will have ten (10) days to submit a written response, which the Investigator will consider prior to completion of the investigative report.

F. The Investigator will prepare a written investigative report that fairly summarizes the relevant evidence. The investigative report may include credibility determinations that are not based on a person's status as a complainant, respondent or witness. The charter school will send the parties and their advisors (if any) a copy of the report in electronic format or hard copy, for their review and written response at least ten (10) days prior to a determination of responsibility.

## X. DETERMINATION REGARDING RESPONSIBILITY

***[NOTE: The Title IX regulations do not require charter schools to conduct live hearings as part of the decision-making phase of the grievance process. Accordingly, this Policy does not include procedures for a live hearing. If a charter school desires to create such procedures, legal counsel should be consulted.]***

A. After the charter school has sent the investigative report to both parties and before the charter school has reached a determination regarding responsibility, the Decision-maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness.

B. The Decision-maker must provide the relevant questions submitted by the parties to the other parties or witnesses to whom the questions are offered, and then provide each party with the answers, and allow for additional, limited follow-up questions from each party.

C. The Decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.

D. When the exchange of questions and answers has concluded, the Decision-maker must issue a written determination regarding responsibility that applies the preponderance of the evidence standard to the facts and circumstances of the formal complaint. The written determination of responsibility must include the following:

1. Identification of the allegations potentially constituting sexual harassment;

2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;

3. Findings of fact supporting the determination;

4. Conclusions regarding the application of the charter school's code of conduct to the facts;

5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the charter school imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the charter school to the complainant; and

6. The charter school's procedures and permissible bases for the complainant and respondent to appeal and the date by which an appeal must be made.

E. In determining appropriate disciplinary sanctions, the Decision-maker should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties

involved, and the context in which the alleged incident occurred.

F. The written determination of responsibility must be provided to the parties simultaneously.

G. The Title IX Coordinator is responsible for the effective implementation of any remedies.

H. The determination regarding responsibility becomes final either on the date that the charter school provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

## XI. APPEALS

A. The charter school shall offer the parties an opportunity to appeal a determination regarding responsibility or the charter school's dismissal of a formal complaint or any allegations therein, on the following bases:

1. A procedural irregularity that affected the outcome of the matter (e.g., a material deviation from established procedures);

2. 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

3. The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

B. If notice of an appeal is timely received by the charter school, the charter school will notify the parties in writing of the receipt of the appeal, assign or designate the Appellate Decision-maker, and give the parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

C. After reviewing the parties' written statements, the Appellate Decision-maker must issue a written decision describing the result of the appeal and the rationale for the result.

D. The written decision describing the result of the appeal must be provided simultaneously to the parties.

E. The decision of the Appellate Decision-maker is final. No further review beyond the appeal is permitted.

## XII. RETALIATION PROHIBITED

A. Neither the charter school nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, or because the individual 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. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, constitutes retaliation. Retaliation against a person for making a report of sexual harassment, filing a formal complaint, or participating in an investigation, constitutes a violation of this policy that can result in the imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

B. Any person may submit a report or formal complaint alleging retaliation in the manner described in this policy and it will be addressed in the same manner as other complaints of sexual harassment or sex discrimination.

C. Charging an individual with violation of charter school policies for making a materially false statement in bad faith in the course of a grievance proceeding under this policy shall not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## XIII. TRAINING

A. The charters school shall ensure that Title IX Personnel receive appropriate training. The training shall include instruction on:

1. The Title IX definition of sexual harassment;

2. The scope of the charter school's education program or activity;

3. How to conduct an investigation and grievance process, appeals, and informal resolution processes, as applicable;

4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;

5. For Decision-makers, training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's prior sexual behavior are not relevant; and

6. For Investigators, training on issues of relevance, including the creation of an investigative report that fairly summarizes relevant evidence.

B. The training materials will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints.

C. Materials used to train Title IX Personnel must be posted on the charter school's website. If the charter school does not have a website, it must make the training materials available for public inspection upon request.

## XIV. DISSEMINATION OF POLICY

A. This policy shall be made available to all students, parents/guardians of students, charter school employee, and employee unions.

B. The charter school shall conspicuously post the name of the Title IX Coordinator, including office address, telephone number, and work e-mail address on its website and in each handbook that it makes available to parents, employees, students, unions, or applicants.

C. The charter school must provide applicants for admission and employment, students, parents or legal guardians of secondary school students, employees, and all unions holding collective bargaining agreements with the charter school, with the following:

1. The name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator;

2. Notice that the charter school does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate in such a manner;

3. A statement that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX may be referred to the Title IX Coordinator, to the Assistant Secretary for Civil Rights of the United States Department of Education, or both; and

4. Notice of the charter school's grievance procedures and grievance process contained in this policy, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the charter school will respond.

## XV. RECORDKEEPING

A. The charter school must create, and maintain for a period of seven calendar years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the charter school must document:

1. The basis for the charter school's conclusion that its response to the report or formal complaint was not deliberately indifferent;

2. The measures the charter school has taken that are designed to restore or preserve equal access to the charter school's education program or activity; and

3. If the charter school does not provide a complainant with supportive measures, then it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. Such a record must be maintained for a period of seven years.

4. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

B. The charter school must also maintain for a period of seven calendar years records of:

1. Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;

2. Any appeal and the result therefrom;

3. Any informal resolution and the result therefrom; and

4. All materials used to train Title IX Personnel.

# TRIO Wolf Creek Distance Learning Charter School #4095

***Legal References:*** Minn. Stat. § 121A.04 (Athletic Programs; sex discrimination) Minn. Stat. § 121A.40 – 121A.575 (Minnesota Pupil Fair Dismissal Act) Minn. Stat. Ch. 363 (Minnesota Human Rights Act)
20 U.S.C §1681-1688 (Title IX of the Education Amendments of 1972)
34 C.F.R. Part 106 (Implementing regulations of Title IX)
20 U.S.C § 1400, *et seq.* (Individuals with Disabilities Education Improvement Act of 2004)
29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973)
42 U.S.C. § 12101, *et seq.* (Americans with Disabilities Act of 1990, as amended)
20 U.S.C. § 1232g (Family Educational Rights and Privacy Act of 1974)
20 U.S.C. § 1092 *et seq.* (Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act ("Clery Act")

***Cross References:*** Policy 102 (Equal Educational Opportunity)
Policy 413 (Harassment and Violence)
Policy 506 (Student Discipline)
Policy 528 (Student Parental, Family, and Marital Status Nondiscrimination)

# TRIO Wolf Creek Distance Learning Charter School #4095

## COMPLAINT FORM: UNLAWFUL SEX DISCRIMINATION TOWARD A STUDENT

TRIO Wolf Creek Charter School #4095 maintains a firm policy prohibiting all forms of unlawful sex discrimination. All students are to be treated with respect and dignity. Unlawful sex discrimination by any teacher, administrator or other school personnel will not be tolerated under any circumstances.

Complainant: _____
Home Address: _____
Home Phone: _____ Cell Phone: _____

Date of Alleged Incident(s):_____

Name of person you believe unlawfully discriminated toward you or a student on the basis of sex: _____

If the alleged unlawful sex discrimination was toward another person, identify that person: _____
_____

Describe the incident(s) as clearly as possible, including such things as: what force, if any, was used; any verbal statements (i.e. threats, requests, demands, etc.); what, if any, physical contact was involved; etc. (Attach additional pages if necessary):_____
_____
_____

Where and when did the incident(s) occur: _____
_____

List any witnesses that were present: _____
_____

This complaint is filed based on my honest belief that _____ has unlawfully discriminated against me or a student on the basis of sex. I hereby certify that the information I have provided in this complaint is true, correct and complete to the best of my knowledge and belief.

_____ Date: _____
(Complainant Signature)

Received by: _____ Date: _____