



**Serendipity
Center**
TEACH NURTURE EMPOWER

SERENDIPITY CENTER, INC. POLICIES AND PROCEDURES

SUBJECT: Title IX of the Education Amendments of 1972

EFFECTIVE DATE: August 2020

ATTACHMENTS: Serendipity Complaint Form

RELATED: Oregon Sexual Harassment Policy

PURPOSE:

Serendipity's policy is that no person will be subjected to harassment or discrimination on the basis of actual or perceived sex or gender and that no person will be denied participation in the benefits and privileges of Serendipity's school and its activities on the basis of actual or perceived sex or gender. As a therapeutic school, Serendipity will implement this policy in consideration of the unique needs of its special education students who are learning to grow emotionally and behaviorally through academic learning and individual treatment.

While all forms of sex-based harassment are prohibited at Serendipity, the purpose of this regulation is to and only to address, sexual harassment as defined in Title IX of the Education Amendments of 1972 (Title IX) that occurs within Serendipity's educational programs and activities, and to provide a formal complaint procedure for investigating and reaching a final determination of responsibility for a formal complaint of sexual harassment.

All other complaints or reports of sexual harassment will be governed by applicable laws and processed in accordance with school policies and administrative regulation.

1. Title IX Definition of Sexual Harassment

Under Title IX, *sexual harassment* means conduct on the basis of sex that satisfies any of the following:

- a. An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct ("quid pro quo")
- b. Unwelcome conduct that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity
- c. Sexual assault—any attempted or actual sexual act directed against another person, without that person's consent, including instances where the person is incapable of giving consent
- d. Dating violence – violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim
- e. Domestic violence – violence committed by a current or former spouse or intimate partner of the victim; or
- f. Stalking – a course of conduct directed at a specific person that would cause

a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

2. Other Definitions

- “*Actual knowledge*” means notice of sexual harassment or allegations of sexual harassment to any Serendipity employee, including the Title IX Coordinator.
- “*Advisor*” means an individual chosen by the complainant or respondent to participate and support them in any meetings, interviews, or proceedings related to the formal complaint. This individual may be, but is not required to be, an attorney.
- “*Complainant*” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- “*Consent*” is knowing, voluntary and clear permission by word or action to engage in mutually agreed upon sexual activity. A person cannot give consent if they are pressured through physical force, coercion or explicit or implied threats, if they are incapacitated due to alcohol or drugs, if they are asleep or unconscious, or if they otherwise lack capacity to understand their interactions and make knowing choices.
- “*Days*” means calendar days but does not include any weekday (Monday through Friday) on which Serendipity's office is closed (e.g., due to holidays, office, or school closure).
- “*Determination of responsibility*” means the formal finding by the decision-maker on each allegation of sexual harassment contained in a formal complaint that the respondent did or did not engage in conduct constituting sexual harassment under Title IX.
- “*Education program or activity*” means locations, events, or circumstances over which Serendipity exercises substantial control over both the respondent and the context in which the sexual harassment occurs.
- “*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 Serendipity investigate the allegation of sexual harassment. A complainant must be participating in or attempting to participate in the education program or activity of Serendipity with which the formal complaint is filed.
- “*Preponderance of the evidence*” means that, after considering the evidence, a decision-maker concludes that the alleged facts are more likely than not to be true (more than 50%).
- “*Remedies*” are measures designed to restore or preserve equal access to the district's program or activity, and may include individualized supportive measures, but remedies need not be non-disciplinary, non-punitive or avoid burdening the respondent. Remedies may be provided to a complainant where a determination of responsibility for sexual harassment has been made and the formal complaint and investigation process

has been followed.

- “*Respondent*” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- “*Supportive measures*” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Serendipity’s educational environment, or deter sexual harassment. Serendipity must maintain as confidential, any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide supportive measures.

3. Title IX Coordinator

The following employee has been designated as Serendipity’s Title IX Coordinator, to coordinate efforts to comply with Serendipity’s responsibilities under Title IX:

Kristin Harquail
PO Box 33350
Portland, OR 97292-3350
(503) 761-7139
kristinh@serendipitycenter.org

Serendipity’s Executive Director may appoint other trained and qualified personnel to serve as deputy Title IX Coordinators, or in the absence of Serendipity’s Title IX Coordinator, as the acting Title IX Coordinator. References to Title IX Coordinator in this regulation include deputy and acting Title IX Coordinators, as applicable.

4. Reporting of Sexual Harassment and Serendipity’s Response

a. Reporting

Any person may make a report of sexual harassment. This report may be made in person, by mail, by telephone, or by electronic mail, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Individuals are strongly encouraged to immediately report conduct they believe violates Serendipity’s policy prohibiting sexual harassment to the Title IX Coordinator or the Executive Director. Students may also report concerns to a teacher or case manager, who will promptly notify a member of the management team.

Any employee who receives direct or indirect notice of conduct that could violate Serendipity’s policy against sexual harassment must immediately report the information to the Title IX Coordinator. If the information reported may constitute

child abuse, the employee will also ensure that a mandatory report is or was made to the Oregon Department of Human Services or a law enforcement agency in compliance with Serendipity's policies.

The management team member shall report the information to the Title IX Coordinator. The Title IX Coordinator will coordinate Serendipity's effort to comply with its responsibilities related to implementation of policy and this regulation.

A report of sexual harassment does not initiate the Title IX Formal Complaint Process. That process only begins upon the filing of a formal complaint under the Title IX Formal Complaint Procedure described below in section 6.

b. Response to Report

Serendipity will respond promptly whenever any school employee has actual notice of, or an allegation of, sexual harassment that if true, would meet the definition of sexual harassment under Title IX, with or without the filing of a formal complaint. The response must not be deliberately indifferent, meaning clearly unreasonable in light of the known circumstances.

When a report of sexual harassment is made under this regulation, the Title IX Coordinator or designee will promptly contact the complainant to discuss the availability of supportive measures, with or without the filing of a formal complaint. They will consider the complainant's wishes with respect to supportive measures, explain the option and process for filing a formal complaint, and consider the complainant's wishes with respect to filing a formal complaint. In certain circumstances, the Title IX Coordinator may sign a formal complaint and proceed with an investigation, despite a complainant not wishing to file a formal complaint.

c. Supportive Measures

Serendipity will make available supportive measures with or without filing a formal complaint. These supports will be available to both parties, as appropriate, free of charge. These are non-disciplinary and non-punitive individualized services designed to offer support without being unreasonably burdensome. They are meant to restore access to education, protect student and employee safety, and/or deter future acts of sexual harassment.

Supportive measures may include counseling, extensions of deadlines or course-related adjustments; modifications of work or class schedules, mutual restrictions on contact between parties; leaves of absence; increased security and monitoring of certain areas of the building; and other similar measures. Serendipity will maintain the confidentiality of any supportive measures provided to the extent that maintaining confidentiality would not impair the ability of the district to provide such measures.

d. Limit on Discipline

Serendipity may not impose disciplinary consequences or sanctions against a respondent for conduct that falls under Title IX until the Title IX formal complaint process has been completed.

e. Emergency Removal and Administrative Leave

Respondents may not be disciplined for conduct that falls under Title IX until and unless they are found responsible after an investigation for violating the prohibition against sexual harassment as defined in this regulation. However, prior to the determination of responsibility, a respondent may be removed on an emergency basis, so long as:

- (1) An individualized safety and risk analysis is conducted;
- (2) The analysis 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
- (3) The respondent is provided written notice and an opportunity to challenge the decision immediately following the removal.

An employee respondent may be placed on administrative leave during the investigation process.

5. Formal Title IX Complaint Procedure

A formal complaint must be filed to initiate a Title IX investigation. A formal complaint is a written report, filed by a complainant, their parent or legal guardian, or the Title IX Coordinator, alleging sexual harassment and requesting Serendipity investigate. The form is available from the Title IX Coordinator or on Serendipity's website.

The investigation and determination of responsibility will be objective, unbiased, and free from conflicts of interest. Complainants and respondents will be treated equitably throughout the process, including in the provision of supportive measures and remedies.

a. Written Notice

Upon receipt of a formal complaint, Serendipity will provide the complainant, respondent, and parents/guardians, if applicable, with written notice of the following:

- (1) Serendipity's complaint procedure, including any informal resolution process;
- (2) The allegations potentially constituting sexual harassment, including

sufficient details known at the time and with sufficient time to prepare a response before any initial interview;

- (3) The respondent is presumed not responsible for the alleged conduct and that a determination of responsibility will be made at the conclusion of the investigation;
- (4) The parties may have an advisor of their choice, who may be, but is not required to be an attorney;
- (5) The parties may inspect and review evidence; and
- (6) That knowingly making false statements or knowingly submitting false information during the complaint procedure is prohibited.

b. Dismissal

Mandatory Dismissal: As an initial matter, the Title IX Coordinator will determine if the formal complaint must be dismissed on any of the following mandatory dismissal grounds:

- (1) Conduct would not constitute sexual harassment as defined under Title IX even if proven;
- (2) Conduct occurred against a person outside of the United States, such as a study abroad program.
- (3) Complainant was not participating or attempting to participate in a Serendipity program or activity when the conduct occurred.
- (4) Conduct occurred under circumstances over which Serendipity did not exercise substantial control over both the respondent and the context in which the sexual harassment happened.

Optional Dismissal: Serendipity may dismiss a formal complaint if at any time during the investigation if:

- (1) A complainant notifies the Title IX Coordinator in writing that the complaint would like to withdraw the formal complaint or any allegation in the complaint;
- (2) The respondent is no longer enrolled or employed by Serendipity; or
- (3) Specific circumstances prevent Serendipity from gathering sufficient evidence to reach a determination of responsibility.

Notice of Dismissal: When a formal complaint is dismissed, Serendipity must promptly send written notice to both parties simultaneously with an explanation as to why it was dismissed.

c. Investigation

The Title IX Coordinator will coordinate Serendipity's investigation. The investigation

must:

- (1) Be conducted by a trained Title IX investigator who is not the decision- maker;
- (2) Presume that the respondent is not responsible for the prohibited conduct;
- (7) Ensure that Serendipity bears the burden of proof and the burden of gathering evidence sufficient to reach a determination of responsibility;
- (8) Obtain written consent before accessing, considering, or using any protected medical or psychological records for use in the formal complaint procedure;
- (9) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- (10) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- (11) Allow parties the same opportunity to have their advisors at all meetings related to the formal complaint, although advisors may not speak on behalf of a party or interfere with the process;
- (12) Not restrict the choice or presence of advisor;
- (13) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all interviews and other meetings, and time to prepare for the same;
- (14) Provide notice of additional allegations to the parties if, during the course of the investigation, the district investigates allegations that were not included in the initial notice;
- (15) Provide an equal opportunity for the parties to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence that tends to prove or disprove the allegation(s), evidence which Serendipity does not intend to rely on in reaching a determination of responsibility, and inculpatory and exculpatory evidence, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation;
- (16) Prior to completion of the investigative report, send to each party and advisor, if any, the evidence subject to inspection and review, and provide the parties with at least ten (10) days to submit a written response;
- (17) Consider the parties' written responses to the evidence prior to completion of the investigative report;
- (18) Complete an investigative report that fairly summarizes relevant evidence and send to each party and advisor, if any, the investigative report for their review and written response. At least ten days will be provided for the parties to provide written comment; written comments, if any, will be sent to the Title IX Coordinator and subsequently provided to the other party and to the Title IX decision-maker. The Title IX decision- maker may

not be the individual who conducted the investigation.

d. Determination of Responsibility Procedure

Written Question and Answer Process: After Serendipity has sent the investigative report to the parties and before reaching a determination of responsibility, the Title IX decision-maker(s) will allow each party to submit written, relevant questions to any party or witness within five (5) days of when the decision-maker received the investigation report, provide at least a five (5) day response period, and provide each party with the other party or witness answers to their written, relevant questions, and allow for additional, limited follow-up questions from each party.

The decision-maker will provide an explanation to the requesting party if a question is determined to be not relevant. Questions or evidence about the complainant's prior sexual history are generally not relevant.

Written Determination: The decision-maker will use the preponderance of evidence standard to reach a determination. Credibility determinations will not be based on the person's status as a complainant, respondent, or witness. Within ten (10) days after the close of time for responses to questions, the decision-maker must issue a written determination to both parties simultaneously, which includes:

- (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 evidence;
- (3) Findings of fact supporting the determination;
- (4) Conclusions regarding the application of Serendipity's code of conduct or other policies to the facts;
- (5) A statement of, and rationale for, the result as to each allegation, including:
 - (a) A determination of responsibility;
 - (b) Any disciplinary sanctions Serendipity imposes on the respondent; and
 - (c) Whether remedies will be provided by Serendipity to the complainant.
- (6) Serendipity's appeal procedures.

After the decision-maker issues a final decision, either party may submit an appeal of the decision to Serendipity's Executive Director with a copy to the Title IX Coordinator. Appeals will be processed as provided below.

The determination of responsibility becomes final on the date that Serendipity 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.

e. Sanctions and Remedies

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

- (1) Disciplinary Sanctions are consequences imposed on a respondent who has been found responsible for the prohibited behavior as alleged. Sanctions are based on the severity and circumstances of the behavior and other relevant factors. Disciplinary consequences can, for students, include any disciplinary measure described in Serendipity's code of conduct (the Student & Caregiver Handbook) or other policies, including suspension or termination of placement. Disciplinary sanctions for employees may include the forms of discipline or sanction relied upon by Serendipity, up to and including termination of employment.
- (2) Remedies: When a respondent is found responsible for the prohibited behavior as alleged by a complainant, Serendipity must provide remedies to the complainant, meaning measures designed to restore or preserve the complainant's equal access to the education program or activity. These remedies may include the same individualized services provided to the complainant as supportive measures, additional services, or different services. Remedial actions as to the respondent after a determination of responsibility may include measures such as no-contact requirements, scheduling adjustments, removal or exclusion from specific school activities, class reassignments, limits on future class assignments, restrictions on access to various spaces in the building, and similar measures that are calibrated to respond appropriately to the circumstances.
- (3) Additional remedial actions may include recommendations for a school-wide response, such as for training, notice of the policy, and other measures.

f. Appeals

Either party may file an appeal from a dismissal of a formal complaint or determination of responsibility within ten (10) days of the decision, on the following bases:

- (1) Procedural irregularity that affected the outcome;
- (2) New evidence that was not reasonably available at the time, that could affect the outcome; or
- (3) Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias that affected the outcome.

When an appeal is filed, the Executive Director will appoint a decision-maker on appeal, who is not the same person as the decision-maker that reached the determination of responsibility or dismissal, the investigator(s), or the Title IX Coordinator. The decision-maker on appeal shall be free from conflicts of interest and bias. When an appeal is filed, Serendipity must:

- (1) Notify the other party in writing;
- (2) Implement appeal procedures equally for both parties;
- (3) Give both parties a reasonable equal opportunity to submit a written statement in support of, or challenging the outcome;
- (4) Issue a written decision describing the result of the appeal and the rationale for the result; and
- (5) Provide the written decision simultaneously to both parties.

g. Informal Resolution

After a formal complaint has been filed, the Title IX Coordinator may offer the parties the opportunity to participate in an optional, informal resolution process to resolve the complaint without completing the investigation and determination process. Informal resolutions do not apply to complaints alleging an employee sexually harassed a student. Additional requirements include written notice to the parties describing the informal resolution process and consequences of participation in that process; express written consent by both parties agreeing to participate in the voluntary informal resolution process; and the right of any party to withdraw from the process before reaching an informal resolution and resume the formal complaint procedure.

h. Timelines

Serendipity will complete the following portions of the formal complaint procedure within the specified timelines: (1) The general complaint procedure (from receipt of formal complaint to determination of responsibility) – 90 days; (2) appeals (from receipt of appeal) – 60 days; and (3) the informal resolution process – 60 days. Temporary delays of the complaint procedure, or limited extensions of time will be allowed for good cause with written notice to the parties.

6. Documentation and Record Retention

All actions taken in response to a report or formal complaint of sexual harassment must be retained for seven years, including but not limited to, documentation for each sexual harassment investigation, including any responsibility determination, audio or audiovisual recording and transcript, disciplinary sanctions imposed, remedies and supportive measures provided, and appeal and informal resolution documentation, if applicable.

If the complainant was not provided with supportive measures, then documentation must include why such a response was not clearly unreasonable in light of the known circumstances.

7. Training

All employees shall receive regular training about their mandatory reporting obligations and responsibilities under this regulation.

Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on the definition of sexual harassment, Serendipity policy and regulation, the scope of Serendipity's education program or activity, how to conduct an investigation, and the formal Title IX complaint procedure including appeals and informal resolution processes. Training must include topics of bias, avoidance of prejudgment of the facts at issue, conflicts of interest, and impartial service as a Title IX Coordinator, investigator, decision-maker, and/or facilitator for all who serve in those roles.

Decision makers will receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Materials used for training the Title IX Coordinator(s), investigators, decision-makers, and any person who facilitates an informal resolution process must be publicly available on the Serendipity website. Such materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

8. Confidentiality

Identities of the parties and participating persons will be kept confidential to the extent allowed by law and the process outlined in this regulation.

9. Retaliation Prohibited

Neither Serendipity nor any person may retaliate against an individual for the purpose of interfering with any right or privilege secured by Title IX or this regulation, or because the individual has made a report, participated, or refused to participate in the investigation process. Complaints of retaliation may be filed by using the complaint form on the Serendipity website.

10. Parental Rights

A student's parent or guardian must be permitted to exercise the rights granted to their child under Title IX, whether such rights involve requesting supportive measures, filing a formal complaint on behalf of their child, or participating in a Title IX formal complaint process. Additionally:

- a. A student's parent or guardian must be permitted to accompany the student to all meetings during the complaint process to exercise rights on behalf of the student, including filing a formal complaint on behalf of their children.
- b. A student's advisor of choice may be a different person from the parent or guardian.
- c. Students over the age of 14 should be offered more discretion in when/how parents are notified given their legal rights to medical and mental health services.

11. No Conflict of Interest

No person designated as a Title IX Coordinator, investigator, decision-maker, nor any person designated by Serendipity to facilitate an informal resolution process, may have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.