Sec. 1. STATEMENT OF NONDISCRIMINATION

Midland Academy Charter does not exclude from participation in, deny the benefits of, or subject to discrimination on the basis of race, religion, color, national origin, sex, age, disability, or relationship or association with an individual with a disability in providing educational services, activities, and programs, including vocational and career technology programs, in accordance with Title VI of the Civil Rights Act of 1964, as amended; the Individuals with Disabilities Education Act, as amended; Title IX of the Educational Amendments of 1972, as amended; the Americans with Disabilities Act ("ADA"), as amended, and Section 504 of the Rehabilitation Act of 1973, as amended.

Sec. 2. GRIEVANCE PROCEDURES

Midland Academy Charter shall adopt and public grievance procedures for prompt and equitable resolution of student complaints alleging discrimination under applicable law. *34 CFR 106.8 (Title IX); 34 CFR 104.7 (Section 504)*. The Superintendent or designee shall ensure that such grievance procedures are distributed and otherwise made available to parents and students.

a) *Title IX Coordinator*

Midland Academy Charter designates the following person(s) to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended: Kent Coker, Superintendent, 500 N. Baird St, Midland, Tx. 79701, 432-686-0003.

b) *ADA/Section 504 Coordinator*

Reports of discrimination based on disability may be directed to the ADA/Section 504 Coordinator. Midland Academy Charter designates the following person(s) to coordinate its efforts to comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended: Melissa Mauldin, Counselor, 500 N. Baird St, Midland, Tx. 79701, 432-686-0003.

c) *Coordinator for Purposes of Compliance with Other Nondiscrimination Laws*

The following person(s) have been designated to coordinate Midland Academy Charter's compliance with all other antidiscrimination laws: Kent Coker, Superintendent, 500 N. Baird St, Midland, Tx. 79701, 432-686-0003.

Sec. 3. EQUAL EDUCATIONAL OPPORTUNITY

Midland Academy Charter shall provide necessary services and supports to provide students equal access to educational opportunities. Certain instructional or other accommodations, including on state-mandated assessments, may be made when necessary, when allowable, and when these

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

accommodations do not modify the rigor or content expectations of a subject, course, or assessment.

If Midland Academy Charter has reason to believe that a student has a disability that may require additional services and supports in order for the student to receive an appropriate education as this term is defined by law, Section 504 and/or the Individuals with Disabilities Education Act ("IDEA") shall govern the evaluation, services, and supports provided by Midland Academy Charter .

Sec. 4. COMPLAINTS

Except as otherwise provided in Policy or Procedure, allegations of unlawful discrimination, prohibited harassment, or retaliation shall be made under PG-3.2 (Freedom from Discrimination, Harassment, and Retaliation).

Complaints concerning identification, evaluation, or educational placement of a student with a disability within the scope of Section 504 shall be filed under the General Provisions of PG-3.2, except that the deadline for filing an initial Level One grievance shall be twenty (20) school days.

Sec. 5. RETALIATION

Midland Academy Charter shall not coerce, intimidate, threaten, retaliate against, or interfere with any person who attempts to assert a right protected by the above laws or cooperates with investigation and enforcement proceedings under these laws. *34 CFR 100.7(e) (Title VI), 104.61 (Section 504), 106.71 (Title IX).*

Sec. 6. DISABILITY DISCRIMINATION

Under the ADA, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of Midland Academy Charter , or be subjected to discrimination by Midland Academy Charter . *42 U.S.C.A. 12132; 28 CFR 35.130.*

Under Section 504, no otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

a) *Student with a Disability*

A "student with a disability" is one who has a physical or mental impairment that substantially limits one or more of the student's major life activities, has a record of having such an impairment, or is being regarded as having such an impairment.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

A student meets the requirement of being "regarded as" having an impairment if the student establishes that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. This provision does not apply to impairments that are transitory or minor. A transitory impairment one with an actual or expected duration of six months or fewer.

29 U.S.C. 705(20)(B), 42 U.S.C. 12102(1), (3)–(4).

b) *Qualified Individual with a Disability*

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by Midland Academy Charter . *42 U.S.C. 12131(2).*

c) *Major Life Activities*

"Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. "Major life activity" also includes the operation of major bodily functions, including functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. *42 U.S.C. 12102(2).*

d) *Reasonable Modification*

Midland Academy Charter shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless Midland Academy Charter can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. *28 CFR 35.130(b)(7).*

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

e) ***Direct Threat***

"Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services as provided below.

Midland Academy Charter is not required to permit an individual to participate in or benefit from the services, programs, or activities of Midland Academy Charter when that individual poses a direct threat to the health or safety of others.

In determining whether an individual poses a direct threat to the health or safety of others, Midland Academy Charter must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

1. The nature, duration, and severity of the risk;
2. The probability that the potential injury will actually occur; and
3. Whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

28 CFR 35.139.

f) ***Free Appropriate Public Education ("FAPE")***

Midland Academy Charter shall provide a free appropriate public education to each qualified student with a disability within Midland Academy Charter 's jurisdiction, regardless of the nature or severity of the student's disability. A student with a disability is "qualified" if he or she is between the ages of three and 21. An appropriate education is the provision of regular or special education and related services that are:

1. Designed to meet the student's individual educational needs as adequately as the needs of students who do not have disabilities are met; and
2. Based on adherence to procedures that satisfy federal requirements for educational setting, evaluation and placement, and procedural safeguards, as set forth below.

34 CFR 104.33(b).

g) ***Educational Setting***

Midland Academy Charter shall place a student with a disability in the regular educational environment, unless Midland Academy Charter demonstrates that education in the regular environment with the use of supplemental aids and services cannot be achieved satisfactorily. *34 CFR 104.34(a).*

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

In providing or arranging for nonacademic and extracurricular services and activities, Midland Academy Charter shall ensure that a student with a disability participates with students who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability. *34 CFR 104.34(b), 104.37*.

h) ***Evaluation and Placement***

Midland Academy Charter shall establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education and related services. Midland Academy Charter shall conduct an evaluation before the initial placement, or any significant change in placement, of the student. *34 CFR 104.35*.

i) ***Military Dependents***

In compliance with the requirements of Section 504, and with Title II of the ADA, Midland Academy Charter shall make reasonable accommodations and modifications to address the needs of incoming military dependents with disabilities, subject to an existing Section 504 or Title II Plan, to provide the student with equal access to education. This does not preclude Midland Academy Charter from performing subsequent evaluations to ensure appropriate placement of the student. *Education Code 162.002 art. V, C.*

j) ***Procedural Safeguards***

Midland Academy Charter shall establish a system of procedural safeguards with respect to the identification, evaluation, and educational placement of persons who need or are believed to need special instruction or related services.

The system shall include notice, an opportunity for the student's parent or guardian to examine relevant records, an impartial hearing with the opportunity for participation by the student's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of IDEA is one means of meeting this requirement. *34 CFR 104.36.*

Sec. 7. HOMELESS CHILDREN

Midland Academy Charter shall adopt policies and practices to ensure that homeless children are not stigmatized or segregated on the basis of their homeless status.

a) ***Liaison***

Midland Academy Charter shall designate an appropriate staff person as the liaison for homeless children. Midland Academy Charter shall inform school personnel, service providers, and advocates working with homeless families of the duties of the liaison. *42 U.S.C. 11432(g)(1)(J)(i), (ii), (g)(6)(B).*

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Sec. 8. DISCRIMINATION ON THE BASIS OF SEX

No person shall, on the basis of sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination by Midland Academy Charter . *20 U.S.C. 1681(a)*.

Midland Academy Charter shall not provide any course or otherwise carry out any of its educational programs or activities separately on the basis of sex, or require or refuse participation therein on the basis of sex, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses. *34 CFR 106.34*.

a) ***Sexual Harassment***

Sexual harassment of students is discrimination on the basis of sex under Title IX.

b) ***Separate Facilities***

Midland Academy Charter may provide separate toilet, locker room, and shower facilities on the basis of sex, but the facilities provided for one sex shall be comparable to the facilities provided for the other sex. *34 CFR 106.33*.

c) ***Human Sexuality Classes***

Portions of classes in elementary and secondary school that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

d) ***Vocal Music Activities***

Midland Academy Charter may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

34 CFR 106.34.

e) ***Single-Sex Programs***

Midland Academy Charter shall not, on the basis of sex, exclude any student from admission to an institution of vocational education operated by Midland Academy Charter . *34 CFR 106.35.*

f) ***Pregnancy and Marital Status***

Midland Academy Charter shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex. *34 CFR 106.40.*

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

g) *Physical Education Classes and Contact Sports*

Midland Academy Charter may group students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

Midland Academy Charter may separate students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

34 CFR 106.34.

h) *Athletic Programs*

Midland Academy Charter shall not discriminate, on the basis of sex, in interscholastic or intramural athletics or provide any such athletics separately on such basis.

i. *Single-Sex Teams*

Midland Academy Charter may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but not for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport.

ii. *Equal Athletic Opportunities*

Midland Academy Charter shall provide equal interscholastic and/or intramural athletic opportunity for members of both sexes. The following factors will be considered in determining whether Midland Academy Charter provides equal athletic opportunities:

1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
2. The provision of equipment and supplies;
3. Scheduling of games and practice time;
4. Travel and per diem allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms, practice and competitive facilities;
8. Provision of medical and training facilities and services;
9. Provision of housing and dining facilities and services; and
10. Publicity.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP

34 CFR 106.41.

Sec. 9. SECTION 504 COMMITTEES

Midland Academy Charter shall form Section 504 committees as necessary. The Section 504 coordinator and members of each Section 504 committee shall receive training in the procedures and requirements for identifying and providing educational and related services and supports to a student who has a disability that results in a substantial limitation of a major life activity.

Each Section 504 committee shall be composed of a group of persons knowledgeable about the student, the meaning of the evaluation data, placement options, and the legal requirements regarding least restrictive environment and comparable facilities for students with disabilities.

a) ***Referrals***

If a teacher, school counselor, administrator, or other Midland Academy Charter employee has reason to believe that a student may have a disability as defined by Section 504, Midland Academy Charter shall evaluate the student. A student may also be referred for evaluation by the student's parent.

b) ***Notice and Consent***

Midland Academy Charter shall seek written parental consent prior to conducting a formal evaluation. Ordinary observations in the classroom or other school setting shall not require prior parental consent.

c) ***Evaluation and Placement***

The results of an evaluation shall be considered before any action is taken to place a student with a disability or make a significant change in placement in an instructional program. The Superintendent shall ensure that Midland Academy Charter's procedures for tests and other evaluation materials comply with the minimum requirements of law. In interpreting evaluation data and when making decisions related to necessary services and supports, each Section 504 committee shall carefully consider and document information from a variety of sources in accordance with law.

d) ***Review and Reevaluation Procedure***

To address the periodic reevaluation requirement of law, Midland Academy Charter shall adhere to the reevaluation timelines in the IDEA regulations.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

A parent, teacher, or other Midland Academy Charter employee may request a review of a student's services and supports at any time, but a formal reevaluation shall generally occur no more frequently than once a year.

e) ***Examining Records***

A parent shall make any request to review his or her child's education records to the campus principal or other identified custodian of records.

f) ***Right to Impartial Hearing***

A parent shall be given written notice of the due process right to an impartial hearing if the parent has a concern or complaint about Midland Academy Charter's actions regarding the identification, evaluation, or educational placement of a student with a disability. The impartial hearing shall be conducted by a person who is knowledgeable about Section 504 issues and who is not employed by Midland Academy Charter or related to a member of the Board in a degree that would be prohibited under the nepotism statute. The impartial hearing officer is not required to be an attorney. Midland Academy Charter and the parent shall be entitled to legal representation at the impartial hearing. *34 CFR 104.36.*

g) ***Records Retention***

Records specific to identification, evaluation, and placement as these pertain to Section 504 shall be retained by Midland Academy Charter in accordance with law and Midland Academy Charter's local records retention schedules.

Sec. 10. SERVICE ANIMALS (FEDERAL LAW REQUIREMENTS)

"Service animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition, unless otherwise allowed by Board Policy. The work or tasks performed by a service animal must be directly related to the handler's disability. *28 C.F.R. 35.104*.

a) ***Policies, Practices, or Procedures***

Midland Academy Charter shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability, unless Midland Academy Charter can demonstrate that the service animal is out of control and the service animal's handler does not take effective action to control it or the service animal is not housebroken. *28 C.F.R. 35.136(a), (b).*

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

b) ***Access***

Individuals with disabilities shall be permitted to be accompanied by their service animal in all areas of Midland Academy Charter facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go. *28 C.F.R. 35.136(g).*

i. *Exceptions*

Midland Academy Charter may ask an individual with a disability to remove a service animal from the premises if:

1. The service animal is out of control and the service animal's handler does not take effective action to control it; or
2. The service animal is not housebroken.

28 C.F.R. 35.136(b).

Midland Academy Charter is not required to permit an individual to participate in or benefit from the services, programs, or activities of Midland Academy Charter when that individual poses a direct threat to the health or safety of others. *28 C.F.R. 35.139*.

If Midland Academy Charter properly excludes a service animal, it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises. *28 C.F.R. 35.136(c).*

ii. *Animal Under Handler's Control*

A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control, whether by voice control, signals, or other effective means. *28 C.F.R. 35.136(d).*

c) ***Inquiries***

Midland Academy Charter shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. Midland Academy Charter may ask if the animal is required because of a disability and what work or task the animal has been trained to perform.

Midland Academy Charter shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Generally, Midland Academy Charter may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). *28 C.F.R. 35.136(f)*.

d) *Care or Supervision of Animal*

Midland Academy Charter is not responsible for the care or supervision of a service animal. *28 C.F.R. 35.136(e)*.

e) *Surcharges*

Midland Academy Charter shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets.

An individual with a disability may be charged for damage caused by his or service animal if Midland Academy Charter normally charges individuals for the damage they cause. *28 C.F.R. 35.136(h)*.

f) *Miniature Horses*

Midland Academy Charter shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

i. *Assessment Factors*

In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, Midland Academy Charter shall consider:

1. The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
2. Whether the handler has sufficient control of the miniature horse;
3. Whether the miniature horse is housebroken; and
4. Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

ii. *Other Requirements*

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

Provisions at 28 CFR 35.136(c) through (h) shall also apply to miniature horses.

28 C.F.R. 35.136(i).

Sec. 11. ASSISTANCE ANIMALS (STATE LAW REQUIREMENTS)

"Assistance animal" means a canine that is specially trained or equipped to help a person with a disability and that is used by a person with a disability. *Human Resources Code 121.002(1).*

a) ***Assistance Animal Access***

No person with a disability may be denied admittance to Midland Academy Charter because of the person's disability or may be denied the use of an assistance animal. Midland Academy Charter may not limit the use of Midland Academy Charter facilities to a designated class of persons and thereby prohibit the use of Midland Academy Charter facilities by persons with disabilities who, except for their use of assistance animals, would fall within the designated class. An assistance animal in training shall not be denied admittance to Midland Academy Charter when accompanied by an approved trainer. *Human Resources Code 121.003(c), (e), (i).*

b) ***Harassment and Harm Prohibited***

A person may not assault, harass, interfere with, kill, or injure in any way, or attempt to assault, harass, interfere with, kill, or injure in any way, an assistance animal. "Harass" means any conduct that is directed at an assistance animal that impedes or interferes with, or is intended to impede or interfere with, the animal's performance of its duties or places a person with a disability who is using an assistance animal, or a trainer who is training an assistance animal, in danger of injury.

A person is not entitled to make demands or inquiries relating to the qualifications or certifications of a service animal for purposes of admittance to a Midland Academy Charter facility except to determine the basic type of assistance provided by the service animal to a person with a disability. If a person's disability is not readily apparent, a staff member or administrator may inquire about whether the service animal is required because the person has a disability and what type of work or task the service animal is trained to perform. *Human Resources Code 121.002, .003(j)-(l).*

c) ***Transportation***

Midland Academy Charter may not refuse to provide transportation to or from school and/or school related activities to a student solely because of the student's disability, nor may a student be required to pay a fee because of his or her use of an assistance animal. *Human Resources Code 121.003(b).*

d) ***Responsibilities of Students with Disabilities***

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

A student with a disability who uses an assistance animal for assistance in travel is liable for any damages done to the premises or facilities by the animal.

A student with a disability who uses an assistance animal for assistance in travel or auditory awareness shall keep the animal properly harnessed or leashed, and a person who is injured by the animal because of the failure of a person with a disability to properly harness or leash the animal is entitled to maintain a cause of action for damages in a court of competent jurisdiction under the same law applicable to other causes brought for the redress of injuries caused by animals. *Human Resources Code 121.005*.

© 2020 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.