Sec. 1. NONDISCRIMINATION STATEMENT

Midland Academy Charter prohibits discrimination, including harassment, against any student on the basis of race, color, religion, sex, gender, national origin, disability, age, or any other basis prohibited by law. Midland Academy Charter further prohibits retaliation against anyone involved in the complaint process.

Sec. 2. GENERAL NON-DISCRIMINATION POLICY

a) *Prohibited Conduct*

In this policy, the term "prohibited conduct" includes discrimination, harassment, and/or retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.

i. *Prohibited Discrimination*

Discrimination against a student is defined as conduct directed at a student on the basis of race, color, religion, sex, gender, national origin, disability, age, or on any other basis prohibited by law, that adversely affects the student.

ii. *Prohibited Harassment*

Prohibited harassment of a student is defined as physical, verbal, or nonverbal conduct based on the student's race, color, religion, sex, gender, national origin, disability, age, or any other basis prohibited by law that is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

Examples of prohibited harassment may include offensive or derogatory language directed at another person's religious beliefs or practices, accent, skin color, or need for accommodation; threatening or intimidating conduct; offensive jokes; name calling, slurs, or rumors; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other negative stereotypes; or other kinds of aggressive conduct such as theft or damage to property.

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iii. *Prohibited Gender-Based Harassment*

Gender-based harassment includes physical, verbal, or nonverbal conduct based on a student's gender, the student's expression of characteristics perceived as stereotypical for the student's gender, or the student's failure to conform to stereotypical notions of femininity or masculinity. Gender-based harassment is considered prohibited harassment if the conduct is so severe, persistent, or pervasive that it:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

Examples of gender-based harassment, regardless of the student's or alleged harasser's actual or perceived gender, may include offensive jokes, name-calling, slurs, or rumors; physical aggression or assault; threatening or intimidating conduct; or other kinds of aggressive conduct such as theft or damage to property.

iv. *Prohibited Retaliation*

Midland Academy Charter prohibits retaliation against a student alleged to have experienced discrimination or harassment or another student who, in good faith, makes a report, serves as a witness, or otherwise participates in an investigation.

Examples of retaliation may include threats, rumor spreading, ostracism, assault, destruction of property, unjustified punishments, or unwarranted grade reductions. Unlawful retaliation does not include petty slights or annoyances.

b) *False Claims*

A student who intentionally makes a false claim, offers false statements, or refuses to cooperate with a Midland Academy Charter investigation regarding discrimination or harassment is subject to appropriate discipline.

c) *Reporting Procedures (Non-Sexual Harassment)*

Any student who believes that he or she has experienced prohibited conduct or believes that another student has experienced prohibited conduct should immediately report the alleged acts to a teacher, counselor, Principal, or the appropriate Compliance Coordinator designated by Midland Academy Charter.

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Any Midland Academy Charter employee who suspects or receives notice that a student or group of students has or may have experienced prohibited conduct shall immediately notify the appropriate Compliance Coordinator listed in this policy, and take any other steps required by this policy.

The procedures in this Section 2 will apply to all allegations of prohibited conduct other than allegations of harassment prohibited by Title IX. For allegations of sex-based harassment that, if proved, would meet the definition of sexual harassment under Title IX (including sexual harassment), see the procedures below at Section 3, Sexual Harassment Prohibited – Title IX Policy.

d) ***Definition of Compliance Coordinator***

For the purposes of this policy, Compliance Coordinators are the Title IX Coordinator, the ADA/Section 504 coordinator, and the Superintendent or designee.

v. *Title IX Coordinator*

The Title IX Coordinator is responsible for coordinating Midland Academy Charter's efforts to comply with its responsibilities under Title IX with respect to discrimination based on sex, including sexual harassment. Midland Academy Charter has designated as the following individual as the Title IX Coordinator: Kent Coker, 500 N. Baird St. Midland, Texas 79701, 432-686-0003, and kcoker@macharter.org>>.

vi. *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 to coordinate its efforts to comply with Title II of the Americans with Disabilities Act of 1990, as amended, which incorporates and expands upon the requirements of Section 504 of the Rehabilitation Act of 1973, as amended: Melissa Mauldin, Counselor, 500 N. Baird St. Midland, Texas 79701, 432-686-0003.

vii. *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, 500 N. Baird St. Midland, Texas 79701, 432-686-0003.

e) ***Alternate Reporting Procedures***

A student shall not be required to report prohibited conduct to the person alleged to have committed the conduct. Reports concerning prohibited conduct, including reports against the Title IX Coordinator or ADA/Section 504 Coordinator, may be directed to the Superintendent or designee.

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Reports concerning prohibited conduct by the Superintendent or designee may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.

f) ***Timely Reporting***

Reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to promptly report may impair Midland Academy Charter's ability to investigate and address the prohibited conduct.

g) ***Notice to Parents***

A Midland Academy Charter official or designee shall promptly notify the parents of any student alleged to have experienced prohibited conduct by a Midland Academy Charter employee or another adult.

h) ***Investigation***

Midland Academy Charter may request, but shall not insist upon, a written report. If a report is made orally, the school official shall reduce the report to written form.

Upon receipt or notice of a report, the appropriate Compliance Coordinator shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. If so, the Compliance Coordinator shall immediately authorize or undertake an investigation, regardless of whether a criminal or regulatory investigation regarding the same or similar allegations is pending.

If appropriate, Midland Academy Charter shall promptly take interim action calculated to prevent prohibited conduct during the course of an investigation.

The investigation may be conducted by a Compliance Coordinator or designee, or by a third party designated by Midland Academy Charter, such as an attorney. When appropriate, the Principal shall be involved in or informed of the investigation.

The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

i) ***Concluding the Investigation***

Absent extenuating circumstances, the investigation should be completed within ten school business days from the date of the report. If the investigator determines that additional time is

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needed to complete a thorough investigation of the complaint and/or issue a report, he or she shall inform the complainant in writing of the necessity to extend the time for investigating or responding and a specific date by which the report will be issued.

The investigator shall prepare a written report of the investigation. The report shall be filed with the Compliance Coordinator overseeing the investigation.

j) *School Action*

If the results of an investigation indicate that prohibited conduct occurred, Midland Academy Charter shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct.

Midland Academy Charter may take action based on the results of an investigation, even if the conduct did not rise to the level of prohibited or unlawful conduct.

k) *Confidentiality*

To the greatest extent possible, Midland Academy Charter shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.

l) *Appeal*

A student who is dissatisfied with the outcome of the investigation may appeal through Board Policy PG-3.30 (Parent and Student Complaints and Grievances), beginning at the appropriate level. A student shall be informed of his or her right to file a complaint with the United States Department of Education Office for Civil Rights.

m) *Records Retention*

Retention of records shall be in accordance with the applicable schedule published by the Texas State Library and Archives Commission.

Sec. 3. SEXUAL HARASSMENT PROHIBITED – TITLE IX POLICY

a) *Definitions for Title IX Terms*

i. *Actual Knowledge*

"Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to Midland Academy Charter's Title IX Coordinator or any Midland Academy Charter official who has authority to institute corrective measures on behalf of Midland Academy Charter, or to any

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employee of an elementary and secondary 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 Midland Academy Charter with actual knowledge is the respondent (as that term is defined below). The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of Midland Academy Charter. "Notice" as used in this definition includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator. *34 C.F.R. 106.30(a)*.

ii. *Complainant*

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. *34 C.F.R. 106.30(a)*.

iii. *Consent*

"Consent" is not currently defined by the Title IX regulations, nor do the regulations require Midland Academy Charter to adopt a particular definition of consent with respect to sexual assault. *34 C.F.R. 106.30(a)*.

iv. *Deliberate Indifference Standard*

If Midland Academy Charter has actual knowledge of sexual harassment in an education program or activity of Midland Academy Charter against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent. Midland Academy Charter is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. *34 C.F.R. 106.44*.

v. *Education Program or Activity*

For purposes of this Title IX policy, "education program or activity" includes locations, events, or circumstances over which Midland Academy Charter exercised substantial control over both the respondent and the context in which sexual harassment occurs. *34 C.F.R. 106.44*.

vi. *Formal Complaint*

"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 Midland Academy Charter investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in Midland Academy Charter's education program or activity. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by email, by using the contact information for the Title IX Coordinator provided by Midland Academy Charter, and by any additional method designated by

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Midland Academy Charter. As used in this definition, the term "document filed by a complainant" means a document or electronic submission (such as by email or through an online portal provided for this purpose by Midland Academy Charter) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party to the Title IX formal complaint, and must comply with the requirements of the Title IX formal process, including the informal resolution process. *34 C.F.R. 106.30(a)*.

vii. *Respondent*

"Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. *34 C.F.R. 106.30(a)*.

viii. *Sexual Harassment*

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

1. An employee of Midland Academy Charter conditioning the provision of an aid, benefit, or service of Midland Academy Charter on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Midland Academy Charter's education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. 1091(f)(6)(A)(v); "dating violence" as defined in 34 U.S.C. 12291(a)(10); "domestic violence" as defined in 34 U.S.C. 12291(a)(8); or "stalking" as defined in 34 U.S.C. 12291(a)(30).

34 C.F.R. 106.30(a).

ix. *Supportive Measures*

"Supportive measures" means nondisciplinary, nonpunitive 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 Midland Academy Charter's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Midland Academy Charter's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Midland Academy Charter must maintain as confidential any supportive measures

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provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair Midland Academy Charter's ability to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. *34 C.F.R. 106.30(a).*

b) ***Requirement to Designate Title IX Coordinator***

Midland Academy Charter must designate at least one employee as a Title IX Coordinator to coordinate Midland Academy Charter's efforts to comply with its requirements under Title IX.

c) ***Notification of Title IX Policy***

Midland Academy Charter must notify applicants for admission and employment, students, parents or legal guardians of students, and all professional organizations holding professional agreements with Midland Academy Charter of the name or title, office address, email address, and telephone number of the employee or employees designated as the Title IX Coordinator.

Midland Academy Charter must also notify the individuals noted above that Midland Academy Charter does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required under Title IX not to discriminate in such a manner. The notification must also state 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 to Midland Academy Charter may be referred to the designated Title IX Coordinator, to the assistant secretary for civil rights of the Department of Education, or both.

34 C.F.R. 106.8(a), (b)(1).

d) ***Handbook Information and Website Postings***

Midland Academy Charter must prominently display the contact information required to be listed for the Title IX Coordinator and the nondiscrimination policy described in "Notification of Title IX Policy," above, on the Midland Academy Charter website, if any, and in the Employee Handbook and Student / Parent Handbook.

Midland Academy Charter may not use or distribute a publication stating that Midland Academy Charter treats applicants, students, or employees differently on the basis of sex except when such treatment is permitted by Title IX.

34 C.F.R. 106.8(b)(2).

e) ***Reporting Sex Discrimination / Sexual Harassment***

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Any person may report sex discrimination, including sexual harassment, whether or not the reporting person is the person alleged to be the victim of conduct that may constitute sex discrimination or sexual harassment. Reports may be made in person, by mail, by telephone, or by email through the contact information listed for Midland Academy Charter's Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Reports may be made at any time (including during nonbusiness hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator. *34 C.F.R. 106.8(a).*

f) *Complaint Procedures*

Midland Academy Charter must adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX, and a formal Title IX complaint process that complies with applicable federal regulations.

Midland Academy Charter must provide notice to the individuals identified in Sec. 3(b) above of the school's procedures and Title IX formal complaint process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how Midland Academy Charter will respond.

The requirements of this provision apply only to sex discrimination occurring against a person in the United States.

34 C.F.R. 106.8(c)-(d).

g) *Response by Title IX Coordinator*

The Title IX Coordinator must promptly contact the complainant 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 filing a formal complaint.

i. *Required Supportive Measures*

Midland Academy Charter's response must treat complainants and respondents equitably by offering supportive measures and by following a grievance process that complies with the Title IX regulations (*see* Process for Formal Title IX Complaint, Sec. 3(h) below) before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

34 C.F.R. 106.44(a).

ii. *Response to Formal Complaint*

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In response to a formal complaint, Midland Academy Charter must follow a process that complies with the Title IX regulations (*see* Process for Formal Title IX Complaint, Sec. 3(h) below).

34 C.F.R. 106.44(b)(1).

iii. *Emergency Removals*

Midland Academy Charter is not precluded from removing a respondent from its education program or activity on an emergency basis, provided that Midland Academy Charter:

1. Undertakes an individualized safety and risk analysis;
2. 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. Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

This may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

34 C.F.R. 106.44(c).

iv. *Administrative Leave*

Midland Academy Charter is not prohibited from placing a nonstudent employee respondent on administrative leave during the pendency of a Title IX formal complaint. This does not modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act. *34 C.F.R. 106.44(d).*

h) *Process for Title IX Formal Complaint*

For purposes of addressing formal complaints of sexual harassment, Midland Academy Charter's process must comply with the requirements listed in this section. Any provisions, rules, or practices other than those required by the Title IX regulations or this policy that Midland Academy Charter adopts as part of its process for handling formal complaints of sexual harassment must apply equally to both parties. *34 C.F.R. 106.45(b).*

Midland Academy Charter's Title IX formal complaint process must:

1. Treat complainants and respondents equally by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a process that complies with the Title IX regulations

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before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to Midland Academy Charter's education program or activity. Such remedies may include the same individualized services described as supportive measures; however, remedies need not be nondisciplinary or nonpunitive and need not avoid burdening the respondent.

2. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
3. Require that any individual designated by Midland Academy Charter as a Title IX Coordinator, investigator, decision-maker, or any person designated by Midland Academy Charter to facilitate an informal resolution process, not to have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Midland Academy Charter must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process receive training on the definition of sexual harassment, the scope of Midland Academy Charter's education program or activity, how to conduct an investigation and Title IX formal complaint process (including hearings, appeals, and informal resolution processes, as applicable), and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Midland Academy Charter must ensure that decision-makers receive training on any technology to be used at a live hearing, if any, and 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. Midland Academy Charter must also ensure that investigators receive training on relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.
4. Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process.
5. Include reasonably prompt timeframes for concluding the grievance process, including reasonably prompt timeframes for filing and resolving appeals and informal resolution processes if Midland Academy Charter offers informal resolution processes, and a process that allows for the temporary delay of the Title IX formal complaint process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

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6. Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that Midland Academy Charter may implement following any determination of responsibility.
7. State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment.
8. Include the procedures and permissible bases for the complainant and respondent to appeal.
9. Describe the range of supportive measures available to complainants and respondents.
10. 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.

34 C.F.R. 106.45(b)(1).

i. *Notice of Allegations*

Upon receipt of a formal complaint, Midland Academy Charter must provide the following written notice to the parties who are known:

1. Notice of Midland Academy Charter's Title IX formal complaint process, including any informal resolution process.
2. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:

    a. The identities of the parties involved in the incident, if known;
    b. The conduct allegedly constituting sexual harassment; and
    c. The date and location of the alleged incident, if known.

    The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX formal complaint process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney and may inspect and review evidence. The written notice must inform the parties of any provision in Midland Academy Charter's Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the Title IX formal complaint process.

If, in the course of an investigation, Midland Academy Charter decides to investigate allegations about the complainant or respondent that are not included in the notice of allegations, Midland

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Academy Charter must provide notice of the additional allegations to the parties whose identities are known.

34 C.F.R. 106.45(b)(2).

ii. *Dismissal of Formal Complaint*

Midland Academy Charter must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in Midland Academy Charter's education program or activity, or did not occur against a person in the United States, then Midland Academy Charter must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of Midland Academy Charter's Code of Conduct.

Midland Academy Charter may dismiss the formal complaint or any allegations therein if, at any time during the investigation or hearing (if applicable):

1. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
2. The respondent is no longer enrolled or employed by Midland Academy Charter; or
3. Specific circumstances prevent Midland Academy Charter from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal of a formal complaint, Midland Academy Charter must promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

34 C.F.R. 106.45(b)(3).

iii. *Consolidation of Formal Complaints*

Midland Academy Charter may consolidate formal complaints as to allegations of sexual harassment against 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. Where a Title IX formal complaint process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable. *34 C.F.R. 106.45(b)(4).*

iv. *Investigating Formal Complaints*

When investigating a formal complaint and throughout the Title IX formal complaint process, Midland Academy Charter must:

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1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Midland Academy Charter and not on the parties, provided that Midland Academy Charter cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Midland Academy Charter obtains that party's voluntary, written consent to do so for a Title IX formal complaint. If a party is not an "eligible student," as defined in the FERPA regulations, Midland Academy Charter must obtain the voluntary, written consent of a "parent," as defined in the FERPA regulations.
2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
4. Provide the parties with the same opportunities to have others present during any Title IX formal complaint proceeding, including the opportunity to be accompanied to any related or proceeding by the advisor of their choice, who may be, but is not required to be, and attorney, and not limit the choice or presence of the advisor for either the complainant or respondent in any meeting or Title IX formal complaint proceeding; however, Midland Academy Charter may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings (if applicable), investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
6. Provide both parties an equal opportunity 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 the evidence upon which Midland Academy Charter does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, Midland Academy Charter must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten days to submit a written response, which the investigator will consider prior to completion of the investigative report. Midland Academy Charter must make all such evidence subject to the parties' inspection and review available at any hearing (if applicable) to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
7. Create an investigative report that fairly summarizes relevant evidence and, at least ten days prior to a hearing (if a hearing is required or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if

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any, the investigative report in an electronic format or a hard copy, for their review and written response.

34 C.F.R. 106.45(b)(5).

v. *Hearings*

Midland Academy Charter's Title IX formal complaint process may, but need not, provide for a hearing. With or without a hearing, after Midland Academy Charter has sent to the investigate report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. With or without a hearing, 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. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant. *34 C.F.R. 106.45(b)(6)(ii).*

vi. *Determination Regarding Responsibility*

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, Midland Academy Charter must apply the same standard of evidence described at "Process for Title IX Formal Complaint, Sec. 3(h) above. The written determination must include:

1. Identification of the allegations potentially constituting sexual harassment.
2. A description of the procedural steps taken from receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held (if any).
3. Findings of fact supporting the determination.
4. Conclusions regarding the application of Midland Academy Charter'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 Midland Academy Charter imposes on the respondent, and whether remedies designed to restore or preserve equal access to Midland Academy Charter's education program or activity will be provided by Midland Academy Charter to the complainant.
6. Midland Academy Charter's procedures and permissible bases for the complainant and respondent to appeal.

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Midland Academy Charter must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that Midland Academy Charter 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.

34 C.F.R. 106.45(b)(7)(i)-(iii).

The Title IX Coordinator is responsible for effective implementation of any remedies identified in a determination regarding responsibility. *34 C.F.R. 106.45(b)(7)(iv).*

vii. *Appeals*

Midland Academy Charter must offer both parties an appeal from a determination regarding responsibility, and from Midland Academy Charter's dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination on responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) 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.

Midland Academy Charter may offer an appeal equally to both parties on additional bases.

As to all appeals, Midland Academy Charter must:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
3. Ensure that the decision-maker(s) for the appeal complies with standards regarding conflict of interest and bias found in the Title IX regulations (as discussed in "Process for Formal Title IX Complaint," Sec. 3(h) above);
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result; and
6. Provide the written decision simultaneously to both parties.

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34 C.F.R. 106.45(b)(8).

i) ***Informal Resolution***

Midland Academy Charter may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with Title IX. Similarly, Midland Academy Charter may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility, Midland Academy Charter may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.

With respect to informal resolution, Midland Academy Charter must provide written notice to the parties disclosing:

1. The allegations;
2. 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, provided, however, that 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; and
3. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Midland Academy Charter also must obtain the parties' voluntary, written consent to the informal resolution process.

Midland Academy Charter cannot offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

34 C.F.R. 106.45(b)(9).

j) ***Recordkeeping***

Midland Academy Charter must maintain for a period of seven 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 Midland Academy Charter's education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and

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4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. Midland Academy Charter must make these training materials publicly available on its website or, if Midland Academy Charter does not maintain a website, Midland Academy Charter must make these materials available upon request for inspection by members of the public.

For each response required under "Response by Title IX Coordinator," Sec. 3(g) above, Midland Academy Charter must create and maintain for a period of seven years records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, Midland Academy Charter must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to Midland Academy Charter's education program or activity.

If Midland Academy Charter does not provide a complainant with supportive measures, Midland Academy Charter must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit Midland Academy Charter in the future from providing additional explanations or detailing additional measures taken.

34 C.F.R. 106.45(b)(10).

k) *Retaliation Prohibited*

Neither Midland Academy Charter 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, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX.

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, constitutes retaliation.

Complaints alleging retaliation may be filed according to the "Process for Formal Title IX Complaint," Sec. 3(h) above.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by Title IX.

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Charging an individual with a Code of Conduct violation for making a materially false statement in bad faith in the course of a Title IX formal complaint proceeding does not constitute retaliation prohibited by Title IX provided, however, that a determination regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.

34 C.F.R. 106.71(a)-(b).

l) ***Confidentiality***

Midland Academy Charter must 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 nay witness, except as may be permitted by the Family Educational Rights and Privacy Act ("FERPA") statute, 20 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. part 99, or as required by law, or to carry out the purposes of the Title IX regulations at 34 C.F.R. part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. *34 C.F.R. 106.71(a).*

m) ***Relationship to General Non-Discrimination Policy***

The formal complaint investigation and resolution process outlined above in Section 3 applies only to formal complaints alleging sexual harassment under Title IX, but not to complaints alleging sex discrimination that do not constitute sexual harassment. Complaints of sex discrimination that do not constitute sexual harassment may be filed with the Title IX Coordinator and will be handled under Midland Academy Charter's general process for receiving reports of suspected discrimination and harassment, as outlined in Section 2 above.

Sec. 4. ACCESS TO POLICY

Information regarding this policy shall be distributed annually to Midland Academy Charter employees and distributed to parents and students through the Student Handbook. Copies of the policy shall be readily available at each campus and the Midland Academy Charter administrative offices.

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