Salt Lake Arts Academy Policy on Sexual Harassment and Retaliation

Updated: October 2024

Salt Lake Arts Academy (SLARTS) seeks to provide a positive environment based on mutual respect for its community of students, teachers, staff, and administrators. This environment should be free of sexual harassment and retaliation. With this goal, and pursuant to the mandates of applicable laws and regulations, SLARTS has developed this policy and its procedures to provide prompt and equitable processes for SLARTS community members involved in allegations of sexual harassment and retaliation. These procedures, rather than any other grievance policy or procedures, will apply when there are allegations of sexual harassment and/or retaliation as defined in this policy.

I. Title IX Coordinator

Title IX of the Education Amendments of 1972 is a federal law barring sex-based discrimination in any school or other education program receiving federal money. Regulations promulgated pursuant to Title IX provide the framework for the procedures outlined in this policy. These regulations require equitable treatment for all parties involved in these allegations, both complainants (those alleged to be the victim or sexual harassment or retaliation) and respondents (those reported to be the perpetrator of alleged sexual harassment or retaliation).

SLARTS has a Title IX Coordinator overseeing SLARTS' furtherance of the law's purpose and the implementation of the procedures outlined in this policy, including formal complaint intake, investigation, resolution, and implementation of supportive measures and remedies related to prohibited sexual harassment and retaliation.

Deborah Candler, Principal, currently serves as the Title IX Coordinator. She and any other individual assisting as an investigator or decision maker in procedures under this policy, will be trained and instructed on the definitions of sexual harassment and retaliation; the procedures described in this policy; the scope of SLARTS' educational program; conducting an investigation, including exclusion of irrelevant questions; and guarding against prejudgment of facts, conflicts of interest, and bias for or against complainants or respondents in general or any specific complainant or respondent involved in allegations of sexual harassment or retaliation.

As discussed in more detail in sections below, SLARTS and the Title IX Coordinator will respond promptly and in a manner not deliberately indifferent to actual knowledge and/or formal complaints of sexual harassment and retaliation in the SLARTS educational community.

Actual knowledge means notice of sexual harassment or allegations of sexual harassment covered by this policy provided to the Title IX Coordinator, a SLARTS official with authority to institute corrective measures on SLARTS' behalf, or any SLARTS employee—except that this standard is not met when the respondent is the only one having actual knowledge.

It is important for members of the SLARTS community to understand that SLARTS employees, including counselors and trusted teachers and staff, are "mandatory reporters." This means they must report known conduct or allegations of conduct constituting sexual harassment covered by this policy, even if a formal complaint is not initially made.

A formal complaint is defined as a document, including an electronic submission, filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting investigation of the alleged sexual harassment.

Actual knowledge or formal complaints of sexual harassment or retaliation as defined in this policy, or inquiries about procedures under this policy may be submitted to the Coordinator:

Deborah Candler
Salt Lake Arts Academy
844 South 200 East
Salt Lake City, Utah 84111
801-531-1173
deborah@slarts.org

Outside inquiries may be made to:
Office of Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
(800) 421-3481
OCR@ed.gov

II. Prohibited Sexual Harassment and Retaliation

This policy bars and provides procedures to address sexual harassment and related retaliation in the SLARTS educational community, including allegations of sexual harassment or retaliation by a SLARTS student against another SLARTS student or SLARTS employee, and allegations by a SLARTS employee against another SLARTS employee.

As addressed in this policy, prohibited "sexual harassment" means conduct on the basis of sex falling in one or more of the following categories:

- **Quid Pro Quo Sexual Harassment:** A SLARTS employee conditioning the provision of an aid, benefit, or service of SLARTS on an individual's participation in unwelcome sexual conduct.

- **Title IX Sexual Harassment:** Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to SLARTS' education program or activity.

- **Sexual Assault:** As defined in 20 U.S.C. § 1092(f)(6)(A)(v), this means "an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting [UCR] system of the Federal Bureau of Investigation [FBI]."

- **Dating Violence:** As defined in 34 U.S.C. § 12291(a)(10), this "means violence committed by a person—
    (A) who is or has been in a social relationship of a romantic or intimate nature with the complainant;
    (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
        i. The length of the relationship.
        ii. The type of relationship.
        iii. The frequency of interaction between the persons involved in the relationship."

- **Domestic Violence:** As defined in 34 U.S.C. § 12291(a)(8), this "includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the
domestic or family violence laws of the jurisdiction."

- **Stalking:** As defined in 34 U.S.C. § 12291(a)(30), this "means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
    (A) fear for his or her safety or the safety of others; or
    (B) suffer substantial emotional distress."

As addressed in this policy, prohibited "retaliation" means conduct including threats or discrimination against, or intimidation or coercion of, any individual if such conduct is undertaken with the purpose of interfering with any right or privilege secured under Title IX or by this policy, or because the targeted individual made a report or complaint, testified, helped, participated in, or refused to participate in an investigation, proceeding, or hearing carried out under this policy. Retaliation does not mean consequences for or charges against individuals for knowingly making materially false statements or knowingly providing materially false information in the course of procedures undertaken under this policy.

III. Procedures for SLARTS' Response to Actual Knowledge and Formal Complaints of Sexual Harassment and Retaliation

SLARTS will promptly carry out the procedures detailed herein in response to actual knowledge or formal complaints of sexual harassment.

When having actual knowledge of sexual harassment, but without a formal complaint, the Title IX Coordinator will contact the complainant to discuss the process for filing a formal complaint, if it is the complainant's desire, and the availability of supportive measures regardless of whether a formal complaint is filed. These supportive measures are available to both complainants and respondents, and are meant to be non-punitive, non-disciplinary, and not unreasonably burdensome to the other party. They are intended to ensure safety, equal educational access, and to deter sexual harassment. They may include: 1) no-contact orders, 2) leaves of absence, 3) academic adjustments such as class schedule changes or teacher reassignments, and 4) increased monitoring or supervision.

If a complainant wishes to file a formal complaint, it must be in writing (including electronic submissions), allege sexual harassment against a respondent, and request investigation of it. The formal complaint should be filed with the Title IX Coordinator. The Title IX Coordinator will maintain the complaint and related records for seven years, the period of time required under the law.

Upon receipt of a formal complaint of sexual harassment covered by this policy, SLARTS will begin the grievance process outlined below. If SLARTS receives multiple formal complaints of harassment arising out of the same facts and circumstances, SLARTS may choose to consolidate these formal complaints into one grievance process pursuant to 34 C.F.R. § 106.45(b)(4).

In the grievance process, SLARTS must objectively evaluate the relevant evidence—whether inculpatory or exculpatory, and will do so applying a preponderance of the evidence standard of proof. The grievance process will not require, permit, or use questions or evidence constituting or seeking disclosure of information protected under a legally recognized privilege, unless the
privilege's holder has waived it.

SLARTS is required to treat both complainants and respondents equitably throughout the grievance process. It is prohibited from making credibility determinations based only on an individual's status as a complainant, respondent, or witness. It must begin the process with a presumption that the respondent is not responsible until after an investigation and a determination of responsibility has been made at the conclusion of the process.

If the grievance process results in a determination of responsibility against the respondent, SLARTS will provide remedies to the complainant. These may include the sort of supportive measures that could have been instigated absent a formal complaint or determination or responsibility, but a determination of responsibility permits remedies that may additionally be punitive, disciplinary, or burden the responsible respondent. For a student respondent found to be responsible, these remedies may include actions taken in accordance with SLARTS discipline policies, including warnings, monitoring, suspension, or expulsion. For an employee respondent found to be responsible, these remedies may include discipline up to and including termination.

SLARTS will endeavor to carry out the grievance process for formal complaints within a reasonably prompt time frame, not exceeding 60 calendar days. But the grievance process time frame may be temporarily delayed or extended by SLARTS for good cause with written notice to

the parties describing the reasons for the delay or extension. Good cause may include events such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; the need for language assistance; or the accommodation of disabilities.

If a grievance process is instigated, SLARTS will take the following steps:

1. **Provide notice to both the complainant and respondent of the formal complaint of sexual harassment, the grievance process, and the option for informal resolution outside the grievance process. Informal resolution processes are discussed below in more detail.**

   The notice will set forth sufficient detail (when known) to permit the respondent to prepare a response or for an interview, such as the identities of the parties involved; the date, time, and location of any alleged incidents; and the conduct alleged to constitute sexual harassment as defined above and in 34 C.F.R. § 106.30.

   The notice will also include:

   - A statement that the respondent is not presumed responsible for the alleged harassment and that a determination of responsibility will be made at the conclusion of the grievance process.
   - A statement that the parties may have an advisor of their choice who may be, but need not be, an attorney.
   - A statement that the parties may inspect and review evidence as part of any investigation of the allegations in the formal complaint.
   - A statement that the parties should not knowingly make a false statement or knowingly submit false information during the grievance process.

   If after the initial notice to both parties SLARTS decides to investigate allegations not included in the initial notice, SLARTS will provide notice of the additional allegations to the involved parties.

2. **The Title IX Coordinator will conduct or otherwise facilitate an investigation of the sexual harassment allegations in the formal complaint.**

   Investigator(s) will be assigned. They may include the Title IX Coordinator or other individuals.

   As an initial matter, if conduct alleged in the formal complaint: 1) would not constitute sexual harassment as defined in this policy even if proved, 2) did not occur in a SLARTS education program or activity, or 3) or did not occur against a person in the United States, then SLARTS is required pursuant to 34 C.F.R. § 106.45(b)(3)(i) to dismiss the formal complaint made under this policy with regard to that conduct. This

dismissal does not by itself preclude action under another SLARTS policy or a provision of law.

Additionally, pursuant to 34 C.F.R. § 106.45(b)(3)(ii), a formal complaint or specific allegations therein may be dismissed if at any time during the investigation or subsequent procedures: 1) the complainant notifies the Title IX Coordinator in writing that they wish to withdraw the formal complaint or specific allegations, 2) the respondent is no longer enrolled in or employed by SLARTS, or 3) specific circumstances bar SLARTS from gathering evidence sufficient to reach a determination as to the formal complaint or included allegations.

If dismissal occurs pursuant to 34 C.F.R. § 106.45(b)(3)(i) or (b)(3)(ii), SLARTS will promptly send written notice of the dismissal and the reasons for it simultaneously to both parties.

If the formal complaint is not dismissed, and the investigation begins, SLARTS and the Title IX Coordinator will, as mandated under 34 C.F.R. § 106.45(b):

- Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on SLARTS and not on the parties, provided that SLARTS 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 SLARTS obtains that party's voluntary, written consent to do so for a grievance process under this section;

- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

- Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but need not be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, SLARTS 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;

- Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with reasonably sufficient time for the party to prepare to participate;

- 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 SLARTS 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, SLARTS will 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 will be given at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. SLARTS will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

- Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

- As a middle school, SLARTS is not required to conduct a hearing on formal complaints of sexual harassment. SLARTS will begin each investigation with a strong presumption that a hearing will not take place, though it may in its discretion determine a hearing is needed.

- With or—as will be the presumed practice—without a hearing, after SLARTS has sent the investigative report to the parties, and before reaching a determination regarding responsibility, the decision-maker(s) will give each party the opportunity to submit written, relevant questions they want 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 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.

3. Decision maker(s) will issue a decision determining responsibility.

Upon completion of the above-described investigative process, the decision-maker(s) must issue a written determination regarding responsibility, applying the preponderance of the evidence standard of proof. These decision-maker(s) may be an individual or a panel, but they cannot be the same person(s) as the Title IX Coordinator or the investigator(s).

The written determination of responsibility must include –

- Identification of the allegations potentially constituting sexual harassment as defined in this policy in reference to 34 C.F.R. § 106.30;
- 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, methods used to gather other evidence, and hearings held, if any;
- Findings of fact supporting the determination;
- Conclusions regarding the application of SLARTS policies to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions SLARTS imposes on the respondent; and whether remedies designed to restore or preserve equal access to SLARTS education program or activity will be provided by SLARTS to the complainant; and
- SLARTS' procedures and permissible bases for the complainant and respondent to appeal.

SLARTS will provide the written determination to the parties simultaneously.

The responsibility determination becomes final either on the date that SLARTS 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.

If the written determination imposes remedies, the Title IX Coordinator will be responsible for their effective implementation.

4. The parties may appeal the written determination or a dismissal.

SLARTS will offer both parties an appeal from a determination regarding responsibility, and/or from SLARTS' dismissal of a formal complaint or any allegations therein, on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- 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.

SLARTS may offer an appeal equally to both parties on additional bases.

A party must file any appeal in writing with the Title IX Coordinator within ten business days from the date of dismissal or the formal complaint if it is entirely dismissed or the written determination regarding responsibility.

As to all appeals, SLARTS will:

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- 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;
- Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this policy for investigators and initial decision makers as set forth in 34 C.F.R. § 145(b)(1)(iii);
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- Issue a written decision describing the result of the appeal and the rationale for the result; and
- Provide the written decision simultaneously to both parties.

4. **Informal resolution processes are available after the formal complaint but before a responsibility determination is made.**

SLARTS will not require waiver of the right to an investigation and adjudication of formal complaints of sexual harassment as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right.

Similarly, it will not require the parties to a formal complaint of sexual harassment to participate in an informal resolution process. Indeed, SLARTS will not offer an informal resolution process based on knowledge of sexual harassment allegation unless a formal complaint is filed.

However, at any time after a formal complaint is filed but prior to the decision maker(s)' issuance of responsibility determination, SLARTS may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that SLARTS:

- Provides to the parties a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, 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 any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

- Obtains the parties' voluntary, written consent to the informal resolution process; and

- Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.