

## **Policy 3085P – Title IX Sexual Harassment**

### Title IX Sexual Harassment Grievance Process

#### When This Process Will Be Used

The procedures outlined in this process apply only to qualifying allegations of Title IX sexual harassment involving members of the Kimberly School District 414 community, which include students, staff, administrators, and faculty members. A qualifying allegation must include all of the following elements:

1. The alleged conduct would constitute Title IX sexual harassment as defined below;
2. The conduct occurred in a District educational program or activity as defined below;
3. The respondent is a member of the District community as defined below;
4. The conduct occurred against a person in the United States; and
5. In cases where formal complaints are filed, at the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the District's education program or activity.

Allegations of sexual misconduct that do not meet the criteria above will be addressed through the applicable procedures outlined in Policy 3085, as determined by the Title IX Coordinator.

#### Collateral Misconduct

This procedure may be used to address collateral misconduct (e.g., vandalism, physical abuse of another, retaliation, etc.) arising from the investigation of, or occurring in conjunction with, reported conduct that meets the criteria of a qualifying allegation of Title IX sexual harassment as described above. For example, if a formal complaint is filed alleging that a qualifying allegation of Title IX sexual harassment and an act of vandalism occurred during the same incident, both allegations may be addressed using the procedures described below.

#### Terms Used For This process

“Advisor” means a person chosen by a party to accompany the party to meetings, interviews, or hearings related to this grievance process and to advise the party on the process.

“Appeal decision-maker refers to those who have decision-making authority during the appeals phase of the District's formal grievance process.

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute Title IX sexual harassment, as defined below.

“Kimberly School District 414” community means, for the purpose of this process, District students, staff, administrators, and faculty members.

“Education Program or Activity” means locations, events, or circumstances where the District exercises substantial control over both the respondent and the context in which the Title IX sexual harassment occurs. For example, this could include, but is not limited to, conduct that takes place within a District school or on property owned or controlled by the District, or at District-sponsored events.

“Formal complaint” means a document submitted by a complainant or their parent/guardian or signed by the Title IX Coordinator alleging Policy 3085 and requesting that the District investigate.

“Formal grievance process” is the method of formal resolution used to determine whether a qualifying allegation of Title IX sexual harassment as described above violates Policy 3085. The formal grievance process is used in a manner that complies with the requirements of the 34 CFR §106.45.

“Decision-maker ” refers to those who have decision-making and sanctioning authority within the District’s formal grievance process.

“Investigator” means the person or persons assigned by the District to gather facts during the formal grievance process, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report.

“Notice” means that any District employee, including the Title IX Coordinator, is made aware of conduct that may constitute a violation of Policy 3085.

“Parties” include the complainant(s) and respondent(s), collectively.

“Remedies” are applied to the complainant and/or the District community, following a resolution, to address safety, prevent recurrence, and restore access to the District’s educational program.

“Respondent” means someone who has been reported as having engaged in conduct that could constitute Title IX sexual harassment, as defined below.

“Sanction” means a consequence imposed by the District on a respondent who is found to have violated Policy 3085 subsequent to engaging in the formal grievance process.

“Title IX Coordinator” is the official(s) designated by the District to ensure compliance with Title IX and the District’s Title IX program. References to the Title IX Coordinator throughout this document may also include a designee of the Title IX Coordinator for specific tasks.

#### Definition of Title IX Sexual Harassment

Title IX sexual harassment, as an umbrella category, includes the actual or attempted offenses of quid pro quo harassment, sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or that is sexual that satisfies one or more of the following criteria:

1. Quid pro quo harassment: An employee of the Kimberly School District 414 conditions, explicitly or implicitly, the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct.
2. Sexual harassment: Unwelcome conduct determined by a reasonable person to be so severe and pervasive and objectively offensive that it effectively denies a person equal access to the District's Education Program or Activity. Unwelcomeness, severity, pervasiveness, and objective offensiveness shall be determined as described in the U.S. Equal Employment Opportunity Commission's Policy Guidance on Current Issues of Sexual Harassment.
3. Sexual assault: Sexual assault shall mean forcible and non-forcible sex offenses as defined in the Clery Act, or dating violence, domestic violence, stalking as defined in the Violence Against Women Act (VAWA).

Acts of Title IX sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

#### Definitions of Force, Coercion, Consent, and Incapacitation

As used in the definitions referenced for the offenses listed above, the following definitions and understandings apply:

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is knowing, voluntary, and clear permission by word or action to engage in sexual activity. Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent to reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn in the middle of a sexual act, that sexual activity should stop immediately. If consent is withdrawn while the other party is not present, the activity shall cease as soon as is practicable.

Consent to some sexual contact, such as kissing or fondling, does not imply there is consent for other sexual activity, such as intercourse. A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the District to determine whether policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. It is a violation of policy if a respondent engages in sexual activity with someone who is incapable of giving consent.

It is a defense to a District policy violation that the respondent neither knew nor should have known the complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. Incapacitation also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

## Retaliation

Kimberly School District 414 and any member of the District community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Policy 3085 or its associated grievance processes.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated either as collateral misconduct under this process or, as determined by the Title IX Coordinator, through the applicable procedures outlined in Policy 3085. The District will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Filing a complaint under another District policy or procedure related to the incident could be considered retaliatory if those charges are made for the purpose of interfering with or circumventing any right or privilege provided under this process that is not provided under the other District policy/procedure that was used. Therefore, the District vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.

The exercise of rights protected under the First Amendment does not constitute retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of this grievance process does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties. Supportive measures are designed to restore or preserve access to the District's Education Program or Activity, including measures designed to protect the safety of all parties or the District's educational environment, and/or deter Title IX sexual harassment.

The Title IX Coordinator shall promptly make supportive measures available to the complainant upon receiving notice or a formal complaint alleging they were the victim of Title IX sexual harassment, and to the respondent upon receipt of a formal complaint alleging that they engaged in Title IX sexual harassment in violation of Policy 3085. At the time that supportive measures are offered, the District will inform the complainant, in writing, that they may file a formal complaint with the District either at that time or in the future, if they have not done so already.

The Title IX Coordinator works with the complainant and/or their parent/guardian to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

The District shall maintain the privacy of the supportive measures so long as the privacy does not impair the District's ability to provide the supportive measures. The District shall reduce the academic or occupational impact on the parties as much as possible and shall implement measures in a way that does not unreasonably burden the other party.

Examples of supportive measures may include, but are not limited to:

1. Referral to counseling, medical, and/or other healthcare services;
2. Referral to the Employee Assistance Program;
3. Referral to community-based service providers;
4. Visa and immigration assistance;
5. Education of the school community or community subgroup(s);
6. Altering work arrangements for employees;
7. Safety planning;
8. Providing school safety escorts;
9. Providing transportation accommodations;
10. Implementing contact limitations, such as no contact orders, between the parties;
11. Academic support, extensions of deadlines, or other course or program-related adjustments;
12. Emergency warnings;
13. Class schedule modifications, withdrawals, or leaves of absence;
14. Increased security and monitoring of certain areas of the school; and
15. Any other actions deemed appropriate by the Title IX Coordinator

Allegations of violations of no contact orders will be investigated either as collateral misconduct under this process or through the applicable procedures outlined in Policy 3085, as determined by the Title IX Coordinator.

### Emergency Removal

The District can act to remove a student respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

This risk analysis is performed by the Title IX Coordinator in conjunction with the District/School threat assessment team. In cases when an emergency removal involves a student with a disability who is receiving services under an Individualized Education Program (IEP), this risk analysis will also be performed in conjunction with the student's IEP Team and may present the need for a manifestation determination.

In all cases in which an emergency removal is imposed, the student respondent and their parent/guardian will be given notice of the action and the option to request to meet with the Title IX Coordinator OR threat assessment team OR Administrator prior to such action/removal being

imposed, or as soon thereafter as reasonably possible, to demonstrate why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. A student respondent may be accompanied by an advisor of their choice during the meeting. The student respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation. A complainant and their advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

When this meeting is not requested, objections to the emergency removal will be deemed waived, except as described below.

In cases when an emergency removal involves a student with a disability who is receiving services under an IEP, this meeting can serve as the student's manifestation determination hearing and will be conducted in accordance with the requirements of the Individuals with Disabilities Education Act (IDEA). The student will not have to request such a meeting as it will be scheduled and held within ten days of the decision to implement the emergency removal. If it is determined that an emergency removal is necessary for more than ten school days, the removal would constitute a change in placement and shall be addressed in accordance with the requirements of the IDEA. The results of the manifestation determination may be appealed in accordance with the requirements under the IDEA.

This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX sexual harassment. There is no appeal process for emergency removal decisions.

The Title IX Coordinator shall have sole discretion under this process to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal shall be grounds for discipline, which may include expulsion.

The District will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator OR threat assessment team OR Administration, these actions could include, but are not limited to:

1. Temporarily re-assigning an employee;
2. Restricting a student's or employee's access to or use of facilities or equipment;
3. Changing transportation arrangements;
4. Authorizing an administrative leave;
5. Suspending a student's participation in extracurricular activities, student organizational leadership, or athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the respondent is an employee, existing provisions for interim action are applicable.

### Promptness

All allegations of Title IX sexual harassment, whether by notice or formal complaint, shall be acted upon promptly. Formal complaints that are addressed through this process can take no less than 30 or no more than 60 business days to resolve, typically. There may be exceptions and extenuating circumstances that cause a resolution to take longer, but the District will avoid all undue delays within its control.

If the timeframes for resolution outlined in these procedures will be delayed, the District shall provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

### Privacy

The District shall make every effort to preserve the privacy of reports of Title IX sexual harassment.

“Privacy” means that information related to notice or a formal complaint will only be shared with the parties, their advisors, and a limited number of District employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the District’s Title IX sexual harassment response under this process shall receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), as outlined in the District’s policies and procedures on student records. The privacy of employee records will be protected in accordance with District policies regarding personnel records.

The District shall not share the identity of any individual who has made a report or formal complaint of Title IX sexual harassment, any complainant, any respondent, or any witness, except as permitted by the 20 U.S.C. 1232g or 34 CFR part 99 or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these procedures.

The District reserves the right to determine which District officials have a legitimate educational interest in information about incidents that fall within this process, pursuant to FERPA.

### Time Limits on Reporting

There is no time limit on providing notice or formal complaints to the Title IX Coordinator. However, if the respondent is no longer subject to the District’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.



Acting on notice/formal complaints significantly impacted by the passage of time shall be at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

### Online Harassment

Policy 3085 and these procedures are written and interpreted to include online manifestations of any of the conduct prohibited above, when the conduct occurs in the District's Education Program and Activities or uses the District's networks, technology, or equipment.

### When a Complainant Does Not Wish To Proceed

If a complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who shall evaluate that request in light of the duty to ensure the safety of the Kimberly School District 414 community and to comply with state or federal law.

The Title IX Coordinator shall have ultimate discretion over whether the District proceeds when the complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate the applicable grievance process. Any decision to proceed should be due to a compelling risk to health and/or safety that requires the District to pursue formal action to protect the District community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The District may be compelled to act on alleged employee misconduct irrespective of a complainant's wishes. The Title IX Coordinator shall also consider the effect that non-participation by the complainant may have on the availability of evidence and the District's ability to pursue a grievance process fairly and effectively.

When the Title IX Coordinator signs the formal complaint, they do not become the complainant. The complainant is the individual who is alleged to have experienced conduct that may constitute Title IX sexual harassment.

When the District proceeds, the complainant (or their advisor) may have as much or as little involvement in the process as they wish. The complainant retains all rights of a complainant under this process irrespective of their level of participation. Typically, when the complainant chooses not to participate, the advisor or the complainant's parent/guardian may be appointed as proxy for the complainant throughout the process, acting to ensure and protect the rights of the complainant, though this does not extend to the provision of evidence or testimony except in situations where a complainant is unable to provide evidence or testimony without assistance (e.g. due to age, disability, etc.).

The District's ability to remedy and respond to notice of Title IX sexual harassment may be limited if the complainant does not want the District to proceed with an investigation and/or

grievance process. The goal is to provide the complainant with as much control over the process as possible, while balancing the District's obligation to protect its community.

In cases in which the complainant requests no formal action and the circumstances allow the District to honor that request, the District shall offer informal resolution options as described below, supportive measures, and remedies to the complainant, but will not otherwise pursue the formal grievance process.

If the complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a complainant has the right, and can expect, to have allegations taken seriously by the District, and to have the incident investigated and properly resolved through the applicable procedures, as determined by the Title IX Coordinator, as outlined in Policy 3085. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

### False Allegations and Evidence

Deliberately false and/or malicious accusations are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination. Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under District policy.

### Resolution Processes for Qualifying Allegations of Title IX Sexual Harassment

Upon receiving a formal complaint or notice pertaining to a qualifying allegation of Title IX sexual harassment, the Title IX Coordinator initiates a prompt initial assessment. The Title IX Coordinator will initiate at least one of the following responses:

1. Offering and/or implementing only supportive measures because the complainant does not want to file a formal complaint. References to the complainant, respondent, or to the parties collectively throughout these procedures may also include their parent(s)/guardian(s) when applicable.
2. An informal resolution process upon submission of a formal complaint; and/or
3. A formal grievance, upon submission of a formal complaint, including an investigation and a determination of whether Policy 3085 was violated.

The District shall use the formal grievance process as detailed by the procedures below to determine whether or not a qualifying allegation of Title IX sexual harassment violates Policy 3085. If so, the District will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to Title IX sexual harassment, its potential recurrence, or its effects.

### Initial Assessment

The Title IX Coordinator's initial assessment typically occurs within one to three business days. The steps in an initial assessment can include:

1. If notice is given, the Title IX Coordinator seeks to determine whether the complainant wishes to make a formal complaint and will assist them in doing so, if desired. If the complainant does not wish to make a formal complaint, the Title IX Coordinator determines whether to initiate a formal complaint due to a compelling threat to health and/or safety.
2. If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the complainant to make sure it is correctly completed.
3. The Title IX Coordinator reaches out to the complainant to offer supportive measures.
4. The Title IX Coordinator works with the complainant to ensure they are aware of the right to have an Advisor.
5. The Title IX Coordinator works with the complainant to determine whether the complainant prefers a supportive measures only response, an informal resolution process, or a formal grievance process.
  - A. If a supportive measures only response is preferred, the Title IX Coordinator works with the complainant to identify their wishes, assesses the request, and implement the measures accordingly. No formal grievance process is initiated, though the complainant can elect to initiate one later, if desired.
  - B. If an informal resolution process is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine whether the respondent is also willing to engage in informal resolution.
  - C. If a formal grievance process is preferred, the Title IX Coordinator determines whether the conduct alleged constitutes a qualifying allegation of Title IX sexual harassment:
    - I. If it does, the Title IX Coordinator will initiate the formal grievance process.
    - II. If it does not, the Title IX Coordinator will "dismiss" the complaint under this process and may address the allegation(s) using the applicable grievance process as outlined in Policy 3085. Dismissing a complaint under this process is solely a procedural requirement under Title IX and does not limit the District's authority to address a formal complaint through a different applicable process.

### Dismissal - Mandatory and Discretionary

These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

The District must dismiss a formal complaint or any allegations therein if, at any time during the investigation or meeting with the Decision-maker, it is determined that the conduct alleged in the formal complaint would not constitute a qualifying allegation of Title IX sexual harassment as defined above, even if proved.

The District may dismiss a formal complaint or any allegations therein if, at any time during the investigation or meeting with the Decision-maker:

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

Upon any dismissal, the District will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by any party under the appeal procedures below.

### Counterclaims

The District shall ensure that the grievance process is not abused for retaliatory purposes. The District permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the applicable procedure, as determined by the Title IX Coordinator. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of Policy 3085.

### Statement of the Rights of the parties

Any party, as defined in this procedure, has the following rights:

1. The right to an equitable investigation and resolution of all credible allegations of Title IX sexual harassment made in good faith to District officials.

2. The right to timely written notice of all alleged violations, including the identity of the parties involved, if known; the precise misconduct being alleged; the date and location of the alleged misconduct, if known; the implicated policies and procedures; and possible sanctions.
3. The right to timely written notice of any material adjustments to the allegations; such as additional incidents or allegations, additional complainants, or unsubstantiated allegations; and any attendant adjustments needed to clarify potentially implicated policy violations.
4. The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
5. The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
6. The right to be treated with respect by District officials.
7. The right to have District policies and procedures followed without material deviation.
8. The right not to be pressured to informally resolve any reported misconduct involving violence, including sexual violence.
9. The right not to be discouraged by District officials from reporting Title IX sexual harassment to both District and local authorities.
10. The right to have allegations of violations of Policy 3085 responded to promptly and with sensitivity by District law enforcement and/or other District officials.
11. The right to be informed of available supportive measures, such as counseling; advocacy; health care; legal or student financial aid; visa and immigration assistance; or other services, both in the District and in the community.
12. The right to a District-implemented no contact order when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
13. The right to be informed of available assistance in changing academic and/or working situations after an alleged incident of Title IX sexual harassment, if such changes are reasonably available. No formal complaint or investigation, either District or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - A. Changing an employee's work environment, such as changing their reporting structure or office or workspace relocation;
  - B. Transportation accommodations;
  - C. Visa or immigration assistance;

- D. Exam, paper, and/or assignment rescheduling or adjustment;
  - E. Transferring classes;
  - F. Temporary leave of absence;
  - G. School safety escorts;
  - H. Alternative course completion options.
14. The right to have the District maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the District's ability to provide the supportive measures.
  15. The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
  16. The right to ask the investigator(s) and decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
  17. The right to provide the investigator(s)/decision-maker(s) with a list of questions that, if deemed relevant by the investigator(s)/Chair, may be asked of any party or witness.
  18. The right not to have irrelevant prior sexual history or character admitted as evidence.
  19. The right to know the relevant and directly related evidence obtained and to respond to that evidence.
  20. The right to a fair opportunity to provide the investigator(s) with their account of the alleged misconduct.
  21. The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law and the right to have at least ten business days to review the report prior to any determination being made.
  22. The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report.
  23. The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
  24. The right to regular updates on the status of the investigation and/or resolution.
  25. The right to have reports of alleged policy violations addressed by investigators, Title IX Coordinators, and decision-maker(s) who have received relevant training.
  26. The right to preservation of privacy, to the extent possible and permitted by law.

27. The right to meetings, interviews, and/or hearings that are closed to the public.
28. The right to petition that any District representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
29. The right to have an advisor of their choice to accompany and assist the party in all meetings, interviews, and/or hearings associated with the resolution process.
30. The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
31. The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
32. The right to be promptly informed in a written notice of outcome letter of the finding(s) and sanction(s) of the formal grievance process and a detailed rationale of the decision, including an explanation of how credibility was assessed, delivered simultaneously—meaning without undue delay—to the parties.
33. The right to be informed in writing of when a decision by the District is considered final and any changes to the sanction(s) that occur before the decision is finalized.
34. The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the formal grievance process, and the procedures for doing so in accordance with the standards for appeal established by the District.
35. The right to a fundamentally fair resolution as defined in these procedures.

### Right to an Advisor

The parties may each have an advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. This could include an attorney, advocate, or support person. The parties may select whoever they wish to serve as their advisor as long as the advisor is eligible and available. “Available” means the party cannot insist on an advisor who simply doesn’t have inclination, time, or availability. Also, the advisor cannot have conflicting roles, such as being a Title IX administrator, who has an active role in the matter, or a supervisor, who must monitor and implement sanctions.

For students, this advisor can be someone in addition to their parent/guardian who may also be present with them for all meetings, interviews, and hearings within the resolution process.

### Who Can Serve as an Advisor

The advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The

parties may choose advisors from inside or outside of the Kimberly School District 414 community.

Parties also have the right to choose not to have an advisor during the resolution process.

### Advisor's Role in Meetings and Interviews

The parties may be accompanied by their advisor in all meetings, interviews, and hearings at which the party is entitled to be present, including intake and investigation interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The District cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not or cannot afford an attorney, the District is not obligated to provide an attorney.

### Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews, meetings, or hearings in advance of these interviews or meetings. This pre-meeting allows advisors to clarify and understand their role and the District's policies and procedures.

### Advisor Violations of District Policy

All advisors shall be subject to the same District policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings or meetings. Advisors shall not address District officials in a meeting or interview unless invited to. For example, they should not ask procedural questions unless invited to. The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the investigator(s) or other decision-maker(s), unless so permitted by the provisions of state law or this policy. In situations where the conduct at issue may also be a violation of criminal law, a legal Advisor may direct their client to refrain from answering a question(s) due to 5<sup>th</sup> Amendment Constitutional Right associated with self-incrimination. In such circumstance, no inferences should be drawn from this action by an accused person.

The parties are expected to ask and respond to questions on their own behalf throughout the resolution process. In cases where a party requires assistance in asking and/or responding to questions on their own behalf, (for example, due to age or disability), the advisor shall be allowed to ask and/or respond to questions on behalf of their advisee, at the discretion of the investigator(s) or decision-maker(s). Although the advisor generally may not speak on behalf of their advisee, the advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their advisors should ask for breaks to allow for private consultation.



Any advisor who oversteps their role as defined by this process shall be warned only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator shall determine how to address the advisor's non-compliance and future role.

#### Sharing Information with the Advisor

The District expects that the parties may wish to have the District share documentation and evidence related to the allegations with their advisors. Parties may share this information directly with their advisor or other individuals, if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The District shall also provide a consent form which authorizes the District to share such information directly with the party's advisor. The parties must submit this completed form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the advisor before the District is able to share records with an advisor.

#### Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. Advisors may not share these records with third parties, disclose them publicly, or use them for purposes not explicitly authorized by the District. The District may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the District's privacy expectations.

Advisors who are also District staff members may also be subject to more stringent confidentiality law, administrative rules, and policies.

#### Expectations of an Advisor

The District generally expects an advisor to adjust their schedule to ensure attendance at resolution process meetings when planned but may change scheduled meetings to accommodate an advisor's inability to attend, if doing so does not cause an unreasonable delay.

The District may also make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### Expectations of the Parties with Respect to Advisors

A party may elect to change advisors during the resolution process and is not obligated to use the same advisor throughout. The parties are expected to inform the investigator(s) and decision-maker(s) of the identity of their advisor at least two business days before the date of their first meeting with investigators and decision-makers, or as soon as possible if a more expeditious meeting is necessary or desired.

If a party changes advisors, consent to share information with the previous advisor is terminated, and a release for the new advisor must be secured before documentation and evidence related to the investigation will be provided to them.

### Resolution Process

Resolution processes are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with District policy. Although there is an expectation of privacy around what investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to an informal resolution, if applicable, and as discussed below. The District encourages parties to discuss any sharing of information with their advisors before doing so.

### Informal Resolution Process

An informal resolution process can include the following different approaches:

1. The Title IX Coordinator resolves the matter informally by providing supportive measures only to remedy the situation.
2. The parties agree to resolve the matter through an alternate resolution mechanism as described below, including mediation, restorative practices, or other resolution methods, usually before a formal grievance process takes place.
3. The respondent accepts responsibility for violating Policy 3085 and desires to accept a sanction and end the resolution process. This usually occurs after the investigation phase of the formal grievance process.
4. The Title IX Coordinator negotiates a resolution that is satisfactory to the parties and the District.

To initiate the informal resolution process, a complainant must first submit a formal complaint. A respondent who wishes to initiate the informal resolution process should contact the Title IX Coordinator.

It is not necessary to pursue informal resolution first in order to engage in the formal grievance process. Any party participating in the informal resolution process can stop the process at any time and begin or resume the formal grievance process.

Prior to implementing the informal resolution process, the District shall provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the District.

The District shall obtain voluntary, written confirmation that all parties wish to resolve the matter through an informal resolution process before proceeding and shall not pressure the parties to participate in informal resolution.

Informal resolution shall not be used to resolve allegations or complaints where the complainant is a student and the respondent is an employee.

### Alternate Resolution Mechanisms

An alternate resolution is an informal mechanism, including mediation or restorative practices, or other resolution methods, by which the parties mutually agree to resolve an allegation. All parties must consent to the use of an alternate resolution mechanism.

The Title IX Coordinator may consider the following factors to assess whether alternate resolution is appropriate, or which form of alternate resolution may be most successful for the parties:

1. The parties' preference for alternate resolution;
2. The likelihood of a potential resolution, considering any power dynamics between the parties;
3. The parties' motivation to participate;
4. The civility of the parties;
5. The disciplinary history of the parties;
6. Whether an emergency removal is needed;
7. The skill of the alternate resolution facilitator with this type of allegation;
8. The complexity of the complaint;
9. The capacity of the parties to understand and fully participate in the process;
10. The goals of the parties; and
11. Adequate resources to invest in alternate resolution, such as time and staff.

The ultimate determination of whether an alternate resolution is available or successful shall be made by the Title IX Coordinator. The Title IX Coordinator shall maintain records of any resolution that is reached. Failure to abide by the resolution agreement may result in appropriate disciplinary actions. The results of complaints resolved by an alternate resolution are not appealable.

### Respondent Accepts Responsibility for Alleged Violations

The respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal grievance process will be paused, and the Title IX Coordinator will determine whether informal resolution can be used according to the criteria above. If so, the Title IX Coordinator shall determine whether all parties and the District are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator shall implement the accepted finding that the respondent is in violation of Policy 3085 and implement agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written agreement to the terms of resolution. If the parties cannot agree on all terms of resolution, the formal grievance process shall resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanctions shall be promptly implemented in order to effectively stop the Title IX sexual harassment, prevent its recurrence, and remedy its effects.

### Negotiated Resolution

The Title IX Coordinator may, with the consent of the parties, negotiate and implement an agreement to resolve the allegations that satisfies all parties and the District. Negotiated resolutions are not appealable.

### Formal Grievance Process

The formal grievance process described below is the method of formal resolution used to determine whether a qualifying allegation of Title IX sexual harassment violates Policy 3085, as determined by an investigation and determination of responsibility made by a decision-maker. The formal grievance process shall be used in a manner that complies with the requirements of 34 CFR §106.45.

### Grievance Process Pool

The formal grievance process relies on a pool of personnel (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of Policy 3085 to all students, parents/guardians of students, employees, prospective students, and prospective employees.

### Pool Member Roles

Members of the Pool are trained, and can serve in any of the following roles, at the direction of the Title IX Coordinator:

1. To provide appropriate intake of and initial guidance pertaining to formal complaints;
2. To act as an advisor to the parties;
3. To serve in a facilitation role in alternate resolution if appropriately trained in appropriate resolution modalities;
4. To perform or assist with initial assessment;
5. To investigate complaints;
6. To serve as a meeting and/or hearing facilitator as a process administrator with no decision-making role;
7. To serve as a decision-maker regarding the formal complaint; and
8. To serve as an appeal decision-maker.

### Pool Member Training

The Pool members receive training based on their respective roles. This training includes, but is not limited to:

1. The scope of the District's Title IX sexual harassment policies and procedures;
2. How to conduct investigations, meetings, and hearings in a manner that protects the safety of complainants and respondents and promotes accountability;
3. Reporting, confidentiality, and privacy requirements;
4. How to implement appropriate and situation-specific remedies;
5. How to investigate in a thorough, reliable, and impartial manner;
6. How to uphold fairness, equity, and due process;
7. How to weigh evidence;
8. How to conduct questioning;
9. How to assess credibility;
10. Impartiality and objectivity;
11. How to render findings and generate clear, concise, evidence-based rationales;
12. The definitions of all offenses;
13. How to apply definitions used by the District with respect to consent or the absence of consent consistently, impartially, and in accordance with District policies and procedures;
14. How to conduct an investigation and grievance process including meetings, hearings, appeals, and informal resolution processes;
15. How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
16. Any technology to be used during an interview, meeting, or hearing;
17. Issues of relevance of questions and evidence;
18. Issues of relevance to create an investigation report that fairly summarizes relevant evidence; and
19. How to determine appropriate sanctions in reference to Title IX sexual harassment.

The materials used to train all members of the Pool are publicly posted here:

<https://www.kimberly.edu/>.

### Notice of Investigation and Allegations

The Title IX Coordinator will provide written Notice of the Investigation and Allegations (NOIA) to the respondent upon commencement of the formal grievance process. This facilitates the respondent's ability to prepare for the interview and to identify and choose an advisor to accompany them. A copy of the NOIA shall also be provided to the complainant, who shall be given advance notice of when the NOIA will be delivered to the respondent.

The NOIA will include:

1. A meaningful summary of all of allegations;
2. The identity of the involved parties, if known;
3. The precise misconduct being alleged;
4. The date and location of the alleged incident(s), if known;
5. The specific policies implicated;

6. A description of the applicable procedures;
7. A statement of the potential sanctions that could result;
8. A statement that the District presumes the respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination;
9. A statement that determinations of responsibility are made at the conclusion of the formal grievance process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period;
10. A statement about the District's policy on retaliation;
11. Information about the privacy of the process;
12. Information on the need for each party to have an advisor of their choosing;
13. A statement informing the parties that the District's policies and procedures prohibit knowingly making false statements, including knowingly submitting false information during the resolution process;
14. Detail on how the party may request disability accommodations during the resolution process;
15. The name(s) of the investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the investigator(s) may have, and
16. Instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of any allegations.

Notice shall be made in writing and may be delivered by one or more of the following methods:

1. In person;
2. Mailed to the local or permanent address(es) of the parties as indicated in official District records; or
3. Emailed to the parties' District-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### Formal Grievance Process Timeline

The District will make a good faith effort to complete the formal grievance process within 30 to 60 business days, including appeal. This time frame can be extended as necessary by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

### Appointment of Investigators

Once the Title IX Coordinator decides to begin an investigation as part of the formal grievance process, the Title IX Coordinator shall appoint Pool members to conduct the investigation, usually within two business days of determining that an investigation should proceed.

### Ensuring Impartiality

Any individual materially involved in the administration of the formal grievance process including the Title IX Coordinator, investigator(s), decision-maker(s) and appeal decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific complainant or respondent.

The Title IX Coordinator shall vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the formal grievance process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator shall determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, shall be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with Kimberly School District Superintendent.

The formal grievance process involves an objective evaluation of all relevant evidence obtained, including evidence that supports the conclusion the respondent engaged in a policy violation and evidence that supports the conclusion the respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a complainant, respondent, or witness.

The District presumes that the respondent is not responsible for the reported misconduct unless and until a final determination is made, in accordance with this policy, that Policy 3085 has been violated.

### Investigation Timeline

Investigations are completed promptly, normally within 30 business days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations; availability of witnesses; police involvement; and other factors.

The District shall make a good faith effort to complete investigations as promptly as possible and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### Delays in the Investigation Process and Interactions with Law Enforcement

The District may undertake a delay in its investigation, lasting from several days to a few weeks, if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or a need for accommodations for disabilities or health conditions.

The District shall communicate in writing the anticipated duration of the delay and the reason for it to the parties and provide the parties with status updates if necessary. The District will

promptly resume its investigation and formal grievance process as soon as feasible. During such a delay, the District will implement supportive measures as deemed appropriate.

District action(s) or processes may be delayed, but are not stopped by, civil or criminal charges involving the underlying incident(s). Dismissal or reduction of those criminal charges may or may not impact on the District's action(s) or processes.

#### Steps in the Investigation Process

All investigations shall be thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

The Title IX Coordinator may act as the investigator.

All parties shall have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The investigator(s) will typically take(s) the following steps, if not already completed. The steps will not necessarily be completed in this order:

1. Determine the identity and contact information of the complainant;
2. In coordination with school partners, initiate or assist with any necessary supportive measures;
3. Identify all policies implicated by the alleged misconduct and notify the complainant and respondent of all of the specific policies implicated;
4. Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation;
5. Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties;
6. Meet with the complainant to finalize their interview or statement, if necessary;
7. Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations;
8. Provide each interviewed party and witness an opportunity to review and verify the investigator's summary notes or transcript of the relevant evidence/testimony from their respective interviews and meetings;



9. Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible;
10. When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose;
11. Interview all available, relevant witnesses and conduct follow-up interviews as necessary;
12. Allow each party the opportunity to suggest witnesses and questions they wish the investigator(s) to ask of the other party and witnesses, and document in the investigation report which questions were asked and the rationale for any changes or omissions;
13. Complete the investigation promptly and without unreasonable deviation from the intended timeline;
14. Provide regular status updates to the parties throughout the investigation;
15. Prior to the conclusion of the investigation, provide the parties and their respective advisors, if so desired by the parties, with a list of witnesses whose information will be used to render a finding;
16. Write a comprehensive investigation report fully summarizing the investigation and all witness interviews and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included;
17. The investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report;
18. Prior to the conclusion of the investigation, provide the parties and their respective advisors, when advisors are identified, a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the District does not intend to rely in reaching a determination, for a ten business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.
19. The investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses;

20. The investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report;
21. The Investigator(s) shares the report with the Title IX Coordinator and/or legal counsel for their review and feedback;
22. The Investigator will incorporate any relevant feedback, and the final investigation report is then shared with all parties and their advisors through secure electronic transmission or hard copy at least ten business days prior to a meeting with the decision-maker. The parties are also provided with a file of any directly related evidence that was not included in the report

### Role and Participation of Witnesses in the Investigation

Witnesses, as distinguished from the parties, who are employees of the District are expected to cooperate with and participate in the District's investigation and formal grievance process. Failure of such witnesses to cooperate with and/or participate in the formal grievance process constitutes a violation of policy and may warrant discipline. Student witnesses and witnesses from outside the District community are encouraged to share what they know about the complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (such as summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The District will take appropriate steps to reasonably ensure the security and privacy of remote interviews. Though not preferred, witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the investigator(s).

### Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If investigator(s) elect to make an audio and/or video record of interviews, all involved parties will be made aware of audio and/or video recording.

### Evidentiary Considerations in the Investigation

The investigation shall not consider:

1. Incidents not directly related to the possible violation, unless they evidence a pattern;
2. The character of the parties; or
3. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, 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, 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.

### Referral to a Decision-maker

If the complaint is not resolved through informal resolution as described above, and after the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter to a Decision-maker to make a determination regarding responsibility.

The Decision-maker cannot make a determination regarding responsibility prior to ten business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the decision-maker—unless all parties and the decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate decision-maker or Decision-makers from the Pool depending on whether the respondent is an employee or a student.

### Decision-Maker Designation

The District shall designate a single Decision-maker, at the discretion of the Title IX Coordinator, and inform the parties and advisors.

The Decision-maker(s) shall not have had any previous involvement with the investigation. Those who have served as investigators in this investigation may not serve as decision-makers. Those who are serving as advisors for any party may not serve as decision-makers in that matter. The Title IX Coordinator may not serve as a decision-maker in the matter.

All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator no later than two business days after being notified of the identity of the Decision-maker. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial consideration of the evidence.

The Title IX Coordinator shall give the decision-maker(s) a list of the names of all parties, witnesses, and advisors. Any decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and advisors. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they shall raise the concern with the Title IX Coordinator as soon as possible.

### Evidentiary Consideration by the Decision-Maker

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The decision-maker will not consider:

1. Incidents not directly related to the possible violation, unless they evidence a pattern;
2. The character of the parties; or
3. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, 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, 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.

Previous disciplinary action of any kind involving the respondent may be considered in determining an appropriate sanction upon a determination of a policy violation. This information is only considered at the sanction stage of the process and is not shared with the Decision-maker until then.

The parties may each submit a written impact statement for the consideration of the decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

#### Exchange of Questions

The decision-maker shall facilitate the exchange of written questions between the parties and direct any written questions to any witnesses before a final determination is made.

The decision-maker shall invite each party to submit proposed written questions for other parties and witnesses. Upon receipt of the proposed questions, the decision-maker will review the proposed questions and determine which questions will be permitted, disallowed, or rephrased. The decision-maker shall limit or disallow questions on the basis that they are irrelevant, repetitive (and thus irrelevant), or abusive. The decision-maker shall have full authority to decide all issues related to questioning and determinations of relevance. The decision-maker may ask a party to explain why a question is or is not relevant from their perspective. The decision-maker shall explain any decision to exclude a question as not relevant or to reframe it for relevance.

The decision-maker, after any necessary consultation with the parties, investigator(s) and/or Title IX Coordinator, shall provide the parties and witnesses with the relevant written questions to be answered and a deadline for the parties and witnesses to submit written responses to the questions and any appropriate follow-up questions or comments by the parties. The exchange of questions and responses by the parties and witnesses shall be concluded within a three to ten business day period.

#### Deliberation, Decision-Making, and Standard of Proof

The decision-maker(s) will then deliberate to determine whether the respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. When determining whether respondent violated Policy 3085,

the Decision-maker(s) use the preponderance of the evidence standard; whether it is more likely than not that the respondent violated Policy 3085 as alleged.

When there is a finding of responsibility on one or more of the allegations, the decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The decision-maker(s) may, at their discretion, consider the statements; but they are not binding.

The decision-maker(s) shall review the statements and any pertinent conduct history provided by the appropriate administrator, such as the Title IX Coordinator and shall recommend the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The decision-maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator.

This statement must be submitted to the Title IX Coordinator within two business days after the decision-maker held their final meeting with the parties and witnesses or concluded the paper evidence exchange and questioning process, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

#### Notice of Outcome

Using the deliberation statement, the decision-maker shall work in conjunction with the Title IX Coordinator as needed to prepare a notice of outcome. The Title IX Coordinator shall then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their advisors within three to seven business days of receiving the decision-maker(s)' deliberation statement.

The notice of outcome shall be shared with the parties simultaneously. Notification shall be made in writing and may be delivered by one or more of the following methods:

1. In person;
2. Mailed to the local or permanent address of the parties as indicated in official District records; or
3. Emailed to the parties' District-issued email or otherwise approved account.

Once mailed, emailed, or received in-person, notice will be presumptively delivered.

The notice of outcome shall articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and shall contain a description of the procedural steps taken by the District from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The notice of outcome shall specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the District is permitted to share such information under state or federal law; any sanctions issued which the District is permitted to share such information according to state or federal law; and any remedies provided to the complainant designed to ensure access to the District's educational or employment program or activity, to the extent the District is permitted to share such information under state or federal law. Detail regarding the final item listed is not typically shared with the respondent unless the remedy directly relates to the respondent.

The notice of outcome shall also include the relevant procedures and bases for any available appeal options.

### Sanctions

Factors considered when determining sanctions may include, but are not limited to:

1. The nature, severity of, and circumstances surrounding the violation(s);
2. The respondent's disciplinary history;
3. Previous allegations or allegations involving similar conduct;
4. The need for sanctions to bring an end to the Title IX sexual harassment;
5. The need for sanctions to prevent the future recurrence of Title IX Sexual harassment;
6. The need to remedy the effects of the Title IX sexual harassment;
7. The impact on the parties; and
8. Any other information deemed relevant by the decision-maker(s)

The sanctions shall be implemented as soon as is feasible, either upon the outcome of any appeal or upon the expiration of the window to appeal if no appeal is requested. The sanctions described in this process are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

### Student Sanctions

The following are the usual sanctions that may be imposed upon students singly or in combination:

1. A warning;
2. Required counseling;
3. A required substance abuse treatment program;
4. Exclusion from participating in extracurricular activities or other District programs/activities;
5. Alternative placement;
6. Suspension, which may be in-school, out-of-school, long-term, short-term, extended, or other suspensions;
7. Expulsion; and

8. Other actions: In addition to or in place of the above sanctions, the District may assign any other sanctions deemed appropriate.

### Employee Sanctions

Sanctions for an employee may include:

1. A verbal or written warning;
2. A performance improvement plan or management process;
3. Enhanced supervision, observation, or review;
4. Required counseling;
5. Required training or education;
6. Probation;
7. Denial of pay increase or pay grade;
8. Loss of oversight or supervisory responsibility;
9. Demotion;
10. Transfer;
11. Reassignment;
12. Assignment to a new supervisor;
13. Restriction of professional development resources;
14. Suspension with pay;
15. Suspension without pay;
16. Termination;
17. Other actions: In addition to or in place of the above sanctions, the District may assign any other sanctions as deemed appropriate.

### Withdrawal or Resignation While Charges Pending

Should a student decide to not participate in the formal grievance process, the process proceeds absent their participation to a reasonable resolution. Should a student respondent permanently withdraw from the District, the formal grievance process shall end, as the District no longer has disciplinary jurisdiction over the withdrawn student.

Should an employee respondent resign with unresolved allegations pending, the formal grievance process shall end, as the District no longer has disciplinary jurisdiction over the resigned employee.

Even if a respondent withdraws from the District or resigns, the District shall continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged Title IX sexual harassment.

An employee who resigns with unresolved allegations pending shall not be eligible for rehire with the District or any school with the District, and the records retained by the Title IX Coordinator shall reflect that status. Any state mandates for reporting of this resignation with respect to licensure or certification shall be met.

All District responses to future inquiries regarding employment references for that individual shall note that the former employee resigned during a pending disciplinary matter.

### Appeals

Any party may file a request for appeal in writing with the Title IX Coordinator within three to seven business days of the delivery of the notice of outcome.

A single appeal decision-maker shall chair the appeal. No appeal decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The request for appeal shall be forwarded to the appeal chair for consideration to determine whether the request meets the grounds for appeal. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is filed in the timeframe specified.

### Grounds for Appeal

Appeals shall be limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter.

If any of the grounds in the request for appeal do not meet the grounds in this procedure, that request will be denied by the appeal chair, and the parties and their advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the request for appeal meet the grounds in this procedure, then the appeal chair will notify the other party(ies) and their advisors, the Title IX Coordinator, and, when appropriate, the investigators and/or the original decision-maker(s).

The other party(ies) and their advisors, the Title IX Coordinator, and, when appropriate, the investigators and/or the original decision-maker(s) shall be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be [three to seven] [business OR school OR calendar] days to submit a response to the portion of the appeal that was approved and involves them. All responses shall be forwarded by the appeal chair to all parties for review and comment.



The party who did not bring the appeal, if there is such a party, may also choose to raise a new ground for appeal at this time. If so, the new ground will be reviewed by the appeal chair to determine if it meets the grounds in this procedure and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the investigator(s) and/or original decision-maker(s), as necessary, who will submit their responses in three to seven business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The appeal chair shall collect any additional information needed and the Chair will render a decision in no more than three to seven business days, barring unusual circumstances. All decisions apply the preponderance of the evidence standard.

A notice of appeal outcome shall be sent to all parties simultaneously including the decision on each approved ground and the rationale for each decision. The notice of appeal outcome shall specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the District is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the District is permitted to share these under state or federal law.

Notification shall be made in writing and may be delivered by one or more of the following methods:

1. In person;
2. Mailed to the local or permanent address of the parties as indicated in official institutional records; or
3. Emailed to the parties' District-issued email or otherwise approved account.

Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### Sanctions Status During the Appeal

Any sanctions imposed by the decision-maker shall take effect following the appeal process. Supportive measures may remain in effect during an appeal process, subject to the same supportive measure procedures above.

### Appeal Considerations

1. Appeal decisions shall defer to the original decision, making changes to the determination only when there is clear error and to the sanction(s) only if there is a compelling justification to do so.
2. Appeals shall not provide for a full reconsideration of the allegation(s) and evidence. In most cases, appeals will be confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

3. An appeal is not an opportunity for appeal decision-makers to substitute their judgment for that of the original decision-maker'(s') merely because they disagree with the determination and/or sanction(s).
4. The appeal chair or decision-maker(s) may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation shall be maintained.
5. Appeals granted based on new evidence should normally be returned to the original investigator(s) and/or decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
6. When appeals result in no change to the determination or sanction, that decision is final. When an appeal results in a new determination or sanction, that determination or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
7. In rare cases where a procedural error cannot be cured by the original decision-maker(s), as in cases of bias, the appeal may order a new hearing with a new Decision-maker(s).
8. The results of a new hearing can be appealed once on any of the three grounds permitted by the district.
9. In cases in which the appeal results in reinstatement to the District or resumption of privileges, all reasonable attempts shall be made to restore the respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

#### Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the school or the Kimberly School District 414 community that are intended to stop the Title IX sexual harassment, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

1. Referral to counseling and health services;
2. Referral to the Employee Assistance Program
3. Education of the individual and/or the community;
4. Permanent alteration of work arrangements for employees
5. Provision of school safety escorts;
6. Climate surveys;
7. Policy or procedure modification and/or training;
8. Provision of transportation accommodations;

9. Implementation of long-term contact limitations between the parties;
10. Implementation of adjustments to academic deadlines, course schedules, or other, similar factors.

At the discretion of the Title IX Coordinator, certain long-term supports or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator shall address any remedies owed by the District to the respondent to ensure no effective denial of educational access.

The District shall maintain the privacy of any long-term remedies, actions, and measures, provided privacy does not impair the District's ability to provide these services.

#### Failure to Comply with Sanctions and/or Interim and Long-Term Remedies and/or Responsive Actions

All respondents are expected to comply with the assigned sanctions and corrective actions within the timeframe specified by the final decision-maker(s).

Failure to abide by the sanction(s) or action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s) or action(s), including suspension, expulsion, and/or termination from the District.

#### Recordkeeping

The District will maintain for a period of at least seven years records of:

1. Each Title IX sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the respondent;
3. Any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity;
4. Any appeal and the result therefrom;
5. Any informal resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, investigators, decision-makers, appeal decision-makers, and any person who facilitates an informal resolution process. The District shall make these training materials publicly available on the District's website.
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of Title IX sexual harassment, including:

- A. The basis for all conclusions that the response was not deliberately indifferent;
- B. Any measures designed to restore or preserve equal access to the District's education program or activity; and
- C. If no supportive measures were provided to the complainant, the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The District will also maintain any and all records in accordance with state and federal laws.

#### Disabilities Accommodations in The Resolution process

The District is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the District's resolution process.

Anyone needing such accommodations or support should contact the Human Resources Department, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### Revision of These Procedures

The District reserves the right to make changes to these procedures as necessary. If laws or regulations change – or court decisions alter – the requirements in a way that impacts these procedures, this document shall be construed to comply with the most recent government regulations or holdings.

#### Procedure History:

Promulgated on: 09/17/2020

Revised on:

Reviewed on: