Title IX Sexual Discrimination and Harassment Policy

I. Notice of Non-Discrimination and Scope

The Fargo Public School District ("District") is committed to providing a learning and working environment free from sexual discrimination and harassment in all employment and educational programs, activities, and facilities as required by Title IX of the Education Amendments of 1972. The District does not discriminate against any employee, applicant for employment, or student, on the basis of actual or perceived Sex, including Sexual Harassment.
In order to ensure compliance with federal, state, and local laws and regulations the District has developed policies and procedures that provide a prompt, equitable, and impartial resolution of allegations of Sexual Harassment.

II. Definitions

1. ***Advisor.*** Any person chosen by a party who may accompany the party to all meetings related to the Resolution Process and advise the party on that process.
2. ***Appeal Decision-maker.*** The person who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s) accordingly.
3. ***Complainant.*** An individual who has allegedly been subjected to conduct that could constitute Sexual Harassment, Retaliation, or Other Prohibited Conduct under the Policy.
4. ***Day.*** A business day when the District is in normal operation. All references in the Policy to days refer to business days unless specifically noted as calendar days.
5. ***Decision-maker.*** The person who reviews evidence, determines relevance, and makes the Final Determination of whether the alleged conduct has violated the Policy and/or assigns sanctions.
6. ***Education Program or Activity.*** Locations, events, or circumstances where the District exercises substantial control over both the Respondent and the context in which the Sexual Harassment, Retaliation, and/or Other Prohibited Conduct occurs.
7. ***Employee.*** A person employed by District either full- or part-time.
8. ***Final Determination.*** A conclusion by the standard of evidence that the alleged conduct did or did not violate the Policy.
9. ***Finding.*** A conclusion by the standard of evidence that the conduct did or did not occur as alleged (as in a "finding of fact").
10. ***Formal Complaint***. A document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging a Respondent engaged in Sexual Harassment, Retaliation, and/or Prohibited Conduct under the Policy and requesting that the District investigate the allegation(s).
11. ***Formal Resolution Process.*** The District's method of formal resolution to address Sexual Harassment and Retaliation allegations, which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45).
12. ***Informal Resolution.*** A Resolution the Parties agree to, and approved by the Title IX Coordinator, which occurs prior to a Final Determination.

13. ***Investigation Report.*** The Investigator's written summary of all Relevant Evidence gathered during the investigation. Versions include the Draft Investigation Report and the Final Investigation Report.
14. ***Investigator.*** The person(s) the District authorizes to gather facts about an alleged violation of the Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report of Relevant Evidence and a file of Directly Related Evidence.
15. ***Mandated Reporter.*** A District Employee who is obligated by Policy to share knowledge, Notice, and/or reports of Sexual Harassment or Retaliation with the Title IX Coordinator.
16. ***Notice.*** When an Employee, Student, or third party informs the Title IX Coordinator or other Employee of the alleged occurrence of Sexual Harassment and/or Retaliation.
17. ***Parties.*** The collective term for the Complainant(s) and Respondent(s) involved in a complaint.
18. ***Reasonable Person.*** A reasonable person under similar circumstances and with similar identities to the Complainant.
19. ***Relevant Evidence.*** Evidence that tends to prove or disprove any element of an offense or any issue materials to resolving a complaint.
20. ***Remedies.*** Typically, post-Resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the District's Education Program or Activity.
21. ***Resolution.*** The result of an [Informal Resolution or] Formal Resolution Process.
22. ***Respondent.*** A person who is alleged to have engaged in conduct that could constitute Sexual Harassment or Retaliation for engaging in a protected activity under the Policy.
23. ***Sanction.*** A consequence imposed on a Respondent who is found to have violated the Policy.
24. ***Sex.*** Birth Sex, including sex stereotypes, [and] sex characteristics, sexual orientation, and gender identity.
25. ***Student.*** Any individual who is registered for or enrolled in the District's education program, and who maintains an ongoing educational relationship with the District.
26. ***Title IX Coordinator.*** At least one official designated by the District to ensure compliance with Title IX of the Education Amendments of 1972 (34 C.F.R. § 106) and the District's Title IX program. References to the Coordinator throughout the Policy may also encompass a Coordinator's designee for specific tasks.

III. Title IX Coordinator

The District has appointed the Title IX Coordinator, to coordinate the District's compliance with federal, state, and local laws and ordinances related to sexual discrimination and harassment:

Title IX Coordinator
Dr. Patricia Cummings
Director of Compliance
700 7th Street S.
Fargo, ND 58103
701.446.1009
cumminp1@fargo.k12.nd.us

The Title IX Coordinator shall have the authority to work with other District officials as is necessary to address any concurrent or related misconduct.

IV. Title IX Mandatory Reporting

All District employees are Title IX Mandatory Reporters, as such they must promptly report all known details of actual or suspected Sexual Harassment, Retaliation, and/or Other Prohibited Conduct to the Title IX Coordinator.

In some cases, the District's response may be altered or briefly delayed by a law enforcement investigation, but a law enforcement investigation does not substitute for the District's response.
The Title IX mandatory reporting requirements are in addition to the statutory requirement to report suspected abuse or neglect to the appropriate state or county officials.

V. Scope

This policy is applicable to all employees, students, and individuals participating or attempting to participate in the District's programs or activities, including education and employment. Sexual Harassment, in both employment and access to educational opportunities, is prohibited.
Nothing in this policy is intended to infringe upon or limit an individual's right to free speech, or rights under the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, or Individuals with Disabilities Act (IDEA).

VI. Jurisdiction

This policy applies to the District's education programs and activities (defined as including locations, events, or circumstances in which Fargo Public School District exercises substantial control over both the Respondent and the context in which the conduct occurred), circumstances where Fargo Public School District has disciplinary authority, and to misconduct occurring within any building owned or controlled by a Fargo Public School District-recognized student organization.

This Policy may also apply to the effects of out-of-school misconduct, including online conduct, that limit or deny a person's access to the District's education program or activities.
In order for disciplinary action to be issued, the Respondent must be a District student, employee, or third-party vendor at the time of the alleged incident. A Complainant must be participating or attempting to participate in the District's educational program or activity at the time of signng a Formal Complaint unless the Title IX Coordinator determines it is necessary to sign a Formal Complaint on the Complainants behalf.

VII. Prohibited Conduct

All offense definitions below encompass actual and/or attempted offenses.

1. Sex Discrimination - Sex discrimination is different treatment with respect to a person's employment or participation in an education program or activity, based, in whole or in part, upon the person's actual or perceived Sex, and that excludes a person from

participation in, denies a person benefits of, or otherwise adversely affects a term or condition of a person's participation in a District program or activity.

a. Disparate Treatment: Any intentional different treatment of a person or persons that is based on a person's actual or perceived Sex and that excludes a person from participation in, denies the person benefits of, or otherwise adversely affects a term or condition of a person's participation in a District program or activity.

b. Disparate Impact: Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a discriminatory impact on the basis of Sex that excludes a person from participation in, denies the person benefits of, or otherwise adversely affects a term or condition of a person's participation in a District program or activity.

2. Title IX Sexual Harassment - Title IX Sexual Harassment, as an umbrella category, includes the offenses of Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking. This definition applies to all Formal Complaints that fall within Title IX jurisdiction as determined by the Title IX Coordinator.
    a. Sexual Harassment includes: Conduct on the basis of Sex, or that is sexual in nature, that satisfies one or more of the following:
        1) ***Quid pro Quo***: a District employee explicitly or impliedly conditioning the provision of an aid, benefit, or service of the District on a person's participation in unwelcome sexual conduct.
        2) ***Sexual Harassment (Hostile Environment):*** Unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, and objectively offensive that it effectively denies a Complainant equal access to the District's program or activity.
        3) Sexual Assault:
            i. Rape.
            ii. Fondling: The touching of the private body parts of the Complainant by the Respondent, or the Respondent's private body parts touching the Complainant, or the Respondent causing the Complainant to touch the Respondent's or their own private body parts, for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.
            iii. Incest: Sexual intercourse between people who are related to each other within the degrees wherein marriage is prohibited by North Dakota law.

iv. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent pursuant to North Dakota law.

4) ***Dating Violence:*** Violence, on the basis of Sex, committed by a person who is or has been in a relation relationship of a romantic or intimate nature with the Complainant, and includes, but is not limited to, sexual or physical abuse or the threat of such abuse. The existence of such a relationship shall be determined based on a consideration of the following factors: (1) The length of the relationship; (2) The type of relationship; and (3) The frequency of interaction between the persons involved in the relationship.

5) ***Domestic Violence:*** Violence on the basis of Sex committed by a person who:
   i. Is a current or former spouse or intimate partner of the Complainant or a person similarly situated to a spouse of the Complainant under the family or domestic violence laws of North Dakota.
   ii. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
   iii. Shares a child in common with the Complainant; or
   iv. Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of North Dakota.

6) ***Stalking:*** engaging in a course of conduct, on the basis of Sex, directed at a specific person that would cause a Reasonable Person to:
   i. Fear for the person's safety or the safety of others; or
   ii. Suffer substantial emotional distress.

   For the purposes of this definition—
   i. Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
   ii. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

3. Retaliation: Any member of the District community taking or attempting to take adverse action, by intimidating, threating, coercing, or discriminating against any person for the purpose of interfering with any right or privilege secured by Title IX or Policy, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

Retaliation complaints are not subject to the procedural requirements outlined in this policy.

VII. Reports and Formal Complaints

Reports or Formal Complaints of Sexual Harassment or Retaliation may be made at any time using any of the following options:

1. Filing a Formal Complaint with, or making a report to, the Title IX Coordinator.
2. Submitting an online report on the District website.

There is no time limitation on providing a Report or Formal Complaint to the Title IX Coordinator. However, if the Respondent is no longer a student or employee and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

VIII. Standard of Evidence

The District uses the preponderance of the evidence standard of evidence when determining whether a policy violation occurred. This means that the District will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent violated the policy.

IX. Supportive Measures

The District will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged Sexual Harassment, and/or Retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to the District's education program or activity, including measures designed to protect the safety of all Parties and/or the Recipient's educational environment and/or to deter Sexual Harassment, and/or Retaliation.

Supportive measures may include, but are not limited to:

- Referral to School based mental health services
- Referral to the Employee Assistance Program
- Implementing contact restrictions between the Parties
- Academic support, extensions of deadlines, or other class-related adjustments
- Class schedule or assignment modifications, withdrawals, or leaves of absence
- Any other actions deemed appropriate by the Title IX Coordinator

X. Confidentiality

The District makes every effort to protect the Parties' privacy, and will not disclose the names of the Complainant, Respondent, and witnesses except as required by law, or to fulfill the purposes of related laws and regulations (e.g., Title IX), the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law.

XI. Notice or Receipt of Formal Complaint

Upon receipt of Notice or a Formal Complaint of an alleged Policy violation, the Title IX Coordinator will initiate a prompt initial assessment to determine the District's next steps. If applicable, the Title IX Coordinator will immediately report suspected child abuse as required by state law. The Title IX Coordinator will work with the applicable building principal to ensure the Complainant is offered supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

XII. Related Misconduct

Potential violations of other District policies that occur in connection with the alleged policy violations, or that arise through the course of the investigation, may be handled along with potential policy violations and resolved jointly under these Procedures. All other allegations of misconduct unrelated to incidents covered by this policy will typically be addressed under a different policy including Administrative Policy 6310 – Student Behavior, Discipline, and Reporting or Administrative Policy 5255 – Staff.

XIII. Initial Assessment

The Title IX Coordinator will conduct an initial assessment, typically within three (3) business days of receiving Notice or a Formal Complaint. The initial assessment typically includes:

- Assessing whether the reported conduct may reasonably constitute a violation of this Policy
- Determining whether the District has jurisdiction over the reported conduct
- Offering and coordinating supportive measures for the Parties
- Notifying the Complainant of the available resolution options
- Determining whether the Complainant wishes to file a Formal Complaint
- Notifying the Respondent of the available resolution options if a Formal Complaint is made

1. **Helping a Complainant to Understand Resolution Options.** If the Complainant wishes to make a Formal Complaint, the Title IX Coordinator will work with the Complainant to determine which resolution option they prefer. The Title IX Coordinator will seek to abide by the Complainant's wishes but may have to take another approach depending upon their assessment of the situation.

   If the Complainant chooses the Formal Resolution Process, the Title IX Coordinator will initiate an investigation.

   If any party indicates that they want to pursue an Informal Resolution option, the Title IX Coordinator will determine whether Informal Resolution is available and whether the other Parties consent to participate. Informal Resolution cannot be used to resolve a

Formal Complaint of Title IX Sexual Harassment involving an Employee Respondent and a Student Complainant.

If the Complainant does not want any action taken, the Title IX Coordinator will consider that request. Typically, allegations of Student-on-Student and Employee-on-Employee misconduct will not prompt the Formal Resolution Process unless deemed necessary by the Title IX Coordinator, though the Complainant can elect to pursue the Formal Resolution Process in the future. The Title IX Coordinator may need to refer allegations of Employee-on-Student misconduct to the Formal Resolution Process regardless of the Complainant's wishes, depending on the nature of the allegations.

The Title IX Coordinator may consider elements such as patterns of behavior, predation, threats, violence, use of weapons, or involvement of minors in determining whether to sign a Formal Complaint.

2. **Title IX Coordinator Authority to Initiate a Complaint.** The Title IX Coordinator has ultimate discretion as to whether a Formal Complaint is made and may consult with appropriate District Employees, and/or conduct a violence risk assessment to aid their determination whether to sign a Formal Complaint on behalf of the Complainant. When the Title IX Coordinator signs a Formal Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged misconduct.

XIV. Dismissal – Mandatory and Discretionary

The District must dismiss a Formal Complaint or any allegations therein if, at any time during the Formal Resolution Process, it is determined that:

1. The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment even if proven
2. The conduct did not occur in the District's Education Program or Activity and/or the District does not have control of the Respondent
3. The conduct did not occur against a person in the United States
4. The Complainant is not participating in or attempting to participate in the District's Education Program or Activity at the time of filing the Formal Complaint, and based on the available information, the Title IX Coordinator has determined that they do not need to sign a Formal Complaint on the District's behalf

The District may dismiss a Formal Complaint or any allegations therein if, at any time prior to a final determination:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein
2. The Respondent is no longer enrolled in or employed by the District

3. Specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein

A Complainant who decides to withdraw a Formal Complaint may later request to reinstate it or refile it. Upon any dismissal, the District will promptly and simultaneously send the Parties written notice of the dismissal and the rationale for the dismissal. This dismissal decision is appealable by any party.

XV. Appeal of Dismissal

The Parties may appeal a decision to dismiss their Formal Complaint. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal decision. A dismissal may be appealed on the following grounds:

1. Procedural irregularity affected the outcome of the matter
2. New evidence that was not reasonably available at the time the determination regarding dismissal was made available and that evidence could affect the outcome of the matter
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

The appeal request must specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Title IX Coordinator will share the request and supporting documentation with all other Parties and provide three (3) business days for other Parties and the Title IX Coordinator to respond to the request. At the conclusion of the response period, the Title IX Coordinator will forward the request, as well as any response provided by the other Parties and/or the Title IX Coordinator to the Appeal Decision-maker for consideration.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so. The Appeal Decision-maker will notify the Parties and Title IX Coordinator of their decision and rationale in writing.

XVI. Emergency Removal of Students

The District may emergency remove a Student accused of Title IX Sexual Harassment upon receipt of a Formal Complaint or at any time during the Formal Resolution Process. Prior to an emergency removal, the District will conduct an risk assessment and may remove the Student if that assessment determines an immediate threat to the physical health or safety of any Student or other individual justifies removal.

When an emergency removal is imposed, wholly or partially, the affected Student will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal within two (2) business days of the notification. Upon receipt of a challenge, the Title IX Coordinator will meet with the Student, and their Advisor if desired, as soon as reasonably possible thereafter allowing them to demonstrate why the removal action should not be implemented or should be modified.

An emergency removal may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Title IX Coordinator will communicate the final decision in writing, typically within three (3) business days of the review meeting.
During the removal period, educational services must be provided to the Student. A temporary alternative placement (e.g., online school, different brick and mortar school) may be considered for a removed Student if the anticipated removal period is lengthy.

XVII. Placing an Employee on Leave

If the Respondent is an Employee accused of misconduct, the decision to temporarily remove an employee must be made in accordance with Administrative Policy 5223 Administrative Leave and Suspension.

XVIII. Counter Complaints

The District is obligated to ensure that the resolution process is not used for retaliatory purposes. Although the District permits counter-complaints, the Title IX Coordinator will use an initial assessment, described above, to assess whether the allegations in the counter-complaint are legitimate and/or made in good faith. When counter-complaints are not legitimate and/or made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute policy violation.

Counter-complaints determined to have been reported legitimately and/or in good faith will be processed using the Formal Resolution Process below. At the Title IX Coordinator's discretion, investigation of such claims may take place at the same time or after resolution of the initial Formal Complaint.

XIX. Parent or Guardian of Minor Students in the Formal Resolution Process

1. Parent/Guardian Role in the Formal Resolution Process

Parents and Guardians have a right to attend Formal Resolution Process meetings with their Student, though the Student is expected to answer questions on their own behalf, to the extent possible.

2. Records Shared with Parent(s)/Guardian(s)

Parents and Guardians are entitled to the same opportunity as their Student to access Relevant and Directly Related Evidence and the Final Investigation Report.

Parents and Guardians are expected to maintain the confidentiality of the records shared with them. Parents and Guardians may not disclose any District work product or evidence the District created or obtained solely through the resolution process for any purpose not explicitly authorized by the District.

3. Parent/Guardian Expectations

The District generally expects Parents and Guardians to adjust their schedule to allow them to attend District meetings and interviews when planned, but the District may change

scheduled meetings and interviews to accommodate a Parents and Guardians inability to attend, if doing so does not cause an unreasonable delay.

The District may also make reasonable provisions to allow a Parents and Guardians to attend a meeting or interview by telephone, video conferencing, or other similar technologies.

Any Parents and Guardians who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the District's established rules of decorum will be warned. If the Parents or Guardians continues to disrupt or otherwise fails to respect the limits of their role, the meeting or interview may be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Parents or Guardians non-compliance and future role. These limitations may be flexible when deemed necessary or appropriate by the Title IX Coordinator, such as when a child's age or mental capacity warrants additional parental involvement.

XX. Advisors in the Formal Resolution Process

The Parties may each have an Advisor of their choice (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings and interviews within the Formal Resolution Process. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available. Student Parties may have an Advisor in addition to their parent or guardian.

1. Advisor's Role in the Formal Grievance Process

The Parties are expected to respond to questions on their own behalf throughout the resolution process, to the extent possible. 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.

2. Records Shared with Advisors

Advisors are entitled to the same opportunity as their advisee to receive copies of the Draft and Final Investigation Reports, as well as the Directly Related Evidence file. Parties will be asked to sign releases for the District to share materials with an Advisor.

Advisors are expected to maintain the confidentiality of the records the District shares with them. The District may 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 confidentiality expectations.

3. Advisor Expectations

The District generally expects an Advisor to adjust their schedule to allow them to attend District meetings or interviews when planned, but the District may change scheduled meetings or interviews 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 to attend a meeting or interview by telephone, video conferencing, or other similar technologies.

4. Advisor Policy Violations

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the District's established rules of decorum will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting or interview may be ended, or other appropriate measures implemented, including the District requiring the party to use a different Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

XXI. Resolution Options Overview

The Formal Resolution Process is the District's primary resolution approach unless all Parties and the District agree to an Informal Resolution. The process considers the Parties' preferences but is ultimately determined at the Title IX Coordinator's discretion.
Resolution proceedings are private. All individuals present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with the Policy.

1. Informal Resolution

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator at any time prior to a Final Determination, or the Title IX Coordinator may offer the option to the Parties. The District will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution. The Title IX Coordinator must also agree that the allegation is appropriate for Informal Resolution. To engage in Informal Resolution, a Complaint must first submit a Formal Complaint.
Three approaches to Informal Resolution are detailed in this section.

1) **Supportive Resolution**. When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation. Supportive Resolution involves only the party who opts for it.

2) **Accepted Responsibility**. When the Respondent accepts responsibility for violating Policy and accepts the recommended sanction(s), and the Complainant(s) and Title IX Coordinator are agreeable to the resolution terms.

3) **Alternative Resolution**. When the Parties agree to resolve the matter through an alternative resolution mechanism, which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc., as described below.

It is not necessary to try Informal Resolution first to move forward with the Formal Resolution Process. Any party participating in Informal Resolution can leave the Informal Resolution Process at any time and start or resume the Formal Resolution Process.

As a condition of engaging in Informal Resolution, the Parties may agree on what statements made or evidence shared during the Informal Resolution process will not be considered in the Formal Resolution Process should Informal Resolution not be successful.
If an investigation is already underway, the Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, the District will provide the Parties with written notice of the reported misconduct and any sanctions, only in the case of Accepted Responsibility, or measures that may result from participating in such a process, including information regarding any records that the District will maintain and under which circumstances they may be released.

If an Informal Resolution option is not available or selected, the District will follow the Formal Resolution Process to determine whether the Policy has been violated.

2. Formal Resolution Process

The Formal Resolution Process starts with a thorough, reliable, and impartial investigation.

A. Rights of the Parties (See Appendix A)

B. Notice of Investigation and Allegations (NOIA)

The Title IX Coordinator will provide written notification of the investigation to the Parties prior to any investigation interviews. Typically, notice is given at least two (2) business days in advance of an interview. The NOIA will include a summary of the allegations, including the date, time, location, and involved Parties; a detailed explanation of the Parties' rights; and the contact information for the assigned Investigator(s). Changes and updates to the NOIA may be made as the investigation progresses and more information becomes available.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address(es) as indicated in official District records, or emailed to the Parties' District-issued email or other approved accounts. Once mailed, emailed, and/or received in-person, notice is considered delivered.

C. Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. They involve interviewing all relevant Parties and witnesses, obtaining Relevant Evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time frame designated for verification, objections to the accuracy of the summary will be deemed to have been waived, and no changes will be permitted.

The District may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, mutually planned upon actions, and/or other shared or similar actions.

D. Witness Role and Participation in the Investigation

Witnesses who are District Employees are strongly encouraged to cooperate with and participate in the District's Formal Resolution Process. Student witnesses and witnesses from outside the District community are encouraged to cooperate with District investigations and to share what they know about a Formal Complaint.

Interviews may be conducted in person, via online video platforms, or, in limited circumstances, by telephone. The District will take appropriate steps to ensure the security or privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

E. Interview Recording

It is standard practice for Investigators to create a record of all interviews pertaining to the Formal Resolution Process, by transcript or written summary. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

F. Evidentiary Considerations

The Parties must provide all evidence to the Investigator prior to completion of the Final Investigation Report. Evidence offered after that time will be evaluated by the Decision-maker for relevance. If deemed relevant, the Parties and Decision-maker must agree to admit it into the record. If the evidence is deemed not relevant, the Decision-maker may proceed with making a determination without the new evidence.

The new Relevant Evidence will be admitted to the record if:

- All Parties and the Decision-maker agree to the new evidence being considered by the Decision-maker without reopening the investigation,
- The evidence includes information not already in the record, and
- The new evidence was either not reasonably available prior to the conclusion of the Final Investigation Report, or the failure to provide it in a timely manner was not intentional.

If the above criteria are not met, but the evidence is deemed materially relevant and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:

- Delay the determination

- Provide the Parties with at least three (3) business days to review the Relevant Evidence
- Reopen the investigation
- Allow the Parties time to review and comment on the new evidence

If the evidence is not relevant, the Decision-maker may proceed with making a determination without considering the new evidence.
Neither the Investigator(s) nor the Decision-maker will consider:

1. Questions or evidence about the Complainant's sexual predisposition.
2. Questions or evidence about the Complainant's 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 alleged conduct, or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
3. Questions or evidence about a party or witness's records that are made or maintained by a physician, psychiatrist, psychologist, or other professional with legal privilege unless the party or witness provides voluntary, written consent for the records to be considered.

The investigation and Final Determination can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility.

Unless there is a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

G. Related Misconduct

The Decision-maker has the authority to make determinations on all allegations of Sexual Harassment or Retaliation under the Policy and may also make determinations on any additional alleged related misconduct that occurred or was reported in connection with the Sexual Harassment or Retaliation even though those related allegations may not specifically fall within the Policy.

H. Referral for Final Determination

Once the Final Investigation Report is shared with the Parties, the Title IX Coordinator will refer the matter for a Final Determination. The determination cannot be made less than ten (10) business days from the conclusion of the investigation – when the Final Investigation Report is provided to the Parties and the Decision-maker – unless all Parties and the Decision-maker agree to an expedited timeline.

The Decision-maker will provide each party an opportunity to submit questions they wish to have asked of another party or witness, and the Decision-maker will relay the responses to all Parties. Parties are permitted to ask relevant follow-up questions at the discretion of the Decision-maker.

I. Notice of Outcome

The Title IX Coordinator will typically provide the Parties a written outcome notification within ten (10)) business days of the conclusion of all questioning. Extensions to this timeframe may be granted by the Title IX Coordinator for appropriate reasons. The Title IX Coordinator will promptly communicate a new timeline to the Parties. The outcome notification will specify the Finding and Final Determination for each alleged Policy violation, any sanction(s) that may result, which the District is allowed to share pursuant to federal or state law, and a detailed rationale, written by the Decision-maker, supporting the outcome to the extent the District is allowed to share under federal or state law. The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the outcome is considered final if no party appeals. Unless based on the Respondent's admission of responsibility, the outcome may be appealed by any party.

The Title IX Coordinator will provide the Parties with the outcome notification without significant time delay between notifications. Notice may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official District records, or emailed to the Parties' District-issued email or other approved accounts. Once mailed, emailed, and/or received in-person, notice is considered delivered.

J. Resolution Timeline

The District will make every effort to complete the Formal Resolution Process within thirty to sixty (30-60) business days, including any appeals, which the Title IX Coordinator can extend as necessary for appropriate cause. The Parties will receive regular updates on the progress of the Formal Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of the new timeline.

Determinations for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to the Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term, including during the summer, as needed, to meet the District's resolution timeline and ensure a prompt resolution.

K. Sanctions

Factors the Decision-maker may consider when determining sanctions and responsive actions include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the Sexual Harassment or Retaliation

- The need for sanctions/responsive actions to prevent the future recurrence of Sexual Harassment or Retaliation
- The need to remedy the effects of the Sexual Harassment or Retaliation on the Complainant and the community
- The impact on the Parties
- The Respondent's acceptance of responsibility
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as possible once a determination is final, either upon the outcome of any appeal or the deadline to appeal, without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, actions taken by external authorities.

L. Appeal of the Determination

The Title IX Coordinator will designate an Appeal Decision-maker to decide the appeal. The Appeal Decision-maker(s) will not have been previously involved in the Formal Resolution Process for the Complaint.

1) Appeal Grounds

Appeals are limited to the following grounds:

a) A procedural irregularity that would change the outcome.
b) New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility was made.
c) 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 would change the outcome.

2) Request for Appeal

Any party may submit a written appeal request to the Title IX Coordinator within five (5) business days of the delivery of the notice of outcome.
The appeal request will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the appeal grounds (a Review for Standing) and was submitted by the appeal deadline. If the appeal request does not meet the grounds in the Procedures or is not submitted by the appeal deadline, the request will be denied, and the Parties will be notified in writing.

If any information in the appeal request meets the grounds in the Procedures, all other Parties, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the Decision-maker will be provided with a copy of the appeal request with the approved grounds. These individuals will then be given five (5) business days to submit a response to the approved portion of the appeal that involves them. The Appeal Decision-maker will forward all responses, if any, to all Parties for review and comment.

The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved appeal grounds and the subsequent responses, and will promptly render a decision.

3) Appeal Determination Process

In most circumstances, appeals are limited to a review of the written documentation or record of the original determination and relevant documentation regarding the specific appeal grounds. An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the Final Determination and/or sanction(s).

Appeal Decision-makers should only make changes to the Final Determination when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions are made by applying the preponderance of the evidence standard of evidence.

4) Appeal Outcome

An appeal may be granted or denied. Appeals that are granted should normally be returned (or partially returned) to the original Investigator and/or Decision-maker with corrective instructions for remedying the errors or issues identified by the Appeal Decision-maker, or reconsideration. In rare circumstances where an error or issue cannot be corrected by the original Investigators and/or Decision-maker or the Title IX Coordinator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new determination with different individuals serving in the Investigator and Decision-maker roles.

A notice of appeal outcome letter will be sent to all Parties without significant time delay between notifications. The appeal outcome letter will specify the Finding on each appeal ground, any specific instructions for reconsideration, all sanction(s) that may result which the District is permitted to share according to federal or state law, and the rationale supporting the appeal outcome's Findings to the extent the District is permitted to share under federal or state law.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on appeal (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new Finding or sanction, that Finding or sanction can be appealed one final time on the grounds listed above and in accordance with the Procedures.

If a remand results in a new Finding or sanction that is different from the original Finding or sanction, that new Finding or sanction can be appealed, once, on any of the available appeal grounds.

5) Sanction Status During the Appeal

Any sanctions imposed because of the Final Determination are not implemented during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are implemented immediately post-determination, but pre-appeal, then the emergency removal meeting procedures (detailed above) must be followed within two (2) business days of implementation.

M. Investigation Process Delays and Interactions with Law Enforcement

The District may undertake a short delay in its investigation (several days to a few weeks) for reasons such as:

- A request from law enforcement to temporarily delay the investigation
- The need for language assistance
- The absence of Parties and/or witnesses
- Health conditions

The District will promptly resume its Formal Resolution Process as soon as possible. The District will implement and maintain supportive measures for the Parties as deemed appropriate during the delay.

District actions or processes are not typically changed or stopped due to civil or criminal charges involving the underlying incident(s) being filed or criminal charges being dismissed or reduced.

The District will make every effort to complete the Formal Resolution Process as promptly as possible and will regularly communicate with the Parties to update them on the progress and timing of the process.

XXII. Ensuring Impartiality

No individual significantly involved in the administration of the Formal Resolution Process, including the Title IX Coordinator, Investigator, and Decision-maker, may have or demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The Title IX Coordinator will evaluate the assigned Investigator, Decision-maker, and Appeal Decision-maker for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The Parties may raise a concern regarding bias or conflict of interest at any time during the Formal Resolution Process, and the Title IX Coordinator will determine whether the concern is reasonable and supportable.

The Formal Resolution Process involves an objective evaluation of all Relevant Evidence obtained, including evidence that supports that the Respondent violated the Policy and evidence that supports that the Respondent did not violate the Policy. Credibility determinations will not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written Investigation Report that accurately summarizes this evidence.

XXIII. Withdrawal or Resignation Before Complaint Resolution

1. Students

Should a Student Respondent decide not to participate in the Formal Resolution Process, the process will continue absent their participation to a reasonable resolution. If a Student Respondent withdraws from the District, the Formal Resolution Process may continue, or the Title IX Coordinator may dismiss the Complaint. If the Complaint is dismissed, District will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged Sexual Harassment or Retaliation. Regardless of whether the Complaint is dismissed, the District will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Sexual Harassment or Retaliation.

2. Employees

Should an Employee Respondent decide not to participate in the Formal Resolution Process, the process proceeds to a reasonable resolution absent their participation. If an Employee Respondent leaves their employment with the District with unresolved allegations pending, the Formal Resolution Process may continue, or the Title IX Coordinator may dismiss the Complaint. If the Complaint is dismissed, the District may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged Sexual Harassment or Retaliation.

When an Employee resigns and the Complaint is dismissed, the Human Capital Department will be notified, and a note will be placed in the Employee's file indicating they resigned with allegations pending. The records retained by the Title IX Coordinator will reflect the designation as well.

XXIV. Long-Term Remedies and Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented or Informal Resolution terms, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or the District community that are intended to stop the Sexual Harassment or Retaliation.

At the Title IX Coordinator's discretion, the Parties may be provided certain long-term support or measures even if no Policy violation is found.

When no Policy violation is found, the Title IX Coordinator will address any remedies the District owes the Respondent to ensure no effective denial of educational access.
The District will maintain the confidentiality of any long-term remedies, actions, or measures, provided confidentiality does not impair the District's ability to provide these services.

XXV. Failure to Comply with Sanctions, Responsive Actions, or Informal Resolution Terms

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker, including the Appeal Decision-maker, or the Informal Resolution agreement.

Failure to abide by the sanctions or actions imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanctions or actions, up to and including suspension, expulsion, and/or termination from the District.

Supervisors are expected to enforce completion of sanctions and responsive actions for their Employees.

An Employee suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Title IX Coordinator's satisfaction.

XXVI. Record Retention

For a period of at least seven (7) years following the conclusion of the Formal Grievance Process, the District will maintain records of:

1. Each Sexual Harassment and Retaliation Formal Resolution Process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation.
2. Any disciplinary sanctions imposed on the Respondent.
3. Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community 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 the Title IX Coordinator and designees, Investigators, Decision-makers, Appeal Decision-makers, Informal Resolution Facilitators, and any person who is responsible for implementing the School/District's resolution processes. The District will make the training information publicly available on its website to the extent authorized.

XXVII. External Contact Information

Concerns about the District's application of this policy and compliance with Title IX of the Education Amendments of 1972 may be addressed to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline: (800) 421-3481
Facsimile: (202) 453-6012
TDD: (877) 521-2172
Email: OCR@ed.gov
Web: http://www.ed.gov/ocr

For allegations of Employee-on-Employee misconduct, contact the United States Equal Employment Opportunity Commission (EEOC).

XXVIII. Policy Revision

The Title IX Coordinator regularly reviews and updates the Policy and procedures. The District reserves the right to make changes to this document as necessary, and those changes are effective once they are posted online.

This Policy is applicable to alleged incidents occurring on or after August 14, 2020. For alleged incidents of Sexual Harassment occurring prior to August 14, 2020, the offense definitions of the policy in place at the time of the alleged incident apply, and the District will use the procedures in place at the time of the report. Applicable versions of those policies and procedures are available from the Title IX Coordinator.

If laws or regulations change or court decisions alter policy or procedural requirements in a way that impacts this document, this document will be construed to comply with the most recent laws, regulations, or court holdings. A change required by a court or government order could occur during an active investigation or resolution process. If that happens, the District reserves the right to adjust the Policy and Procedures accordingly and notify the Parties of any necessary mid-process changes. This could include entirely replacing the Policy or associated procedures, which could necessitate restarting an investigation or resolution process. The District will make every effort to minimize the impact on the Parties as much as possible if changes are unavoidable.

This document does not create legally enforceable protections beyond the protections of the background federal and state laws that frame such policies and codes, generally.

Legal Citations
34 C.F.R. Part 106

Adopted 06/2025

APPENDIX B: STATEMENT OF THE PARTIES' RIGHTS

In accordance with AP 5050/6050, the Parties have the right to:

- An equitable investigation and resolution of all credible allegations of prohibited Sexual Harassment or Retaliation when reported to District officials.
- 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.
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional reports or Formal Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.
- Be informed in advance of any District public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- Have all personally identifiable information protected from the District's release to the public without consent, except to the extent permitted by law.
- Be treated with respect by District officials.
- Have District Policy and Procedures followed without material deviation
- Voluntarily agree to resolve allegations under the Policy through Informal Resolution without District pressure, if Informal Resolution is approved by the Title IX Coordinator
- Not be discouraged by District officials from reporting Sexual Harassment or Retaliation to both District and external authorities.
- Be informed of options to notify proper law enforcement authorities, including District and local police. This also includes the right not to be pressured to report. If, however, the alleged conduct falls within the North Dakota's mandated reporting requirements, the District will act consistent with state law.
- Have District officials respond promptly to alleged Policy violations.
- Be informed of available supportive measures, such as counseling, advocacy, health care, and/or other services, both in school and in the community.
- A District-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- Be informed of available assistance in changing academic and/or employment situations after an alleged incident of Sexual Harassment or Retaliation if such changes are reasonably available. No report or Formal Complaint, or investigation, either institutional or criminal, needs to occur before this option is available.
- Have the District maintain supportive measures for as long as necessary, ensuring they remain confidential, provided confidentiality does not impair the District's ability to provide the supportive measures or comply with the law.
- Receive sufficiently advanced written notice of any District meetings or interviews involving another party, when possible

- Identify and have the Investigator(s) and/or Decision-maker question relevant available witnesses, including expert witnesses
- Provide the Investigator(s)/Decision-maker with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker, may be asked of any party or witness
- Have Complainant's inadmissible sexual predisposition/prior sexual behavior or any party's irrelevant character evidence excluded by the Decision-maker
- Review the Relevant and Directly Related Evidence (if applicable) obtained and respond to that evidence
- A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record
- Receive a copy of all Relevant and Directly Related Evidence (if applicable) obtained during the investigation, subject to privacy limitations imposed by federal and state law, and a ten (10)-business-day period to review and comment on the evidence
- Receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed, and to have at least ten (10) business days to review prior to a Final Determination
- Be informed of the names of all witnesses whose information will be used to make a Finding, in advance of that Finding, when relevant
- Regular status updates on the investigation and/or resolution process
- Have reports of alleged Policy violations addressed by individuals who have received relevant annual training as required
- Preservation of confidentiality/privacy, to the extent possible and permitted by law
- Meetings, interviews, and/or hearings that are closed to the public
- Petition that any District representative in the process be recused on the basis of disqualifying bias and/or a conflict of interest
- Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process
- Apply the appropriate standard of evidence, preponderance of the evidence, to make a Finding and Final Determination after an objective evaluation of all Relevant Evidence
- Be present, including presence via remote technology, during all testimony given and evidence presented during any hearing
- Have an impact and/or mitigation statement considered by the Decision-maker following a Final Determination of responsibility for any allegation, but prior to sanctioning
- Be promptly informed of the resolution process Findings and sanctions, if any, and be given a detailed rationale for the decision, including an explanation of how credibility was assessed, in a written outcome letter delivered to the Parties simultaneously, without undue delay.
- Be informed in writing of when a District outcome is considered final and any changes to the Final Determination or sanctions that occur post outcome letter delivery
- Be informed of the opportunity to appeal the Findings and sanctions and the procedures for doing so in accordance with the District's appeal grounds.
- A fundamentally fair resolution as defined in the Procedures.