

## TITLE IX POLICY NON-DISCRIMINATION ON THE BASIS OF SEX IN EDUCATION

### I. Purpose

KCNA is committed to providing students, employees, and volunteers with an environment that is safe, welcoming, and inclusive. KCNA takes seriously its obligations to ensure that no student or employee suffers discrimination on the basis of sex, as defined in Title IX of the Education Amendments Act of 1972 (“Title IX”). Title IX requires that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” 20 U.S.C. § 1681(a). KCNA does not discriminate against or tolerate discrimination against students, employees, or applicants on the basis of actual or perceived sex, sexual orientation, gender identity or expression.

### II. Prohibited Acts

The following acts are prohibited and will not be tolerated at KCNA:

- Dating violence
- Discrimination on the basis of sex
- Domestic violence
- Sexual assault
- Sexual harassment
- Stalking

Please see the Appendix at the end of this policy for definitions.

### III. Designation of Title IX Coordinator

KCNA has designated a Title IX Coordinator to manage KCNA’s response to reports or complaints of sexual harassment, sexual assault, and dating violence and oversee KCNA’s compliance with Title IX. This current information can be found on KCNA’s website: [www.kippnj.org/compliance](http://www.kippnj.org/compliance).

## IV. KCNA's Title IX Authority

KCNA may investigate formal complaints of sexual harassment under Title IX if the acts occur within:

- the United States and
- KCNA's education program or activity.

For the purposes of this policy, sexual harassment under Title IX is prohibited:

1. In KCNA's "education program and activities" including locations, events, and circumstances in which KCNA has exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This includes KCNA's admissions, recruiting, financial aid, academics, student services, counseling and guidance, discipline practices, class assignments, grading policies, recreational activities, and athletics.
2. On KCNA grounds and immediately adjacent property, including at KCNA-sponsored and school related events, activities, functions, or programs, whether on or off school grounds; in vehicles owned, leased, or used by KCNA; or through the use of any electronic devices owned, leased or used by KCNA.

## V. Reporting Options

Any person may report sex discrimination, whether or not the person reporting is the person alleged to be the victim of sexual harassment, in person, by mail, by telephone, or by electronic mail.

Reports may be made to any staff member with whom the person reporting feels comfortable, including KCNA's Title IX Coordinator, a KCNA teacher, counselor, the school Assistant Principal, the school Principal/designee, or any Dean. A report may be made at any time (including during non-business hours) and as soon as possible in order for KCNA to maximize its ability to respond promptly and effectively.

To file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR) alleging sexual harassment, contact OCR at:

Office for Civil Rights  
Attention: Director, U.S. Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202  
Fax: (202) 453-6021  
(202) 453-6020 (voice)

800-877-8339 (TDD)  
Email: [ocr.dc@ed.gov](mailto:ocr.dc@ed.gov)  
Web: [www.ed.gov.ocr/complaintprocess.html](http://www.ed.gov.ocr/complaintprocess.html)

## VI. Response to Sexual Harassment and Sex Discrimination

When KCNA has actual knowledge, with or without a formal complaint, of a Title IX violation, KCNA will promptly respond and take steps to end and remedy any unlawful discrimination.

KCNA will treat Complainants and Respondents equitably by offering supportive measures before disciplining or taking other actions that are not supportive measures against a Respondent. KCNA's Title IX Coordinator will promptly contact the Complainant to complete an initial assessment, discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Complainant the process for filing a formal complaint.

## VII. Grievance Process for Formal Complaints of Sexual Harassment

Both Complainants and Respondents will be treated equitably and afforded supportive measures as needed throughout the process.

If an investigation results in a determination of responsibility for sexual harassment, remedies designed to restore or preserve equal access to KCNA's education programs and activities will be assigned. Remedies may include the same individualized services as supportive measures but also may include disciplinary sanctions or other actions.

Prior to the conclusion of the grievance process, KCNA will only apply supportive measures. Once KCNA receives a formal complaint, an impartial investigator and impartial decision-maker panel will be assigned and KCNA will provide a Notice of Grievance Process and Notice of Investigation to known parties.

### **Notification of Additional Individuals**

Once a report of harassment has been received by KCNA, the following groups will be notified as needed by the Title IX Coordinator, school Principal, Investigator, or designee:

1. Parents/guardians: The Title IX Coordinator/designee will, when appropriate, notify the parents/guardians of the Complainant, Respondent, and if appropriate, witnesses to an incident of alleged harassing behavior about the nature of the incident and the procedures and steps in place for responding to it. The Title IX Coordinator/designee will determine if parents/guardians should be informed prior to or after the investigation of an incident.
2. Schools: KCNA may notify non-KCNA schools of all Complainants and Respondents involved in an incident of harassment to ensure that students are not victimized across schools and that comprehensive service and protection can be provided to the Complainants and Respondents.
3. Protection and Enforcement agencies: If KCNA determines that the reported behavior cannot be safely and appropriately handled through school-based policies or present indicators of child abuse or neglect (including sexual abuse) the information about the incident may be conveyed to law enforcement pursuant to mandatory reporting requirements. As part of making this determination, the Title IX Coordinator, Investigator, or designee may consult with either a law enforcement officer or legal counsel.

## Evaluation of Evidence

The parties will be given an objective evaluation of all relevant evidence and credibility determinations will not be based upon a person's status as a Complainant, Respondent, or witness.

In accordance with the Title IX regulations, the investigator and decision-maker panel shall presume that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

## Time for Resolution

KCNA will issue a written determination regarding responsibility within 120 calendar days following receipt of the formal complaint.

The time for resolution, and any then-pending deadlines, may be extended for good cause and with written notice to both parties. Good cause may include, but is not limited to, the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

Appeals will be resolved within 30 calendar days.

**Remedies and Disciplinary Measures for Students.** A determination of responsibility may result in remedies, which may include, but are not limited to disciplinary measures included in the Student and Family Handbook as well as the Staff Handbook.

**Standard of Evidence.** KCNA must determine that an allegation has been proven by a preponderance of the evidence (more likely than not) in order to make a determination of responsibility.

**Withdrawal of Formal Complaint.** The Complainant may request to withdraw the formal complaint any time prior to a decision being made. The request to withdraw must be in writing to the Title IX Coordinator. If the Complainant does not wish to proceed with a formal complaint, the Title IX Coordinator will adhere to the withdrawal so long as failing to do so would not be clearly unreasonable in light of the circumstances known.

### Information for Complainants and Respondents

After receipt of the formal complaint, the Title IX Coordinator will provide information to the Complainant and Respondent about:

- The investigation process and informal resolution process including a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of investigation process;
- The allegations including sufficient details known at the time including the identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment, sexual assault and/or dating violence, and the date and location of the alleged incident, if known;
- The Complainant and Respondent's right to have an advisor of his/her choice who may be, but is not required to be, an attorney, at all phases of the process;
- The right to inspect and review evidence; and
- The prohibition against knowingly making false statements or knowingly submitting false information during the investigation process.

Additionally, the Complainant will be provided information about available services and advocacy organizations, their rights under Title IX of the Education Amendments of 1972.

## VIII. Investigation of a Formal Complaint

**Burden of Proof.** KCNA bears the burden of proof and is responsible for gathering evidence that would aid in reaching a decision regarding responsibility.

**Privileged Information.** In general, a party's medical and counseling records are confidential. KCNA will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure or, information protected under a legally recognized privilege (e.g., attorney-client, doctor-patient), unless the individual holding such the privilege has waived the privilege voluntarily.

**Prior Sexual Behavior.** Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct

alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

**Opportunity to Present Witnesses and Evidence.** Either party may present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence at any time prior to the issuance of the investigative report.

**Parties' Advisors.** Either party may be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. However, neither party's advisor will be permitted to question witnesses, nor participate in interviews or meetings in which the represented party is not a participant.

**Parental Involvement.** Nothing herein is intended to supplant any legal right of a parent or guardian to act on behalf of a student.

**Written Notices.** Parties will receive written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the party to prepare to participate if the party's participation is invited or expected.

#### **Evidence Review Period.**

Any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which KCNA does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source will be provided to both parties at the conclusion of the investigator's evidence gathering. The evidence will be redacted of personally identifiable information, besides names.

Prior to completion of the investigative report, KCNA will send each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The parties will have 10 calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report.

**Investigative Report.** Following the evidence review period, the investigator will issue an investigative report that fairly summarizes relevant evidence. The investigative report will be sent to each party and the party's advisor, if any, for their review and written response.

#### **Investigation and Q&A**

Upon the investigator's finalization of the investigative report, the investigator will provide an opportunity for questions and answers from the parties.

Following receipt of the investigative report, the parties will have two days to review and may submit written, relevant questions that a party wants asked of any party. Questions may be submitted to the investigator. The investigator will provide each party with answers to any questions posed by a party.

Additional follow-up questions, limited only to the scope of the prior questions, may be presented by either party within three calendar days after receipt of the investigator's answers.

Only relevant questions will be entertained. The investigator will explain to the party proposing the questions any decision to exclude a question as not relevant.

**Determination Regarding Responsibility.** At the conclusion of the investigation, and not less than 10 days after the parties receive the investigative report, the decision-maker will issue a full and final, written determination in compliance with the regulations implementing Title IX.

## IX. Assessment and Dismissal of Formal Complaint

Upon receipt of a formal complaint, KCNA will respond to any immediate health or safety concerns raised. The Title IX Coordinator will then conduct an initial assessment for the sole purpose of determining whether the alleged conduct, if substantiated, would constitute prohibited conduct under this policy.

If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in KCNA's education program or activity, or did not occur against a person in the United States, then KCNA must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. Such a dismissal does not preclude action under another provision of the student code of conduct or KCNA's policies related to employee discipline.

Additionally, KCNA may dismiss the formal complaint or any allegations therein, if at any time during the investigation: a Complainant withdraws the complaint in writing to the Title IX Coordinator; the Respondent is no longer affiliated with KCNA; or specific circumstances prevent KCNA from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal, KCNA will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

## X. Title IX Informal Resolution Process

At any time after the filing of a formal complaint and prior to reaching a determination regarding responsibility, KCNA may facilitate a Title IX informal resolution process, such as mediation, that does not involve a full investigation and adjudication.

Prior to a Title IX informal resolution, KCNA will provide to the parties a written notice disclosing the allegations, and the requirements of the informal resolution process. A party agreeing to participate in a Title IX informal resolution process will not waive either party's right to a formal investigation and

adjudication. At any time prior to agreeing to a resolution, any party has the right to withdraw from the Title IX informal resolution process and resume the grievance process with respect to the formal complaint.

Title IX Informal resolution will only be pursued with the parties' voluntary, written consent to the informal resolution process. KCNA will not require the parties to participate in a Title IX informal resolution process nor make it a condition of enrollment.

The Title IX informal resolution process is separate and apart from any other KCNA informal resolution process or mediation. The Title IX informal resolution process can only be offered and take place when there is a formal Title IX complaint filed and under investigation.

Allegations that an employee sexually harassed a student shall not be resolved by an informal resolution process.

## XI. Appeals

**Reviewable Decisions.** Parties may seek review of the following:

1. The dismissal of a formal complaint under Title IX or any allegations therein; or
2. A final determination regarding responsibility following the investigation of a formal complaint.

**Bases for Review.** Appeals are 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 individual Complainant or Respondent that affected the outcome of the matter.

**Notice of Appeal.** The decision of KCNA may be appealed by petitioning the Title IX Coordinator. Any party who files an appeal must do so in writing to the Title IX Coordinator within three school days of receiving the written determination regarding responsibility. The petition should state whether the appealing party challenges the finding, the remedies imposed, or both. The party appealing a decision must state all relevant bases for review simultaneously. Any basis not raised in the initial appeal is waived. Upon receipt of an appeal by either party, a notice of appeal will be provided to both parties by an appellate member who will review and conduct the appeal.

**Responses.** The Title IX Coordinator will share the filed appeal with the other party. If the opposing party wishes to file a response, the response must be received by the appellate member no later than two school days following receipt of the appeal. If additional time is needed, prior to the expiration of the two-day deadline, the Title IX Coordinator may grant an extension of one school day upon request.



**Status While Pending Review.** All remedies imposed by KCNA will be in effect during the appeal. A request may be made to the Title IX Coordinator for special consideration in exigent circumstances, but the presumptive stance of KCNA is that the remedies will stand. Graduation, field trips, internships/externships, etc. do not in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to KCNA or of privileges, all reasonable attempts will be made to restore the student or staff member to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

**Process for Review.** All appeals and responses are forwarded to the appellate member for initial review to determine if the appeal states an appropriate basis for review and is timely. The original finding and sanction will stand if the appeal is not timely or does not meet the criteria of one of the above bases for appeal, and the decision is final. If the appeal is timely and presents an appropriate basis for review, the appellate member will proceed with a substantive review of the appeal.

**Appellant's Burden.** The party requesting appellate review must show error in the original finding or sanction. The finding and sanction are presumed to have been decided reasonably and appropriately.

**New Evidence.** If the appellate member determines that new evidence should be considered, the appellate member will reconsider in light of the new evidence only. The appellate member's reconsideration cannot be appealed.

**Remedies.** At the conclusion of an appeal, if the appellate member determines that the remedies or disciplinary sanctions imposed are disproportionate to the severity of the violation, the appellate member may increase, decrease or otherwise modify the remedies or disciplinary sanctions.

#### **Additional Considerations.**

1. All parties will be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision.
2. An appeal is not intended to be a full rehearing of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original decision-making process and pertinent documentation regarding the grounds for appeal.
3. This is not an opportunity for the appellate member to substitute his or her judgment for that of KCNA merely because the appellate member disagrees with the finding or sanction. Appeals decisions are to be deferential to the decision-maker, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so.
4. Remedies imposed are implemented immediately unless the appellate member or Title IX Coordinator stays their implementation in extraordinary circumstances, pending the outcome of the appeal.

**Final Determination.** The appellate member will render a written decision describing the result of the appeal and the rationale for the result simultaneously to all parties within fourteen school days from receipt of the appeal. Additional time to render the appeal decision is allowed for good cause, but not to exceed 15 school days. The appellate member's decision to deny an appeal request is final.

## XII. Administrative Leave

KCNA may choose to place a non-student employee Respondent on administrative leave during the pendency of a grievance process. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

## XIII. Emergency Removal

KCNA must undertake an individualized safety and risk analysis to remove a student, on an emergency basis, from KCNA's education program or activity. To justify removal, KCNA must determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment. The Respondent must be provided with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

## XIV. Required Training

All Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, shall receive training on the definition of sexual harassment in § 106.30, the scope of KCNA's education program or activity, how to conduct an investigation and grievance process including appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Decision-makers shall receive training on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

## XV. Retaliation

KCNA prohibits retaliation against any individual who has made a complaint pursuant to this policy in good faith, assisted in an investigation, or otherwise exercised rights protected by law. No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated in any manner in an investigation. Any student, staff member, or volunteer who is subject to retaliation in violation of this policy or who knows of another student, staff member, or volunteer who has been subject to retaliation is urged to report it as soon as possible to KCNA staff or the Title IX Coordinator.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual

harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Complaints alleging retaliation may be filed according to the grievance procedures for sexual harassment under Title IX.

## XVI. Confidentiality

To the greatest extent possible, KCNA shall respect the privacy of individuals who report potential violations of this policy, individual(s) against whom a report is filed, and witnesses, except as may be permitted by the FERPA statute or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Any notifications to other parties will be made only to ensure that services are provided to the Complainant, Respondent, and to protect the Complainant from further or sustained harassment. KCNA will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair KCNA's ability to provide the supportive measures. The Title IX Coordinator/designee conducting the investigation will be responsible for making determinations about confidentiality.

## XVII. Recordkeeping

KCNA must retain the following for a period of seven years:

1. Each sexual harassment investigation to include any determination, disciplinary sanctions, remedies provided, any appeal and result, informal resolution, basis for conclusion, all documents that restore or preserve equal access, additional explanations or details of measures taken.
2. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. KCNA will make these materials available upon request.

## XVIII. Appendix

### Definitions

For purposes of this policy, these terms are subject to the following definitions:

**Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to any of the following persons:

- KCNA's Title IX Coordinator,
- Any KCNA official who has authority to institute corrective measures on behalf of KCNA or
- Any school employee.

**Complainant** means an individual who is alleged to be the Complainant of conduct that could constitute sexual discrimination.

**Formal Complaint** means the completion of the "Title IX Formal Complaint Form" filed by a Complainant, Complainant's parent/guardian or signed by the Title IX coordinator alleging sexual harassment against a Respondent and requesting that the recipient investigate the allegation of sexual harassment.

**Informal Complaint** means the reporting of alleged discrimination on the basis of sex (including sexual harassment) against a Respondent to any KCNA staff member in person, by mail, by telephone, or by electronic mail or by using the contact information listed on the website for the Title IX Coordinator.

**Sexual harassment** is defined as conduct on the basis of sex, which satisfies one of the following:

1. An employee of KCNA conditioning the provision of aid, a benefit, or service of KCNA on an individual's participation in unwelcome sexual conduct (also known as quid pro quo);
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to KCNA's education program or activity (also known as a hostile environment);

**Sexual assault** is defined as follows:

A sexual assault is an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting [UCR] system of the Federal Bureau of Investigation [FBI],

**Dating violence** defined as: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**Domestic violence** includes felony or misdemeanor crimes of violence committed by:

- a. A current or former spouse or intimate partner of the Complainant,
- b. A person with whom the Complainant shares a child in common,
- c. A person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner,

- d. A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the State of New Jersey receiving grant monies, or
- e. Any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the State of New Jersey.

**Stalking** defined as: engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- f. Fear for the person's safety or the safety of others; or
- g. Suffer substantial emotional distress.

**Supportive measures** mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to KCNA's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment.

Supportive measures include, but are not limited to: behavior plan or agreement, counseling with a school based mental health practitioner, conference with parent/legal guardian, student, counselor, teaching and/or administrator, creating individual safety plans, designated staff member to serve as the Complainant or Respondent's "safe" person, extensions of deadlines or other course-related adjustments, increased security and monitoring of certain areas of the campus, modifications of work or class schedules, campus escort services, reflective essay, leaves of absence, mutual restrictions on contact between the parties, parent/guardian shadowing, online or in-person training on a relevant topic, proximity control, referral to an outside agency for services, and other similar measures. Supportive measures are available to the Complainant and Respondent throughout the grievance procedure and so long as the parties request them, regardless of the filing of a formal complaint, or outcome of the determination of responsibility.

**Title IX** is defined to include Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 *et seq.*, and implementing regulations promulgated by the United States Department of Education, 34 C.F.R. Part 106.